AUTHENTICATED
U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 81 Tuesday,

No. 248 December 27, 2016

Pages 94909–95396

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 211

RIN 3206–AN47

Veterans' Preference

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements statutory changes pertaining to veterans' preference. We are making this change in response to the Gold Star Fathers Act of 2015, which broadened the category of individuals eligible for veterans' preference to provide that fathers of certain permanently disabled or deceased veterans shall be included with mothers of such veterans as preference eligibles for treatment in the civil service. This action will align OPM's regulations with the existing statute.

DATES: Effective December 27, 2016. Comments must be received on or before February 27, 2017.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this proposed rulemaking.

You may also send, deliver, or fax comments to Kimberly A. Holden, Deputy Associate Director for Recruitment and Hiring, Employee Services, U.S. Office of Personnel Management, Room 6351D, 1900 E Street NW., Washington, DC 20415–9700; email at *employ@opm.gov* or fax at (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Roseanna Ciarlante by telephone on (267) 932–8640, by fax at (202) 606–4430, by TTY at (202) 418–3134, or by email at *Roseanna.Ciarlante@opm.gov.*

SUPPLEMENTARY INFORMATION: On October 7, 2015, the Gold Star Fathers Act of 2015 (the ''Act'') was enacted as Public Law 114–62. The Act provides an amendment to the eligibility criteria for veterans' preference purposes by amending subparagraphs (F) and (G) to 5 U.S.C. 2108(3). The amendment provides that fathers of certain permanently disabled or deceased veterans shall be included with mothers of such veterans as preference eligibles for treatment in the civil service. The Act also changes the requirements for parents of such veterans to qualify for this preference.

The Act replaces 5 U.S.C. 2108(3)(F) to state that the parent of an individual who lost his or her life under honorable conditions while serving in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955, is eligible for preference if the spouse of that parent is totally and permanently disabled; or that parent, when preference is claimed, is unmarried or, if married, legally separated from his or her spouse.

The Act also replaces 5 U.S.C. 2108(3)(G) to state that the parent of a service-connected permanently and totally disabled veteran is eligible for preference if the spouse of that parent is totally and permanently disabled; or that parent, when preference is claimed, is unmarried or, if married, legally separated from his or her spouse.

OPM is amending 5 CFR 211.102(d) to state that a ''preference eligible'' is ''a veteran, disabled veteran, sole survivor veteran, spouse, widow, widower, or parent who meets the definition of 'preference eligible' in 5 U.S.C. 2108.'' This amendment replaces the word ''mother'' with the word ''parent'' to conform to the statutory definition.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Waiver of advance notice is necessary to ensure that the regulations become effective immediately, and that agencies understand their obligations under 5 U.S.C. 2108(3) and do not unwittingly deny veterans' preference based upon the outdated existing regulations. If OPM's regulations were permitted to remain as written while OPM solicited comments upon its proposed revisions, parents of certain deceased and disabled veterans may be inadvertently denied veterans' preference in Federal hiring based upon the current language in regulations. Accordingly, the notice otherwise required is impracticable because it would impede due and timely execution of agencies' functions. The revised language in this interim rule will ensure parents of certain deceased and disabled veterans receive their statutory entitlement to veterans' preference.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in Title 5 CFR Part 211

Government employees, Veterans.

U.S. Office of Personnel Management

Beth F. Cobert,

Acting Director.

Accordingly, OPM is amending part 211 of title 5, Code of Federal Regulations, as follows:

PART 211—VETERAN PREFERENCE

■ 1. Amend § 211.102 by revising paragraph (d) introductory text to read as follows:

§ 211.102 Definitions.

* * * * *

(d) *Preference eligible* means a veteran, disabled veteran, sole survivor veteran, spouse, widow, widower, or parent who meets the definition of ''preference eligible'' in 5 U.S.C. 2108.

* * * * *

[FR Doc. 2016–30893 Filed 12–23–16; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF ENERGY

10 CFR Part 820

[Docket No. EA–RM–16–PRDNA]

RIN 1992–AA52

Procedural Rules for DOE Nuclear Activities

AGENCY: Office of Enterprise Assessments, Office of Enforcement, Office of Nuclear Safety Enforcement, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting a final rule to clarify that the Department may assess civil penalties against certain contractors and subcontractors for violations of the prohibition against retaliating against an employee who reports violations of law, mismanagement, waste, abuse, or dangerous/unsafe workplace conditions, among other protected activities, concerning nuclear safety (referred to as ''whistleblowers''). Specifically, this rule clarifies the definition of ''DOE Nuclear Safety Requirements'' and clarifies that the prohibition against whistleblower retaliation is a DOE Nuclear Safety Requirement to the extent that it concerns nuclear safety. This final rule is based on an earlier proposal the Department published on August 12, 2016.

DATES: *Effective Date:* The effective date of this rule is January 26, 2017.

ADDRESSES: The docket, which includes **Federal Register** notices and all comments received is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure. A link to the docket Web page can be found at: *https://www.regulations.gov/docket?D=DOE-HQ-2016-0021.* The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, available in the docket.

FOR FURTHER INFORMATION CONTACT:

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K.C. Michaels, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585–0121. Phone: (202) 586–3430. Email: *Kenneth.Michaels@hq.doe.gov.*

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I. Authority and Background

Pursuant to the Atomic Energy Act of 1954 (AEA) (42 U.S.C. 2011 *et seq.*), DOE has issued regulations governing nuclear safety management (at 10 CFR part 830) and occupational radiation protection (at 10 CFR part 835). Section 234A of the AEA (42 U.S.C. 2282a) authorizes DOE to impose civil penalties for violations of these regulations. Specifically, section 234A authorizes civil penalties against contractors, subcontractors, and suppliers that are covered by an indemnification agreement under section 170.d. of the AEA (42 U.S.C. 2210(d)) (commonly known as the Price-Anderson Act) that violate DOE rules, regulations, or orders ''related to nuclear safety.'' DOE has issued Procedural Rules for DOE Nuclear Activities at 10 CFR part 820 (part 820), which establishes a process for imposing civil penalties under section 234A.

Separate from part 820, DOE has also issued regulations at 10 CFR part 708 (part 708) that prohibit DOE contractors or subcontractors from retaliating against employees for reporting violations of law, rule or regulation, fraud, gross mismanagement, waste, abuse; danger to employees or the public; participating in Congressional or administrative proceedings; or refusing to participate in an activity that may constitute a violation of federal health and safety law or cause a reasonable fear of serious injury (referred to as ''whistleblowers''). Part 708 establishes an affirmative duty on the part of contractors not to retaliate against whistleblowers, and establishes a process for an employee alleging retaliation to file a claim for reinstatement, transfer-preference, back-pay, legal fees, and other relief.

On August 12, 2016, DOE published a Notice of Proposed rulemaking (NOPR) to amend part 820 to clarify the definition of ''DOE Nuclear Safety Requirements'' and to clarify that DOE may impose civil penalties against a contractor or subcontractor for violating the prohibition against whistleblower retaliation found in part 708, to the extent the violation concerns nuclear safety. 81 FR 53337.

II. Synopsis of the Final Rule

This final rule revises the definition for ''DOE Nuclear Safety Requirements'' found in 10 CFR part 820 to identify the particular rules and regulations that DOE regards as DOE Nuclear Safety Requirements. Under the final rule, the following are enforceable DOE Nuclear Safety Requirements:

10 CFR part 830 (nuclear safety management);
10 CFR part 835 (occupational radiation protection);
10 CFR 820.11 (information accuracy requirements);
Compliance Orders issued pursuant to 10 CFR part 820, subpart C; and
10 CFR 708.43 (duty of contractors not to retaliate against whistleblowers) to the extent that subject activities concern nuclear safety.

In the NOPR, DOE proposed that Compliance Orders issued pursuant to 10 CFR part 820, subpart C and each of the four listed rules and regulations are DOE Nuclear Safety Requirements ''to the extent that subject activities concern nuclear safety.'' In the final rule, DOE has moved this phrase so that it applies only to 10 CFR 708.43. Under section 234A of the AEA, DOE may impose civil penalties for violations of ''any applicable rule, regulation, or order related to nuclear safety.'' DOE believes that all of the activities subject to 10 CFR part 830, 10 CFR part 835, 10 CFR 820.11, and Compliance Orders issued pursuant to 10 CFR part 820, subpart C, have a direct connection to nuclear safety. Each of these rules is directed specifically at DOE activities that affect nuclear safety and therefore these rules ''concern nuclear safety'' in all their applications. By contrast, 10 CFR 708.43 is directed at all DOE activities, including those that have no connection to nuclear safety. Therefore, DOE is amending the definition of ''DOE Nuclear Safety Requirements'' to include 10 CFR part 830, 10 CFR part 835, 10 CFR 820.11, and Compliance Orders issued pursuant to 10 CFR part 820, subpart C, in all their applications and 10 CFR 708.43 to the extent that activities subject to 10 CFR 708.43 concern nuclear safety.

DOE is also establishing a new section, 10 CFR 820.14, to provide specific requirements that apply to imposing civil penalties for a violation of the prohibition against whistleblower retaliation found in 10 CFR 708.43. For example, the final rule provides that DOE will not initiate an investigation or take action with respect to an alleged act of retaliation by a DOE contractor until 180 days after an alleged violation occurs. The final rule further provides that DOE will suspend an investigation or other proceeding when an

administrative or judicial proceeding commences based on the same alleged act of retaliation until 60 days after a final decision of an agency or court finds that a retaliation occurred, or otherwise makes a final disposition of the matter on procedural grounds without explicitly finding that retaliation did not occur. A final decision of an agency or court includes a final agency decision pursuant to 10 CFR part 708, a final decision or order of the Secretary of Labor pursuant to 29 CFR part 24, a decision by the Secretary of Energy upon a report by the Inspector General, or a decision by a federal or state court. The final rule makes clear that the commencement of an administrative or judicial proceeding shall not affect the Department's authority to take enforcement action for compliance with DOE Nuclear Safety Requirements other than 10 CFR 708.43.

DOE explained in its proposed rule that ''it will not take any action under part 820 with respect to alleged retaliation until after the deadlines have passed for filing a claim under part 708 or 29 CFR part 24—*i.e.* 180 days after the alleged violation occurs'' and that if ''an administrative or judicial proceeding is filed after DOE has already initiated any action under part 820, DOE will immediately suspend its activities under part 820 until the issuance of a final decision in the proceeding—including the exhaustion of appeals.'' The proposed rule stated that ''DOE will not take any action under part 820 until sixty days after a final decision in an administrative or judicial proceeding finds that a retaliation occurred.'' DOE's intent was to ensure that its investigation did not run concurrent with a judicial or administrative proceeding examining the same facts. A similar situation exists where an administrative or judicial proceeding is dismissed on procedural grounds without an explicit finding whether retaliation in fact occurred. Under this scenario, there would be no risk of conflict with any judicial or administrative proceedings, and DOE would be unable to pursue its interest in preventing whistleblower retaliation even though no judicial or administrative proceeding had fully addressed the question of whether retaliation in fact occurred. Therefore, consistent with DOE's intent, this final rule states that DOE will suspend an investigation or other proceeding when an administrative or judicial proceeding commences based on the same alleged act of retaliation until 60 days after a final decision of an agency or court finds that retaliation occurred, or otherwise makes a final disposition of the matter on procedural grounds without explicitly finding that retaliation did not occur.

Finally, DOE is revising its Whistleblower Enforcement Policy, found in appendix A to part 820. This appendix is a general statement of policy and is not binding on DOE or its contractors.

III. Response to Comments

The Department received four comments in response to the proposed rule. After reviewing these comments, DOE has concluded that the rule should be finalized as proposed and without change. DOE's response to the comments is fully explained below.

One commenter stated that the proposed rulemaking would inappropriately narrow DOE's authority to issue civil penalties for retaliation by limiting that authority to retaliation for raising concerns involving only nuclear safety. DOE disagrees that this rule will limit its authority in this manner. This final rule clarifies that DOE may issue civil penalties under part 820 for violations of the prohibition against whistleblower retaliation that concern nuclear safety. DOE's authority to issue civil penalties against contractors that retaliate against employees for reporting non-nuclear safety concerns or refusing to participate in an activity that the employees reasonably believe may cause serious injury to themselves or other employees is covered under a different regulation that is not affected by today's rule. Namely, subpart C to 10 CFR part 851, Worker Safety and Health Program, requires DOE contractors to establish procedures for workers to report job-related hazards, and to permit workers to stop work or decline to perform an assigned task because of a reasonable belief that the task poses an imminent risk of serious physical harm to workers, without fear of reprisal. Subpart E to part 851 establishes the process for taking enforcement actions, including the issuance of civil penalties, against contractors that violate part 851 requirements.

One commenter identified a number of offenses for which DOE contractors should be subject to criminal penalties and questioned the independence of DOE personnel who oversee or may conduct investigations of DOE contractor activities. While these issues are outside the scope of this rulemaking, DOE notes that subpart F of part 820 already establishes provisions for the identification and disposition of potential criminal violations of the Atomic Energy Act or any applicable DOE Nuclear Safety Requirement. With respect to the independence of personnel handling enforcement functions, § 820.4 requires any DOE official with a financial or personal interest in a matter being addressed pursuant to the provisions of part 820 to withdraw from that action. This section also allows any interested person to request that DOE's General Counsel disqualify a DOE Official from a part 820 matter due to a conflict of interest.

Another commenter agreed with DOE's general approach of deferring any enforcement activity under part 820 with respect to an alleged retaliation until after a final decision has been issued concerning any other proceeding addressing the same alleged act of retaliation. The commenter stated that given that multiple avenues are available for whistleblowers to pursue retaliation complaints and obtain relief, the Department should presume that no retaliation has occurred, and thus enforcement action is not warranted, unless an employee has submitted a retaliation complaint using one of these mechanisms. DOE does not agree that there should be a presumption that no retaliation has taken place unless and until an employee has submitted a complaint. The existence of multiple avenues for aggrieved employees to raise complaints does not guarantee that a complaint will be filed after every instance of retaliation. There could be many reasons an individual employee may choose not to file a complaint through one of these mechanisms, and DOE does not believe it is appropriate to draw conclusions from the mere fact that no complaints have been filed. DOE intends to exercise its enforcement discretion consistent with the final decision of an agency or court on matters of retaliation that concern nuclear safety. However, DOE retains the authority to investigate whether a contractor has violated a DOE Nuclear Safety Requirement in retaliating against an employee for raising a nuclear safety concern under appropriate circumstances, even if no complaint of retaliation has been filed.

The commenter also suggested that DOE consider providing additional clarification regarding the escalation or mitigating factors the Department would consider in determining its enforcement penalties, particularly if this rulemaking is expected to result in an increase in enforcement activities. Based on historical trends in the number of cases of substantiated retaliation against DOE contractor and subcontractor employees who raise nuclear safety concerns, DOE does not expect any increase in enforcement activities. Further, DOE does not expect that this final rule will

directly lead to an increase in enforcement activities. DOE believes that the factors that it considers when determining whether to escalate or mitigate any civil penalty are adequately described in section IX of appendix A to part 820 and in DOE's Enforcement Process Overview document that is available at *http://energy.gov/ea/services/enforcement/enforcement-program-and-process-guidance-and-information.* These same factors would be applied in any enforcement action for nuclear safety-related retaliation under part 820, in addition to those described in amended section XIII of appendix A of this rulemaking.

One commenter stated that DOE's authority to issue civil penalties for cases of nuclear safety-related retaliation is inconsistent with the Energy Reorganization Act and 29 CFR part 24, which provide jurisdiction to the Department of Labor to consider complaints of retaliation by DOE contractors against contractor employees. The commenter stated that imposing a civil penalty under part 820 for a retaliation that the Department of Labor has already considered and awarded a remedy to the employee for would constitute a duplicate penalty for the same violation. DOE disagrees that a civil penalty imposed under part 820 for a retaliation that the Department of Labor has substantiated under 29 CFR part 24 constitutes a duplicate penalty. DOE sees these processes as complementary in that each process has a different type of remedy that serves different purposes. The allowable remedies under 29 CFR part 24 are designed to ''make the employee whole'' by providing reinstatement, transfer-preference, back-pay, and legal fees sufficient to compensate the employee for the harm. By contrast, part 820 provides for civil penalties in order to hold a contractor accountable for violating a DOE Nuclear Safety Requirement and to deter future retaliation. This distinction is also true with respect to the DOE Contractor Employee Protection Program under part 708 and the Pilot Program for Enhancement of Employee Whistleblower Protection (41 U.S.C. 4712), neither of which provide for imposing a civil penalty on a contractor for violating a requirement that prohibits retaliation.

The commenter also stated that DOE has other sufficient mechanisms available, such as contract fee reductions, to address any ''chilled workplace'' or other leadership concerns. Under this final rule, DOE retains other mechanisms, including contract fee reductions, to respond to contractor violations of DOE Nuclear Safety Requirements. Although these mechanisms may be sufficient in a particular case to address ''chilled workplace'' concerns, DOE believes that there may be circumstances where civil penalties under part 820 are appropriate and necessary to ensure that future violations of the prohibition against whistleblower retaliation are deterred.

Finally, the commenter noted that the proposed rule does not address situations in which a DOE federal employee causes, demands or directs a contractor to retaliate against one of its employees for whistleblowing. DOE is not aware of any instance where a DOE employee was found to have caused or contributed to a retaliation by a contractor against a contractor employee. Nonetheless, DOE notes that section IX.8 of appendix A to part 820 already discusses DOE's approach to enforcement for cases wherein DOE may have contributed to a contractor's violation of a DOE Nuclear Safety Requirement. This final rule does not amend or alter this provision.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This final rule has been determined not to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this notice of proposed rulemaking was not subject to review by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Regulatory Flexibility Act

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

DOE has reviewed this rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The final rule amends DOE's Procedural Rules for DOE Nuclear Activities to clarify the definition of ''DOE Nuclear Safety Requirements'' and to clarify that DOE may assess civil penalties against certain contractors and subcontractors for violations of the prohibition against retaliating against whistleblowers. While the amended part 820 would expose small entities that are contractors and subcontractors to potential liability for civil penalties, DOE does not expect that a substantial number of these entities will violate a DOE Nuclear Safety Requirement resulting in the imposition of a civil penalty. On this basis, DOE certifies that this final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

C. Paperwork Reduction Act

This rule does not impose new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. National Environmental Policy Act

DOE has determined that this rule is covered under the Categorical Exclusion in DOE's National Environmental Policy Act regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemaking that interprets or amends an existing rule or regulation without changing the environmental effect of the rule or regulation that is being amended. The final rule amends DOE's regulations on civil penalties with respect to certain DOE contractors and subcontractors in order to clarify that civil penalties are available for violations of the prohibition against whistleblower retaliation found in § 708.43 that concern nuclear safety. These amendments are procedural and do not change the environmental effect of part 820. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.,* requires each Federal agency, to

the extent permitted by law, to prepare a detailed assessment of the effects of any Federal mandate in an agency rule that may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more (adjusted annually for inflation) in any one year. 2 U.S.C. 1532. While the final rule may expose DOE contractors and subcontractors to potential liability for civil penalties for retaliating against a whistleblower in connection with a protected activity relating to nuclear safety, DOE does not expect that these civil penalties will approach $100 million in any single year. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999, 5 U.S.C. 601 note, requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family wellbeing. While this final rule would apply to individuals who may be members of a family, the rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this final rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

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

I. Treasury and General Government Appropriations Act, 2001

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

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action has been determined to not be a significant regulatory action, and it would not have an adverse effect on the supply, distribution, or use of energy. Thus, this action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

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

L. Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of this final rule.

List of Subjects in 10 CFR Part 820

Administrative practice and procedure, Enforcement, Government contracts, Nuclear safety, Penalties, Whistleblowing.

Issued in Washington, DC, on December 19, 2016.

Glenn S. Podonsky,

Director, Office of Enterprise Assessments.

For the reasons stated in the preamble, DOE hereby amends part 820 of chapter III of title 10 of the Code of Federal Regulations as set forth below:

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

■ 1. The authority citation for part 820 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

■ 2. Section 820.2 is amended by revising the definition for ''DOE Nuclear Safety Requirements'' to read as follows:

§ 820.2 Definitions.

* * * * *

DOE Nuclear Safety Requirements means the set of rules, regulations, orders, and other requirements relating to nuclear safety adopted by DOE to govern the conduct of persons in connection with any DOE nuclear

activity and includes any program, plan, or other provision required to implement these rules, regulations, orders, or other requirements. DOE Nuclear Safety Requirements include the following:

(i) 10 CFR part 830;

(ii) 10 CFR part 835;

(iii) 10 CFR 820.11;

(iv) Compliance Orders issued pursuant to 10 CFR part 820, subpart C; and

(v) 10 CFR 708.43, to the extent that subject activities concern nuclear safety.

* * * * *

■ 3. Section 820.14 is added to subpart A to read as follows:

§ 820.14 Whistleblower protection.

(a) *Covered acts.* An act of retaliation (as defined in 10 CFR 708.2) by a DOE contractor, prohibited by 10 CFR 708.43, that results from a DOE contractor employee's involvement in an activity listed in 10 CFR 708.5(a) through (c) may constitute a violation of a DOE Nuclear Safety Requirement if it concerns nuclear safety.

(b) *Commencement of investigation.* The Director may not initiate an investigation or take any other action under this part with respect to an alleged act of retaliation by a DOE contractor until 180 days after an alleged violation of 10 CFR 708.43 occurs.

(c) *Administrative or judicial proceedings.* The Director shall immediately suspend any ongoing activities under this part and suspend any time limits under this part when an administrative or judicial proceeding commences based on the same alleged act of retaliation. While an administrative or judicial proceeding, including appeals, is pending, the Director may not exercise any authority under this part based on an alleged violation of 10 CFR 708.43, including issuing enforcement letters, subpoenas, orders to compel attendance, Consent Orders, Preliminary Notices of Violation, or Final Notices of Violation. Once such a proceeding commences, the Director shall not conduct any activities under this part until sixty days after a final decision of an agency or court finds that a retaliation occurred, or otherwise makes a final disposition of the matter on procedural grounds without explicitly finding that retaliation did not occur.

(d) *Final decision.* For the purposes of this section, a final decision of an agency or court includes any of the following:

(1) A final agency decision pursuant to 10 CFR part 708;

(2) A final decision or order of the Secretary of Labor pursuant to 29 CFR part 24;

(3) A decision by the Secretary upon a report by the Inspector General;

(4) A decision by a federal or state court.

(e) *Evidentiary record.* If a final decision of an agency or court finds that retaliation occurred, the Director may obtain and use information collected as part of those proceedings. The Director has discretion to give appropriate weight to information obtained from these proceedings and to initiate and conduct further investigation if the Director deems necessary, particularly with regard to the relationship between the retaliation and nuclear safety.

(f) *Underlying nuclear safety requirements.* Notwithstanding the commencement of an administrative or judicial proceeding based on an alleged act of retaliation, this section shall not prevent the Director from taking any action consistent with this part regarding compliance with DOE Nuclear Safety Requirements other than 10 CFR 708.43.

■ 4. Section 820.20 is amended by revising paragraphs (a) and (b) to read as follows:

§ 820.20 Purpose and scope.

(a) *Purpose.* This subpart establishes the procedures for investigating the nature and extent of violations of DOE Nuclear Safety Requirements, for determining whether a violation of DOE Nuclear Safety Requirements has occurred, for imposing an appropriate remedy, and for adjudicating the assessment of a civil penalty.

(b) *Basis for civil penalties.* DOE may assess civil penalties against any person subject to the provisions of this part who has entered into an agreement of indemnification under 42 U.S.C. 2210(d) (or any subcontractor or supplier thereto), unless exempted from civil penalties as provided in paragraph (c) of this section, on the basis of a violation of a DOE Nuclear Safety Requirement.

* * * * *

■ 5. Appendix A to part 820 is amended by revising section XIII to read as follows:

Appendix A to Part 820—General Statement of Enforcement Policy

* * * * *

XIII. Whistleblower Enforcement Policy

a. DOE contractors may not retaliate against any employee because the employee has taken any actions listed in 10 CFR 708.5(a) through(c), including disclosing information, participating in proceedings, or refusing to participate in certain activities. DOE contractor employees may seek relief for allegations of retaliation through one of several mechanisms, including filing a complaint with DOE pursuant to 10 CFR part 708 (part 708), the Department of Labor (DOL) under sec. 211 of the Energy Reorganization Act (sec. 211), implemented in 29 CFR part 24, or the DOE Inspector General (IG).

b. An act of retaliation by a DOE contractor, prohibited by 10 CFR 708.43, that results from a DOE contractor employee's involvement in an activity listed in 10 CFR 708.5(a) through (c), may constitute a violation of a DOE Nuclear Safety Requirement under 10 CFR part 820 if it concerns nuclear safety. To avoid the potential for inconsistency with one of the mechanisms available to an aggrieved DOE contractor employee alleging retaliation referenced in section XIII.a, the Director will not take any action under this part with respect to an alleged violation of 10 CFR 708.43 until a request for relief under one of these mechanisms, if any, has been fully adjudicated, including appeals. With respect to an alleged retaliation, the Director will generally only take action that is consistent with the findings of a final decision of an agency or court. If a final decision finds that retaliation occurred, the Department will consider whether that retaliation constitutes a violation of § 708.43, and if so, whether to take action under part 820. If a final decision finds that no retaliation occurred, the Director will generally not take any action under part 820 with respect to the alleged retaliation absent significant new information that was not available in the prior proceeding. If a final decision dismisses a complaint on procedural grounds without explicitly finding that retaliation did not occur, the Director may take further action under part 820 that is not inconsistent with the final decision.

c. DOE encourages its contractors to cooperate in resolving whistleblower complaints raised by contractor employees in a prompt and equitable manner. Accordingly, in considering what remedy is appropriate for an act of retaliation concerning nuclear safety, the Director will take into account the extent to which a contractor cooperated in proceedings for remedial relief.

d. In considering what remedy is appropriate for an act of retaliation concerning nuclear safety, the Director will also consider the egregiousness of the particular case including the level of management involved in the alleged retaliation and the specificity of the acts of retaliation.

e. When the Director undertakes an investigation of an allegation of DOE contractor retaliation against an employee under part 820, the Director will apprise persons interviewed and interested parties that the investigative activity is being taken pursuant to the nuclear safety procedures of part 820 and not pursuant to the procedures of part 708.

[FR Doc. 2016–31150 Filed 12–23–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 1004

RIN 1901–AB41

Revision of the Department of Energy's Freedom of Information Act (FOIA) Regulations

AGENCY: FOIA Program, Office of Public Information, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) issues a final rule amending its regulations that prescribe the procedures by which the public may request records pursuant to the Freedom of Information Act (FOIA) from DOE offices, excluding the Federal Energy Regulatory Commission (FERC). This final rule makes changes to DOE's regulations to reflect statutory amendments made to the FOIA by the FOIA Improvement Act of 2016, and to make minor grammatical and other editorial changes throughout the regulations. The editorial changes clarify various defined terms, update the internal procedures for processing records requested under FOIA, and reflect minor changes to DOE's internal organizational structure.

DATES: This rule is effective December 27, 2016.

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SUPPLEMENTARY INFORMATION: 10 CFR part 1004 contains DOE's regulations that implement the FOIA, 5 U.S.C. 552. The regulations provide information concerning the procedures by which the public may request records from DOE offices, and the policies and procedures by which DOE provides such records to members of the public. DOE previously amended its regulations in 1988 (53 FR 15660, May 3, 1988) and 2014 (79 FR 22855, Apr. 25, 2014). DOE is now updating its regulations to implement the requirements of the FOIA Improvement Act of 2016, Public Law 114–185 (June 30, 2016) (Act). The Act requires that Federal agencies review and update their FOIA regulations in accordance with its provisions. The Act addresses a range of procedural issues, including a requirement that agencies make available for public inspection in an electronic format records that have become or are likely to become the subject of subsequent requests for substantially the same records, or records that have been requested three or more times. The Act also requires that agencies provide a minimum of 90 days for requesters to file an administrative appeal following an adverse determination, and that they provide dispute resolution services at various times throughout the FOIA process. The Act also codifies the U.S. Department of Justice's ''foreseeable harm'' standard, specifying that an agency shall withhold information only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in 5 U.S.C. 552(b) or if disclosure is prohibited by law. This provision also requires that agencies consider whether partial disclosure is possible if full disclosure is not possible, and that agencies take reasonable steps to segregate and release nonexempt information. The Act also amends Exemption 5 to specify that the deliberative process privilege does not apply to records created 25 years or more before the date of the request; creates a new ''FOIA Council'' charged with, among other things, developing recommendations for increased agency compliance and efficiency; and adds two new elements to agency Annual FOIA Reports (*i.e.,* the number of times an agency has denied a request for records under 5 U.S.C. 552(c) and the number of records made available for public inspection under 5 U.S.C. 552(a)(2)).

DOE also makes additional revisions to update, clarify, and streamline the language in several procedural provisions, as described in Section I.

I. Section by Section Analysis

In the paragraphs that follow, DOE describes the changes to each section of 10 CFR part 1004 that it is promulgating in this final rule.

In § 1004.1, DOE adds a citation to the FOIA Improvement Act of 2016, which was enacted on June 30, 2016. The citation is to Public Law 114–185, 130 Stat. 538.

In § 1004.2(b), DOE clarifies the definition of ''Authorizing or Denying Official''; clarifies that term in reference to DOE's National Nuclear Security Administration (NNSA); and corrects several typographical errors.

In § 1004.2(h)(1), DOE updates the address of the Bonneville Power Administration.

In § 1004.2(h)(5), DOE updates the address of the Golden Field Office.

In § 1004.2(h)(6), DOE updates its Headquarters address.

In § 1004.2(h)(8), DOE updates the address of the National Nuclear Security Administration.

In § 1004.2(h)(9), DOE updates the address of the National Energy Technology Laboratory.

In § 1004.2(h)(13), DOE updates the address of the Office of Scientific and Technical Information.

In § 1004.2(i), DOE revises the reference to the DOE Organization Act, Public Law 95–91, and clarifies the definition of ''General Counsel'' in reference to the NNSA General Counsel, as defined by the National Nuclear Security Administration Act, Public Law 106–65.

In § 1004.2(m), DOE updates the definition of ''Representative of the news media'' to mirror the term as defined in the FOIA, 5 U.S.C. 552(a)(4)(A)(ii)(III).

In § 1004.2(n), DOE corrects a typographical error.

In § 1004.2(p), DOE corrects typographical errors.

In § 1004.3, DOE revises the language to conform to the requirements of the FOIA Improvement Act of 2016, which amended 5 U.S.C. 552(a)(2) to require that agencies maintain, for public inspection in an electronic format, the materials required by FOIA to be made available for public inspection and copying. The Act also requires that agencies make available for public inspection in an electronic format records that have become or are likely to become the subject of frequent requests for substantially the same records or that have been requested three or more times. DOE will implement this section consistent with FOIA, as amended by the Act.

DOE deletes paragraphs (b) through (d) of § 1004.3 and renumbers § 1004.3(e) as § 1004.3(b). Paragraphs (b) and (c) pertained to reading rooms at DOE field offices, and paragraph (d) was reserved.

In renumbered § 1004.3(b), DOE revises the reference to 5 U.S.C. 552(b)(2) by deleting ''(2)'' to make this section consistent with the Supreme Court decision in *Milner* v. *Dep't of the Navy,* 131 S. Ct. 1259 (2011), wherein the Court clarified that FOIA Exemption 2, 5 U.S.C. 552(b)(2), prevents disclosure only of material that relates solely to the internal personnel rules and practices of an agency. DOE's revision is also consistent with the intent of FOIA, which promotes a policy of disclosure unless disclosure is prohibited by law or by any of the

enumerated exemptions in 5 U.S.C. 552(b), not solely the exemption found at § 552(b)(2).

In renumbered § 1004.3(b)(2), DOE revises references to paragraphs § 1004.3(e)(1) and (e)(4) to refer to renumbered paragraphs § 1004.3(b)(1) and (b)(4), respectively.

In renumbered § 1004.3(b)(4), DOE revises the reference to paragraph § 1004.3(e)(2) to refer to renumbered paragraph § 1004.3(b)(2).

In § 1004.4(a), DOE revises the language to conform to the requirements of the FOIA Improvement Act of 2016, which requires that agencies maintain, for public inspection in an electronic format, the materials required by FOIA to be made available for public inspection and copying. 5 U.S.C. 552(a)(2). DOE further revises § 1004.4(a) by clarifying that requests can be submitted via facsimile or electronically on an appropriate agency Web site. DOE also corrects a typographical error.

In § 1004.4(c)(2), DOE corrects a typographical error.

In § 1004.5(b), DOE revises the procedure for processing requests for records to conform to the requirements of the FOIA Improvement Act of 2016, which requires that a written response to the requester shall notify the requester of the right to seek dispute resolution services from the DOE FOIA Public Liaison or the Office of Government Information Services. 5 U.S.C. 552(a)(6)(A)(i).

In § 1004.5(c), DOE corrects grammatical errors in the procedure for processing requests for records in the custody of one or more Authorizing Officials. No change to current practice is intended.

In § 1004.5(d), DOE clarifies the definition of ''days'' with respect to the time limit for processing requests, to eliminate any confusion with existing § 1004.12 on computation of time. No change in the time limit is intended. DOE also amends the reference to when a request is ''received'' for purposes of the time limits prescribed in § 1004.4(a).

In § 1004.5(d)(iii), DOE clarifies the extension of time that can be granted before a decision on a request can be reached, consistent with existing § 1004.12. No change in the length of an extension is intended. DOE also revises this section to conform to the requirements of the FOIA Improvement Act of 2016, which provides that in unusual circumstances, the agency shall notify the requester of the right to seek dispute resolution services from the DOE FOIA Public Liaison or the Office of Government Information Services. 5 U.S.C. 552(a)(6)(B)(i).

In § 1004.5(d)(4), DOE corrects a typographical error.

In § 1004.5(d)(7), DOE extends the time period during which a requester can appeal a denial of expedited processing to 90 days, as required by the FOIA Improvement Act of 2016, which prescribes the time period in which adverse determinations may be appealed. 5 U.S.C. 552(a)(6)(A)(i)(III)(aa). DOE also corrects a typographical error.

In § 1004.7(b), DOE corrects a typographical error.

In § 1004.7(b)(4), DOE extends the period during which requesters may challenge the adequacy of search to 90 days, as required by the FOIA Improvement Act of 2016. 5 U.S.C. 552(a)(6)(A)(i)(III)(aa).

In § 1004.7(b)(5), DOE extends the period during which requesters may appeal a determination to deny records to 90 days, as required by the FOIA Improvement Act of 2016. 5 U.S.C. 552(a)(6)(A)(i)(III)(aa).

In § 1004.8(a), DOE revises the time limit for an appeal of an initial denial of a request for records to 90 days, as required by the FOIA Improvement Act of 2016. 5 U.S.C. 552(a)(6)(A)(i)(III)(aa). DOE also corrects typographical errors in this section.

In § 1004.8(b), DOE revises the methods by which an appeal may be delivered to the Office of Hearings and Appeals and corrects typographical errors.

In § 1004.8(c), DOE corrects typographical errors.

In § 1004.8(d), DOE clarifies the definition of ''days'' with respect to the Appeal Authority's time limit for acting upon an appeal, consistent with existing § 1004.12. No change in the time limit is intended.

In § 1004.8(d)(2), DOE clarifies the means by which DOE notifies requesters of an extension of the time to make an appeal decision.

In § 1004.9(a), DOE updates the reference to the Government Printing Office to the Government Publishing Office. DOE also corrects a grammatical error.

In § 1004.9(a)(2), DOE revises the language regarding computer searches for records and removes the reference to the central processing unit (CPU), consistent with current practice.

In § 1004.9(a)(6)(i), DOE clarifies the definition of ''search time'' and clarifies how fees for search time are calculated, consistent with current practices.

DOE adds paragraphs (a)(6)(iii) through (iv)(cc) in § 1004.9 consistent with the FOIA Improvement Act of 2016. 5 U.S.C. 552(a)(4)(A)(vii). The amendments in the Act enumerate exceptions to DOE's ability to assess search fees for certain categories of requesters when DOE has not complied with the time limits described in § 1004.5(d). The Act also specifies that DOE may assess search fees when it has determined that unusual circumstances apply; more than 5,000 pages are necessary to respond to the request; DOE has provided the requester with a timely written notice; and DOE has made no fewer than three good-faith attempts to contact the requester to discuss how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

In § 1004.9(a)(8)(i), DOE corrects typographical errors.

In § 1004.9(a)(8)(ii), DOE corrects typographical errors.

In § 1004.9(b), DOE corrects a typographical error.

In § 1004.9(b)(1), DOE corrects a typographical error.

In § 1004.9(b)(5), DOE clarifies when it will begin assessing interest charges on the amount billed to requesters who fail to pay fees. This change is consistent with existing § 1004.12, and no change in the administrative time limits is intended.

In § 1004.9(b)(6), DOE clarifies that it is not required to assess charges for search time even if the search fails to identify responsive records or if the records located are exempt from disclosure.

In § 1004.9(b)(8)(ii), DOE clarifies the definition of ''days'' for purposes of determining when a requester has failed to pay a fee in a timely fashion for purposes of exemption from making an advance payment, by deleting the word ''working'' as superfluous. This section also clarifies the definition of ''days'' for purposes of administrative time limits for certain actions when DOE receives advance fee payments. This change is consistent with existing § 1004.12, and no change in the administrative time limits is intended.

In § 1004.10(b)(5), DOE revises the definition of exemption (b)(5) to conform to the requirements of the FOIA Improvement Act of 2016, which states that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested. 5 U.S.C. 552(b)(5).

In § 1004.10(c), DOE revises its obligations to reasonably segregate nonexempt portions of records as required by the FOIA Improvement Act of 2016, which states that an agency shall withhold information under 5 U.S.C. 552 only if the agency reasonably foresees that disclosure would harm an

interest protected by an exemption described in subsection (b) of 5 U.S.C. 552, or disclosure is prohibited by law. 5 U.S.C. 552(a)(8)(A)–(B). The section is also revised to reflect the requirement in the Act that agencies consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible and take reasonable steps necessary to segregate and release nonexempt information.

In § 1004.11(g), DOE clarifies the definition of ''days'' for purposes of the time limit for informing submitters of DOE's intended discretionary release prior to public disclosure of the information to a requester. This change is consistent with the existing § 1004.11(c), (d), and (e), and no change in the administrative time limits is intended.

II. Procedural Issues and Regulatory Review

A. Review Under the Administrative Procedure Act

DOE has determined that notice and comment is not required pursuant to 5 U.S.C. 553(b)(B), which requires notice and an opportunity for comment unless an agency finds good cause that notice and public procedures are impracticable, unnecessary or contrary to the public interest. In this rulemaking, DOE is implementing changes required by the FOIA Improvement Act of 2016, Public Law 114–185 (June 30, 2016). DOE is exercising no discretion in implementing these statutory changes. DOE is also correcting minor typographical errors and making other minor changes to, for example, reflect the current DOE organizational structure. As a result, seeking public comment on these changes is unnecessary. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

B. Review Under Executive Orders 12866 and 13563

This rule has been determined to be not significant for purposes of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). As a result, the Office of Information and Regulatory Affairs within the Office of Management and Budget did not review this rule.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). Because there was no requirement to first publish this regulation for comment, as discussed in section II.A., no analysis is required for purposes of the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act

This rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the National Environmental Policy Act of 1969

DOE has reviewed this final rule under 10 CFR part 1021, DOE's National Environmental Policy Act Implementing Procedures. DOE has determined that the final rule fits within categorical exclusion A.5 listed in Appendix A to 10 CFR part 1021, subpart D: Rulemaking that interprets or amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required. DOE's CX determination for this rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx.*

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism.'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule, which would update DOE's FOIA regulations for consistency with the FOIA Improvement Act of 2016, and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

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

the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE has concluded that this final rule will not result in the expenditure by States, tribal, or local governments, in the aggregate, or by the private sector, of $100 million in any one year. As a result, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

I. Review Under the Treasury and General Government Appropriations Act, 1999

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

J. Review Under Executive Order 12630

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

K. Review Under the Treasury and General Government Appropriations Act, 2001

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

L. Review Under Executive Order 13211

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

DOE has concluded that this regulatory action, which sets forth amended procedures by which the public may request records from DOE offices under the FOIA, and the policies and procedures by which DOE will provide such records to members of the public, is not a significant energy action because the final rule is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final rule.

M. Congressional Notification

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

List of Subjects in 10 CFR Part 1004

Freedom of Information.

Issued in Washington, DC, on December 21, 2016.

Ingrid Kolb,

Director, Office of Management.

For the reasons set forth in the preamble, amend part 1004 of Title 10 of the Code of Federal Regulations as set forth below:

PART 1004—FREEDOM OF INFORMATION ACT (FOIA)

■ 1. The authority citation for part 1004 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 2. Section 1004.1 is revised to read as follows:

§ 1004.1 Purpose and scope.

This part contains the regulations of the Department of Energy (DOE) that implement Freedom of Information (FOIA) 5 U.S.C. 552, Public Law 89–487, as amended by Public Law 93–502, 88 Stat. 1561, by Public Law 94–409, 90 Stat. 1241, by Public Law 99–570, 100 Stat. 3207–49, by Public Law 104–231, 110 Stat. 3048, by Public Law 110–175, 121 Stat. 2524, Public Law 111–83 § 564, 123 Stat. 2142, 2184, and by Public Law 114–185, 130 Stat. 538. The regulations of this part provide information concerning the procedures by which records may be requested from all DOE offices, excluding the Federal Energy Regulatory Commission (FERC). Records of DOE made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public as prescribed by this part. Persons seeking information or records of DOE may find it helpful to consult with a DOE FOIA Officer before invoking the formal procedures set out below. To the extent permitted by other laws, DOE will make records available which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

■ 3. Section 1004.2 is amended by revising paragraphs (b), (h)(1), (h)(5), (h)(6), (h)(8), (h)(9), (h)(13), (i), (m) and (n) to read as follows:

§ 1004.2 Definitions.

* * * * *

(b) *Authorizing or Denying Official* means that DOE officer having custody of or responsibility for records requested under 5 U.S.C. 552. In DOE Headquarters, the term refers to The Freedom of Information Act Officer and officials who report directly to either the Office of the Secretary or a Secretarial Officer as defined. In the field offices, the term refers to the head of a field location identified in paragraph (h) of this section and the heads of field offices to which they provide administrative support and have delegated this authority. In the National Nuclear Security Administration (NNSA), the term refers to the official appointed at such location as identified in paragraph (h)(8) of this section.

* * * * *

(h) * * *

(1) Bonneville Power Administration, P.O. Box 3621CHI–7, Portland, OR 97208–3621.

* * * * *

(5) Golden Field Office, 15013 Denver West Parkway, Mail Stop RSF DOE Golden, CO 80401.

(6) Headquarters, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

* * * * *

(8) National Nuclear Security Administration Albuquerque Complex, P.O. Box 5400, Albuquerque, NM 87185.

(9) National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940.

* * * * *

(13) Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37830.

* * * * *

(i) *General Counsel* means the General Counsel provided for in section 202(e) of the DOE Organization Act, or any DOE attorney designated by the General Counsel as having responsibility for counseling the Department on Freedom of Information Act matters. In the NNSA, the term refers to the NNSA General Counsel, or any attorney designated by the NNSA General Counsel for counseling the NNSA on Freedom of Information Act matters, as provided for in section 3217 of the National Nuclear Security Administration Act, 50 U.S.C. 2407, Pub. L. 106–65. The NNSA General Counsel is not a Secretarial Officer.

* * * * *

(m) *Representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; DOE may also consider the past publication record of the requester in making such a determination.

(n) *Review* refers to the process of examining documents located in response to a commercial use request (see paragraph (c) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.,* doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

* * * * *

■ 4. Section 1004.3 is amended by:

■ a. Revising the section heading and paragraph (a);

■ b. Removing paragraphs (b) through (d);

■ c. Redesignating paragraph (e) as paragraph (b);

■ d. Revising newly designated paragraphs (b)(1), (b)(2), and (b)(4).

The revisions read as follows:

§ 1004.3 Public inspection in an electronic format and policy on contractor records.

(a) DOE will maintain, for public inspection in an electronic format, the materials which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying. An electronic public reading room can be accessed via *www.energy.gov* and *nnsa.energy.gov.*

(b) *Contractor records.* (1) When a contract with DOE provides that any records acquired or generated by the contractor in its performance of the contract shall be the property of the Government, DOE will make available to the public such records that are in the possession of the Government or the contractor, unless the records are exempt from public disclosure under 5 U.S.C. 552(b).

(2) Notwithstanding paragraph (b)(1) of this section, records owned by the Government under contract that contain information or technical data having commercial value as defined in paragraph (b)(4) of this section or information for which the contractor claims a privilege recognized under Federal or State law shall be made available only when they are in the possession of the Government and not otherwise exempt under 5 U.S.C. 552(b).

* * * * *

(4) For purposes of paragraph (b)(2) of this section, ''technical data and information having commercial value'' means technical data and related commercial or financial information which is generated or acquired by a contractor and possessed by that contractor, and whose disclosure the contractor certifies to DOE would cause competitive harm to the commercial value or use of the information or data.

■ 6. Section 1004.4 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 1004.4 Elements of a request.

(a) *Addressed to the FOIA Officer.* A request for a record of DOE which is not available for public inspection in an electronic format, as described in § 1004.3, shall be: Addressed to the Headquarters or appropriate field FOIA Officer at DOE at a location listed in § 1004.2(h), and both the envelope and the letter shall be clearly marked ''Freedom of Information Act Request;'' or submitted via facsimile or electronically, on an appropriate agency Web site. Except as provided in paragraph (e) of this section, a request will be considered to be received by DOE for purposes of 5 U.S.C. 552(a)(6) and the 20-day response period will start upon actual receipt by the appropriate FOIA Officer, or not later than ten days after receipt by a designated FOIA Officer at any location in § 1004.2(h). Requests delivered after regular business hours are considered

received on the next regular business day.

* * * * *

(c) * * *

(2) *Assistance in reformulating a non-conforming request.* If a request does not reasonably describe the records sought, as specified in paragraph (c)(1) of this section, the DOE response will specify the reasons why the request failed to meet the requirements of paragraph (c)(1) of this section and will invite the requester to confer with knowledgeable DOE personnel in an attempt to restate the request or reduce the request to manageable proportions by reformulation or by agreeing on an orderly procedure for the production of the records. If DOE responds that additional information is needed from the requester to render records reasonably described, any reformulated request submitted by the requester will be treated as an initial request for purposes of calculating the time for DOE response.

* * * * *

■ 7. Section 1004.5 is amended by:

■ a. Revising paragraphs (b) and (c);

■ b. Revising the introductory text of paragraph (d)(1), and revising paragraphs (d)(1)(iii), (d)(4), and(d)(7).

The revisions read as follows:

§ 1004.5 Processing requests for records.

* * * * *

(b) The Authorizing Official will promptly identify and review the records encompassed by the request. The Authorizing Official or FOIA Officer will prepare a written response—

(1) Granting the request;

(2) Denying the request;

(3) Granting/denying it in part;

(4) Replying with a response stating that the request has been referred to another agency under § 1004.4(f) or § 1004.6(e); or

(5) Informing the requester that responsive records cannot be located or do not exist. The written response shall also notify the requester of the right to seek dispute resolution services from the DOE FOIA Public Liaison(s) or the Office of Government Information Services.

(c) Where a request involves records that are in the custody of or are the concern of more than one Authorizing Official, the FOIA Officer will identify all concerned Authorizing Officials that can reasonably be expected to have custody of the requested records. Upon identification of the appropriate Authorizing Officials, the FOIA Officer will forward them a copy of the request and a request for action. The Authorizing Officials will prepare a DOE response to the requester consistent with paragraph (b) of this section. The response will identify the Authorizing Official having responsibility for the determination to release or deny records.

(d) *Time for processing requests.* (1) Action pursuant to paragraph (b) of this section will be taken within 20 days of a request for DOE records being received (''received'' is defined in § 1004.4(a)), except that,

* * * * *

(iii) If unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting records is promptly informed in writing by the Authorizing Official or FOIA Officer of the reasons for such extension and the date on which a determination is expected to be dispatched, then the Authorizing Official or FOIA Officer may take an extension not to exceed ten days. In cases where the Authorizing Official determines that unusual circumstances exist, the requester shall be notified in writing of the right to seek dispute resolution services from the DOE FOIA Public Liaison(s) or the Office of Government Information Services.

* * * * *

(4) If no determination has been made at the end of the 20-day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be made within the applicable time limit, the responsible Authorizing Official or FOIA Officer will nevertheless continue to process the request. If DOE is unable to provide a response within the statutory period, the Authorizing Official or FOIA Officer will inform the requester of the reason for the delay; the date on which a determination may be expected to be made; and the requester's right to seek remedy through the courts, but will ask the requester to forego such action until a determination is made.

* * * * *

(7) A determination to grant or deny a request for expedited processing will be made by the appropriate FOIA Officer within ten days after receipt of the request. The requester will be notified of the determination and informed that any denial may be appealed within 90 calendar days to the Office of Hearings and Appeals.

■ 8. Section 1004.7 is amended by:

■ a. Revising the introductory text of paragraph (b);

■ b. Revising paragraphs (b)(4) and (b)(5).

The revisions read as follows:

§ 1004.7 Responses by authorizing officials; Form and content.

* * * * *

(b) *Form of denial.* A reply denying a request for a record will be in writing. It will be signed by a FOIA Officer or the Denying Official pursuant to § 1004.5 (b) or (c) and will include:

* * * * *

(4) *Adequacy of search.* Although a determination that no such record is known to exist is not a denial, the requester will be informed that a challenge may be made to the adequacy of the search by appealing within 90 calendar days to the Office of Hearings and Appeals.

(5) *Administrative appeal.* A statement that the determination to deny documents made within the statutory time period may be appealed within 90 calendar days to the Office of Hearings and Appeals.

■ 9. Section 1004.8 is amended by revising paragraphs (a), (b), (c), (d)(1), and (d)(2) to read as follows:

§ 1004.8 Appeal of initial denial.

(a) *Appeal to Office of Hearings and Appeals.* When the Authorizing or Denying Official or FOIA Officer has denied a request for records in whole or in part or has responded that there are no documents responsive to the request consistent with § 1004.4(d), or when the FOIA Officer has denied a request for expedited processing consistent with § 1004.5(d) or for waiver of fees consistent with § 1004.9, the requester may, within 90 calendar days of its receipt, appeal the determination to the Office of Hearings and Appeals.

(b) *Elements of appeal.* The appeal must be in writing, addressed to the Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1615 and both the envelope and letter must be clearly marked ''Freedom of Information Act Appeal.'' The appeal may be delivered by U.S Mail, commercial delivery service, or by electronic mail to *OHA.Filings@hq.doe.gov.* The appeal must contain a concise statement of the grounds upon which it is brought and a description of the relief sought. It should also include a discussion of all relevant authorities, including, but not limited to, DOE (and predecessor agencies) rulings, regulations, interpretations and decisions on appeals, and any judicial determinations being relied upon to support the appeal. A copy of the letter

containing the determination which is being appealed must be submitted with the appeal. The appeal should also provide a telephone number, electronic mail address, or other means for communicating with the requester during business hours.

(c) *Receipt of appeal.* An appeal will be considered to be received for purposes of 5 U.S.C. 552(a)(6) upon receipt by the Appeal Authority. Documents delivered after the regular business hours of the Office of Hearings and Appeals are considered received on the next regular business day.

(d) *Action within 20 days.* (1) The Appeal Authority will act upon the appeal within 20 days of its receipt, except that if unusual circumstances (as defined in § 1004.5(d)(2)) require an extension of time before a decision on a request can be reached, the Appeal Authority may extend the time for final action for an additional ten days less the number of days of any statutory extension which may have been taken by the Authorizing Official during the period of initial determination.

(2) The requester must be promptly notified in writing of the extension, setting forth the reasons for the extension, and the date on which a determination is expected to be issued. Notification will be sent by electronic mail, when possible, or by letter.

* * * * *

■ 10. Section 1004.9 is amended by revising paragraphs (a) introductory text, (a)(2), (a)(6), (a)(8) introductory text, (a)(8)(i) introductory text, (a)(8)(ii) introductory text, (b) introductory text, (b)(1), (b)(5), (b)(6) and (b)(8)(ii) to read as follows:

§ 1004.9 Fees for providing records.

(a) *Fees to be charged.* DOE may charge fees that recoup the full allowable direct costs incurred. DOE will use the most efficient and least costly methods to comply with requests for documents made under FOIA. DOE may contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, DOE will ensure that the ultimate cost to the requester is no greater than it would be if DOE itself had performed these tasks. In no case will DOE contract out responsibilities which FOIA provides that only the agency may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees, which are determinations by Authorizing Officials or FOIA Officers. Where DOE can identify documents that are responsive to a request and are maintained for public distribution by other agencies such as the National Technical Information Service and the Government Publishing Office, the FOIA Officer will inform requesters of the procedures to obtain records from those sources.

* * * * *

(2) *Computer searches for records.* DOE will charge at the actual direct cost of providing the service.

* * * * *

(6) *Restrictions on assessing fees.* (i) With the exception of requesters seeking documents for a commercial use pursuant to 5 U.S.C. 552(a)(4)(A)(iv), DOE will provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, DOE will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, DOE will not begin to assess fees until after the Department has provided the free search and reproduction. For example, if a request involves two hours and ten minutes of search time and results in 105 pages of documents, DOE will charge for only ten minutes of search time and only five pages of reproduction. If this cost is equal to or less than $15.00, the amount DOE incurs to process a fee collection, no charges would be assessed. For purposes of these restrictions on assessment of fees, the word ''pages'' refers to paper copies of a standard agency size which will be normally be ''8½ × 11'' or ''11 × 14.'' Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction. Similarly, the term ''search time'' is based on a *manual or electronic search.* To apply this term, DOE will calculate the hourly rates of the subject matter expert and/or FOIA analysts conducting the search plus 16 percent.

(ii) When unusual or exceptional circumstances do not apply and time limits specified in FOIA are not met, DOE will not charge any search fees, or duplication fees for educational and non-commercial scientific institution requesters and requesters who are representatives of the news media.

(iii) Except as provided in paragraph (a)(6)(iv) of this section, DOE will not assess any search fees (or in the case of a requester who is an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media, duplication fees) under this paragraph (a)(6)(iii) if DOE has failed to comply with any time limit under § 1004.5(d).

(iv)(A) If DOE has determined that unusual circumstances apply (as the term is defined in § 1004.5(d)(2)) and DOE provided a timely written notice to the requester in accordance with § 1004.5(d)(1)(iii), a failure described in paragraph (a)(6)(iii) of this section is excused for an additional 10 days. If DOE fails to comply with the extended time limit, DOE may not assess any search fees (or in the case of a requester described under paragraph (a)(6)(iii) of this section, duplication fees).

(B) If DOE has determined that unusual circumstances (as that term is defined in § 1004.5(d)(2)) apply and more than 5,000 pages are necessary to respond to the request, DOE may charge search fees (or in the case of a requester described under paragraph (a)(6)(iii) of this section, duplication fees) if DOE has provided a timely written notice to the requester in accordance with § 1004.5(d)(1)(iii) and DOE has discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(C) If a court has determined that unusual circumstances exist (as that term is defined in § 1004.5(d)(2)), a failure described in paragraph (a)(6)(iv) of this of this section shall be excused for the length of time provided by the court order.

* * * * *

(8) *Waiving or reducing fees.* DOE will furnish documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure is not primarily in the commercial interest of the requester. This fee waiver standard thus sets forth two basic requirements, both of which must be satisfied before fees will be waived or reduced. First it must be established that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. Second, it must be established that disclosure of the information is not primarily in the commercial interest of the requester.

When these requirements are satisfied, based upon information supplied by a requester or otherwise made known to DOE, the waiver or reduction of a FOIA fee will be granted. In determining when fees should be waived or reduced the appropriate FOIA Officer should address the following two criteria:

(i) That disclosure of the information ''is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.'' Factors to be considered in applying this criteria include but are not limited to:

* * * * *

(ii) If disclosure of the information ''is not primarily in the commercial interest of the requester.'' Factors to be considered in applying this criteria include but are not limited to:

* * * * *

(b) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The FOIA Officers will make determinations regarding categories of requesters as defined at § 1004.2. The Headquarters FOIA Officers will assist field FOIA Officers in categorizing requesters, and will resolve conflicting categorizations. FOIA prescribes specific levels of fees for each of these categories:

(1) *Commercial use requesters.* When DOE receives a request for documents which appears to be for commercial use, charges will be assessed to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. DOE will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

* * * * *

(5) *Charging interest—notice and rate.* Interest will be charged to those requesters who fail to pay fees. DOE will begin to assess interest charges on the amount billed on the 31st calendar day following the day on which the billing was sent to the requester. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(6) *Charges for unsuccessful search.* DOE may assess charges for time spent searching even if the search fails to identify responsive records or if records located are determined to be exempt from disclosure. If DOE estimates that search charges are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice will offer the requester the opportunity to confer with agency personnel in order to reformulate the request to reduce the cost of the request.

* * * * *

(8) * * *

(ii)(A) A requester has previously failed to pay a fee in a timely fashion (*i.e.,* within 30 calendar days of the date of the billing). DOE will require the requester to pay the full amount delinquent plus any applicable interest as provided in paragraph (b)(5) of this section, or demonstrate that he or she has, in fact, paid the delinquent fee; and to make an advance payment of the full amount of the estimated current fee before we begin to process a new request or a pending request from that requester.

(B) When DOE acts under paragraphs (b)(8) (i) or (ii) of this section, the administrative time limits prescribed in section (a)(6) of FOIA (*i.e.,* 20 days from receipt of initial requests and 20 days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after DOE has received fee payments described.

* * * * *

■ 11. Section 1004.10 is amended by revising paragraphs (b)(5) and (c) to read as follows:

§ 1004.10 Exemptions.

* * * * *

(b) * * *

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

* * * * *

(c) DOE shall withhold information under this section only if—

(1) The agency reasonably foresees that disclosure would harm an interest protected by an exemption described in paragraph (b) of this section; or

(2) Disclosure is prohibited by law. DOE shall consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible and take reasonable steps necessary to segregate and release nonexempt information. Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure by paragraph (b)(3) of this section.

■ 12. Section 1004.11 is amended by revising paragraphs (a) and (g) to read as follows:

§ 1004.11 Handling information of a private business, foreign government, or an international organization.

(a) Whenever a document submitted to DOE contains information which may be exempt from public disclosure, it will be handled in accordance with the procedures in this section. While DOE is responsible for making the final determination with regard to the disclosure or nondisclosure of information contained in requested documents, DOE will consider the submitter's views (as that term is defined in this section) in making its determination. Nothing in this section will preclude the submission of a submitter's views at the time of the submission of the document to which the views relate, or at any other time.

* * * * *

(g) When DOE, in the course of responding to a Freedom of Information Act request, determines that information exempt from the mandatory public disclosure requirements of the Freedom of Information Act is to be released in accordance with § 1004.1, DOE will notify the submitter of the intended discretionary release no less than seven (7) calendar days prior to the intended public disclosure of the information in question.

* * * * *

[FR Doc. 2016–31337 Filed 12–23–16; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 249

[Docket No. R–1525; Regulation WW]

RIN 7100 AE–39

Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies To Meet the Liquidity Coverage Ratio Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a final rule to implement public disclosure requirements for the liquidity coverage ratio (LCR) rule. The final rule applies to all depository institution holding companies and

covered nonbank financial companies that are required to calculate an LCR under the Board's LCR rule (covered companies). Under the final rule, a covered company will be required to disclose publicly, on a quarterly basis, quantitative information about its LCR calculation and a discussion of the factors that have a significant effect on its LCR. The final rule also provides additional time for companies that become subject to the Board's modified LCR requirement in the future to come into compliance with the requirement.

DATES: *Effective Date:* April 1, 2017.

FOR FURTHER INFORMATION CONTACT: Anna Lee Hewko, Associate Director, (202) 530–6260, Peter Clifford, Manager, (202) 785–6057, or J. Kevin Littler, Senior Supervisory Financial Analyst, (202) 475–6677, Risk Policy, Division of Supervision and Regulation; Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036, Dafina Stewart, Senior Counsel, (202) 452–3876, Adam Cohen, Counsel, (202) 912–4658, or Joshua Strazanac, Attorney, (202) 452–2457, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION:

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I. Background and Summary of the Proposed Rule

On December 1, 2015, the Board of Governors of the Federal Reserve System (Board) invited comment on a proposed rule (proposed rule) to implement public disclosure requirements for certain companies subject to the Board's liquidity coverage ratio (LCR) rule: (1) All bank holding companies and certain savings and loan holding companies that, in each case, have $50 billion or more in total consolidated assets or $10 billion or more in total consolidated on-balance sheet foreign exposure; and (2) nonbank financial companies designated by the Financial Stability Oversight Council for Board supervision to which the Board has applied the LCR rule by separate rule or order (covered companies).[1] The LCR rule [2] requires a company subject to the rule to maintain an amount of high-quality liquid assets (HQLA) (the numerator of the ratio) [3] that is no less than its total net cash outflow amount over a forward-looking 30 calendar-day period of significant stress (the denominator of the ratio).[4] A modified LCR requirement (modified LCR requirement) applies to certain smaller, less complex banking organizations (modified LCR holding companies). Community banking organizations are not subject to the Board's LCR rule.[5]

The purpose of the proposed rule was to promote market discipline by providing the public with comparable liquidity information about covered companies.[6] The Board has long supported meaningful public disclosure by banking organizations with the objective of improving market discipline and encouraging sound risk-management practices.[7] Market discipline can mitigate the risk to financial stability by causing a firm to internalize the cost of its liquidity profile and encouraging safe and sound banking practices. For instance, a firm that consistently and predictably discloses a resilient liquidity profile to its investors and counterparties may have access to a lower cost of funding. Companies with less-resilient liquidity profiles would be incentivized to improve their liquidity positions in order to reduce their cost of funding and companies with more resilient liquidity profiles would be encouraged to maintain their sound risk management practices.

To the extent that disclosure can increase investor confidence and bolster transparency between counterparties, it increases liquidity in the market as a whole, thereby limiting the risk that a liquidity event will lead to asset fire sales and contagion effects in the financial sector. A funds provider that is uncertain about the liquidity conditions of its counterparties may be more likely to withhold funding during a liquidity event.

The Board receives and analyzes liquidity information from covered companies through supervisory reporting; market participants bring additional perspectives through their assessments of these firms, which will in turn help inform the Board's supervision of covered companies. In this fashion, market discipline complements the Board's supervisory practices and policies.

The proposed rule would have required a covered company to disclose publicly information about (1) certain components of its LCR calculation in a standardized tabular format (LCR disclosure template), and (2) factors that have a significant effect on its LCR, to facilitate an understanding of the company's calculations and results.[8]

Under the proposed rule, a covered company would have been required to provide timely public disclosures, including a completed LCR disclosure template, each calendar quarter in a direct and prominent manner on its public internet site or in a public financial or other public regulatory report. A covered company would have been required to keep this information available publicly for at least five years from the time of initial disclosure, on a rolling basis. For example, the proposed rule would have required information that was initially disclosed on February 1, 2018, to remain available until at least February 1, 2023.

The Board received five comments from trade organizations, a public interest group, and other interested parties on the proposed rule. Although some commenters generally supported requiring covered companies to disclose

[1] 80 FR 75010 (December 1, 2015).

[2] The LCR rule was adopted in 2014 by the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. *See* 79 FR 61440 (October 10, 2014).

[3] A company's HQLA amount for purposes of the LCR rule is calculated according to 12 CFR 249.21.

[4] A company's total net cash outflow amount for purposes of the LCR rule is calculated according to 12 CFR 249.30 or 249.63, as applicable.

[5] The Board's LCR rule does not apply to state member banks with less than $10 billion in total consolidated assets and less than $10 billion in total consolidated on-balance sheet foreign exposure.

[6] 79 FR 61440, 61445 (October 10, 2014).

[7] *See* 78 FR 62018, 62128–9 (October 11, 2013).

[8] The Basel Committee on Banking Supervision published liquidity coverage ratio disclosure standards in January 2014 and revised the standards in March 2014 (BCBS disclosure standards). Basel Committee on Banking Supervision, ''Liquidity coverage ratio disclosure standards'' (March 2014), *available at http://www.bis.org/publ/bcbs272.htm.* The BCBS disclosure standards include a common disclosure template (BCBS common template) intended to improve the transparency of regulatory liquidity requirements, enhance market discipline, and reduce uncertainty in the markets. The final rule implements public disclosure requirements consistent with the BCBS disclosure standards and the BCBS common template with some modifications to require more granularity and to reflect ways in which the LCR rule differs from the BCBS LCR standard published in January 2013. *See* Basel Committee on Banking Supervision, ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools'' (January 2013), *available at http://www.bis.org/publ/bcbs238.htm.* The differences between the final rule and the BCBS disclosure standards relate primarily to the enhancements implemented in the LCR rule. The disclosure requirements contained in the final rule ensure comparability of components of the LCR calculations on an international basis.

publicly information about their LCR calculations, commenters objected to the frequency of the required disclosures under the proposed rule and the granularity of the information required to be disclosed on the proposed LCR disclosure template. Two commenters supported the proposed scope of application of the proposed rule, which included depository institution holding companies and nonbank financial companies but not depository institutions. Commenters raised concerns about the requirements for qualitative disclosure under the proposed rule. In particular, commenters argued that the disclosure requirements should include a materiality standard that is consistent with disclosure requirements applicable under other public disclosure regimes and a clarification that covered companies would not be required to disclose confidential or proprietary information. Finally, some commenters sought additional time before covered companies would have to comply with the proposed disclosure requirements.[9]

The final rule includes the same general requirements as the proposed rule with some modifications in response to comments as described below.

II. LCR Public Disclosure Requirement

A. Frequency of Disclosure

The proposed rule would have required a covered company to provide timely public disclosures after each calendar quarter. One commenter argued that the frequency of the required disclosure should be increased to daily because market participants need more timely information so they can adequately adjust their risk management and business activities based on the liquidity risk of covered companies. The commenter also argued that quarterly LCR disclosures could increase market instability, relative to more frequent disclosures, because large changes in a covered company's LCR between quarters would be more disruptive to the market compared to more frequent disclosures that revealed smaller incremental changes to a firm's LCR. Another commenter supported a monthly or weekly disclosure requirement, which could be made more frequent in the event of a market or idiosyncratic stress.

The final rule maintains the requirement that disclosures be made quarterly. Liquidity, by its nature, is subject to rapid changes. As a result, it is expected that the LCR of a covered company will exhibit some volatility in the short term, which may not be indicative of liquidity problems at the firm. Indeed, there are many potential causes for short-term fluctuations in a firm's liquidity, such as seasonal deposit flows and periodic tax payments. Public disclosure of these types of short-term swings in a covered company's LCR could potentially negatively affect the firm and may not be indicative of a company's medium-term liquidity position, which in most cases is a better indication of the overall strengths and weaknesses of a company's liquidity position. Disclosure on a quarterly basis should help market participants assess the liquidity risk profiles of covered companies consistent with other quarterly disclosures of financial information. For supervisory purposes, the Board will continue to monitor on a more frequent basis any changes to a covered company's liquidity profile through the information submitted on the FR 2052a Complex Institution Liquidity Monitoring Report (FR 2052a report).[10]

As noted, under the proposed rule, a covered company would have been required to provide timely public disclosures, including a completed LCR disclosure template, each calendar quarter in a direct and prominent manner on its public internet site or in a public financial or other public regulatory report. One commenter asserted that the ''direct and prominent'' disclosure standard is unnecessary because the requirement for a covered company to make the required disclosures in its financial statements or on its Web site will cause that information to be accessible to the public. The final rule retains the direct and prominent standard to ensure that the required disclosures are easily accessible to interested market participants. Such disclosures must remain available to the public for at least five years from the time of initial disclosure.

As discussed in the Supplementary Information section of the proposed rule, the timing of disclosures under the federal banking laws may not always coincide with the timing of disclosures required under other federal law, including disclosures required under the federal securities laws and their implementing regulations by the Securities and Exchange Commission (SEC). For calendar quarters that do not correspond to a covered company's fiscal year-end, the Board would consider disclosures that are made within 45 days of the end of the calendar quarter (or within 60 days for the limited purpose of the covered company's first calendar quarter in which it is subject to the final rule's disclosure requirements) as timely. In general, where a covered company's fiscal year-end coincides with the end of a calendar quarter, the Board considers disclosures to be timely if they are made no later than the applicable SEC disclosure deadline for the corresponding Form 10–K annual report. In cases where a covered company's fiscal year-end does not coincide with the end of a calendar quarter, the Board would consider the timeliness of disclosures on a case-by-case basis.

This approach to timely disclosures is consistent with the approach to public disclosures that the Board has taken in the context of other regulatory reporting and disclosure requirements. For example, the Board has used the same indicia of timeliness with respect to the public disclosures required under its risk-based capital rules.[11]

B. Quantitative Disclosure Requirements

The proposed rule would have required a covered company to disclose publicly its LCR and certain components of its LCR calculation in a standardized tabular format. The standardized format was designed to help market participants compare the LCRs of covered companies across the U.S. banking industry and international jurisdictions. In this regard, the proposed format was similar to a common disclosure template developed by the Basel Committee on Banking Supervision (BCBS). However, the proposed rule was tailored to reflect differences between the LCR rule and the BCBS LCR standard.

Under the proposed rule, a covered company, other than a modified LCR holding company, would have been required to calculate all disclosed amounts as simple averages of the components used to calculate its daily LCR over the past quarter. A modified LCR holding company would have been

[9] One commenter argued that liquidity rules cause banks to reduce their investments in community development because such investments do not qualify as level 2A liquid assets, and thus do not receive beneficial treatment under the LCR rule. Although community development investments generally may not be included in a firm's HQLA amount, the LCR rule and the final rule do not prevent a covered company from making community development investments. Covered companies often make community development investments for other purposes, such as to comply with the Community Reinvestment Act of 1977. *See* 12 U.S.C. 2901 *et seq.*

[10] On November 17, 2015, the Board adopted the revised FR 2052a report to collect quantitative information on selected assets, liabilities, funding activities, and contingent liabilities from certain large banking organizations.

[11] *See* 78 FR 62018, 62129 (October 11, 2013).

required to calculate all disclosed amounts as simple averages of the components used to calculate its monthly LCR over the past quarter. The proposed rule would have required a covered company to disclose both average unweighted amounts and average weighted amounts, as set forth in section 249.91(b)(2) and (3) of the proposed rule, for the covered company's HQLA, cash outflow amounts, and cash inflow amounts.

One commenter asserted that the detailed disclosures required by the proposed rule would create new vulnerabilities that could exacerbate market stresses. The commenter argued that the public disclosure of the granular information required by the proposed LCR disclosure template could precipitate or accelerate a significant liquidity event rather than promote market discipline as intended. The commenter also asserted that detailed disclosure of a covered company's liquid assets could constrain the covered company's ability to execute its risk management and business strategies in a stressed environment. For instance, the commenter argued that a covered company may find it difficult to adjust the composition of its HQLA because of a potential negative reaction from market participants in response to its LCR public disclosures or because other market participants could use the information in public disclosures to ''front run'' the covered company's planned liquidity management actions.

The commenter suggested the Board's policy objectives would be better achieved by requiring only disclosure of a firms' HQLA amount, aggregate outflows, and aggregate inflows, which the commenter argued would provide the market with sufficient information on a covered company's liquidity profile without resulting in the negative effects of overly detailed disclosures. The commenter also recommended that, in order to mitigate the impact of short-term fluctuations in a covered company's LCR, a covered company should calculate disclosed amounts as simple averages of the components used to calculate its daily or monthly LCR over a rolling six-month rolling period, rather than over a quarter.

The final rule retains the requirement that a covered company make its disclosures using quarterly averages, rather than using six-month rolling average calculations. Extending the averaging period from three to six months would cause the public disclosures to be inconsistent with a covered company's other public regulatory disclosures, such as its quarterly reporting on the FR Y–9C Consolidated Financial Statements for Holding Companies and its quarterly disclosures under federal securities laws.

The final rule requires a covered company to make public disclosures with the same the level of granularity that would have been required under the proposal. In determining the appropriate amount of detail of the disclosure requirements, the Board weighed the benefits that detailed disclosures provide, such as promoting market discipline of firms and overall liquidity in the funding market, against the costs of such requirements, including the risk that the disclosures could potentially contribute to a liquidity event during stress.

The disclosure requirements are designed to provide market participants with information on covered companies' liquidity positions in order to enable them to distinguish among covered companies' liquidity risk profiles. The disclosure of only a firm's HQLA amount, aggregate outflows, and aggregate inflows may be insufficient to enable market participants to assess fully the nature of a covered company's liquidity risk profile. On the other hand, more granular disclosure would provide market participants a more accurate view of the covered company's liquidity risk profile and enhance covered companies' incentives to maintain a robust liquidity risk profile. For example, more detailed disclosure about a covered company that has a high LCR, but also exhibits high dependence on a particular funding class or counterparty type, would allow market participants to better assess potential liquidity vulnerabilities. For a covered company with strong liquidity risk management, more granular disclosures would also reduce the likelihood that market participants would react overly negatively towards the covered company in the event of the public release of negative information about the covered company or the banking sector more generally. Without such granular disclosure, there is a greater likelihood that uncertainty over a covered company's liquidity position would cause counterparties to cease funding the covered company following the release of negative information. The granular disclosure requirements under the proposed and final rules would encourage covered companies to engage in safe and sound banking practices and strengthen financial stability, without causing firms to bear undue costs.

Although the final rule requires disclosure of relatively detailed liquidity data to enhance market participants' understanding of firm's liquidity risk management, several considerations should mitigate the potential for the disclosures to negatively impact a covered company or precipitate or accelerate a significant liquidity event during times of idiosyncratic or market stress. As noted, the disclosures are based on quarterly averages. Importantly, the due dates for the disclosures are several weeks after the end of the quarter. This means that the liquidity disclosures will include a lag that provides market participants with a broad understanding of a firm's medium-term liquidity position without causing the release of current liquidity data that could potentially negatively affect the firm. The final rule also does not require firms to disclose specific asset- or transaction-level details, which will limit the risk that the public disclosures will constrain a covered company's ability to execute its risk management and business strategies.

The proposed rule would have required a covered company to disclose its average HQLA amount, average total net cash outflow amount, and average LCR. A covered company's HQLA amount and total net cash outflow amount are the numerator and the denominator of the LCR, respectively, and thus, are important to help market participants and other parties understand the liquidity risk profile of a covered company and compare risk profiles across companies.

At a more granular level, to describe the quality and composition of a covered company's HQLA amount, the proposed rule would have required a covered company to disclose its average amount of eligible HQLA,[12] as well as the average amounts of eligible level 1, level 2A, and level 2B liquid assets to identify the quality and composition of a company's HQLA amount.[13] The proposed rule would have required the disclosure of both average unweighted amounts and average weighted amounts of eligible HQLA and eligible level 1, level 2A, and level 2B liquid assets. The proposed rule also would have required a covered company to disclose both the average unweighted amounts and average weighted amounts of its cash outflows and inflows. This information helps identify the short-term liquidity risks facing a firm and, in particular, potential sources of liquidity strains during a period of market stress.

In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Board clarified three points regarding a

[12] Eligible HQLA are high-quality liquid assets that meet the requirements set forth in 12 CFR 249.22.

[13] *See* 12 CFR 249.20–249.22.

covered company's required quantitative disclosures. First, the Board noted that the average values disclosed for the HQLA amount, total net cash outflow amount, and the LCR (rows 29, 32, and 33 of the LCR disclosure template) may not equal the calculation of those values using component values reported in rows 1 through 28 of the LCR disclosure template. This lack of equivalence is due to technical factors such as the application of the level 2 liquid asset caps, the total inflow cap and, for modified LCR holding companies, the application of the 0.7 factor to total net cash outflows. The application of the asset and inflow caps and modified LCR requirement's 0.7 factor may affect a covered company's LCR calculation in varying degrees across the calculation dates used to determine the average values that are required to be disclosed in rows 29, 32, and 33 of the LCR disclosure template and, thus, would affect the averages for the covered company's HQLA amount, total net cash outflow amount, and the LCR. The LCR disclosure template includes a footnote that highlights this difference.

Second, because a modified LCR holding company is not required to calculate a maturity mismatch add-on calculation amount under the modified LCR requirement,[14] it would not have been required to disclose amounts in row 30 or 31 of the LCR disclosure template, which each relate to the maturity mismatch add-on amount calculation.

Third, while the proposed rule would have required a modified LCR holding company to disclose its average total net cash outflow amount after applying a factor of 0.7 (which reflects the fact that modified LCR holding companies are required to apply a factor of 0.7 to its average total net cash outflow amount under section 249.63 of the LCR rule), the proposed rule would have required a modified LCR holding company to disclose its average cash outflows and cash inflows without applying the factor of 0.7.

The Board did not receive comments, other than those described above, on these aspects of the proposal, and the final rule adopts these aspects without modification.

[14] A covered company, other than a modified LCR holding company, is required to calculate a maturity mismatch add-on under 12 CFR 249.30(b) to address liquidity risks posed by maturity mismatches between a covered company's outflows and inflows during the LCR rule's prospective 30 calendar-day period.

C. Qualitative Disclosure Requirements

Under the proposed rule, a covered company would have been required to provide a ''sufficient'' qualitative discussion of its LCR. This discussion was intended to complement the quantitative disclosure requirements. In this regard, the proposed rule included a list of potentially relevant items for the covered company to address in its qualitative disclosures: (1) The main drivers of the LCR; (2) changes in the LCR over time; (3) the composition of eligible HQLA; (4) concentration of funding sources; (5) derivative exposures and potential collateral calls; (6) currency mismatch in the LCR; (7) the covered company's centralized liquidity management function and its interaction with other functional areas of the covered company; and (8) other inflows and outflows in the LCR that are not specifically identified by the required quantitative disclosures, but that the covered company considers to be relevant to facilitate an understanding of its liquidity risk profile. The proposed rule also would have required that a covered company provide a brief discussion of any significant changes that have occurred since the end of the quarter (*i.e.,* during the period following the quarter for which a covered company has prepared its LCR disclosures) such that current or previous quantitative disclosures were no longer reflective of a covered company's current liquidity risk profile.

Two commenters argued that the qualitative disclosure requirement should be better aligned with public disclosures required by other regulations. The commenters requested that a covered company only be required to provide a qualitative discussion of items that are ''material'' to the firm's LCR, rather than items that are ''significant'' or ''relevant'' to a firm's LCR, as would have been required under the proposed rule. The commenters argued that adopting a materiality standard that is consistent with disclosure requirements applicable under other public disclosure regimes, notably federal securities laws, would be less confusing and ensure that covered companies approach the required disclosures in a consistent manner. In addition, one commenter argued that qualitative public disclosures should include an exemption, similar to that in the Board's risk-based capital rules, for disclosure of certain confidential or proprietary financial information.

In response to the commenters' concerns, the final rule clarifies that a covered company is not required to include in its qualitative disclosures any information that is proprietary or confidential. Rather, the covered company would only be required to disclose general information about those subjects and provide a reason why the specific information has not been disclosed.

The final rule continues to use the term ''significant'' to describe items affecting a covered company's LCR about which a covered company should provide a qualitative discussion. However, in response to concerns raised by commenters, the Board agrees with commenters that a covered company may assess the relevant qualitative disclosures based on their materiality. Information is regarded as material for purposes of the disclosure requirements in the final rule if the omission or misstatement of the information could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions. This approach is consistent with the standards in the Board's risk-based capital rules, which also use a concept of materiality to inform the qualitative disclosure requirements required under those rules.[15]

The proposed rule's requirement that a covered company provide a qualitative discussion of the main drivers of its LCR and any changes in its LCR over time, to the extent such changes were significant, was intended to include a discussion of the causes of any such changes. However, in order to avoid any confusion, the final rule has been revised to state explicitly that, in addition to discussing any changes in its LCR over time, a covered company should also include a discussion of the causes of such changes. Changes in risk management strategies or macroeconomic conditions are examples of the type of causes that could potentially cause a change to a covered company's LCR and that, if significant, would have to be discussed in the firm's qualitative disclosures.

In addition, the final rule eliminates the requirement that a covered company provide a brief discussion of any significant changes that have occurred since the end of the quarter that would cause its quarter-end quantitative disclosures to no longer reflect its liquidity profile. Although it was not the intended result, this requirement could have been interpreted to require a covered company to disclose information about specific and recent developments in its liquidity risk profile, which could include short-term

[15] *See* 78 CFR 62018, 62129 (October 11, 2013).

volatility of a firm's LCR. The disclosure of this information could have potentially adverse effects on a covered company, or precipitate or accelerate a significant liquidity event during times of idiosyncratic or market stress. Moreover, such a requirement would have been at odds with the final rule's requirement that all disclosed amounts be calculated as quarterly averages and that due dates for the disclosures be several weeks after the end of the quarter. For these reasons, the final rule does not include this requirement.

As noted above, the proposed rule would have required a covered company to provide a qualitative discussion of its LCR and would have included an illustrative list of potentially relevant items that a firm could discuss, to the extent relevant to its LCR. Among the illustrative list of potentially relevant items was ''other inflows and outflows in the LCR that are not specifically identified by the required quantitative disclosures, but that the covered company considers to be relevant to facilitate an understanding of its liquidity risk profile.'' The Board has determined that this item is redundant of the proposed rule's general requirement that a firm must provide a qualitative discussion of its LCR. For this reason, the final rule eliminates this example.

III. Transition and Timing

The proposed compliance dates for the public disclosure requirements would have differed based on the size, complexity, and potential systemic impact of the covered companies that currently are subject to the LCR rule. The proposed rule would have required covered companies that have $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody to comply with the proposed public disclosure requirements beginning on July 1, 2016. Other covered companies, not including modified LCR holding companies, would have been required to comply with the proposed public disclosure requirements beginning on July 1, 2017. These proposed compliance dates would have required covered companies that are currently subject to the LCR rule to comply with the proposed public disclosure requirements one year after the date that they were required to calculate their LCR on a daily basis.[16] The proposed rule would have required modified LCR holding companies to comply with the public disclosure requirements beginning on January 1, 2018.

One commenter argued that covered companies need additional time to comply with the public disclosure requirements in order to align their existing liquidity data reporting processes under the FR 2052a report with the LCR public disclosure requirements. The commenter also asserted that a longer transition period was necessary so that covered companies would have sufficient time to clarify certain aspects of their LCR calculations with the agencies to ensure that the disclosed LCR data is calculated consistently across covered companies.

In response to the comments, the final rule extends the implementation timeline nine months such that a covered company currently subject to the LCR rule would be required to make LCR public disclosures approximately five calendar quarters after the covered company's liquidity information has been required to be submitted on the FR 2052a report.[17] The effect of this extension will be to require covered companies that have $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody to comply with the public disclosure requirements beginning on April 1, 2017. Other covered companies, other than modified LCR holding companies, will be required to comply with the public disclosure requirements beginning on April 1, 2018. Modified LCR holding companies that are currently subject to the modified LCR rule will be required to comply with the public disclosure requirements beginning on October 1, 2018.

A covered company that becomes subject to the LCR rule in the future will be required to make its first public disclosures for the calendar quarter that starts on its LCR rule compliance date (*i.e.,* three months after the company becomes subject to the LCR rule). During the time such company is required to calculate the LCR monthly pursuant to 12 CFR 249.1(b)(2)(ii),[18] the company would be required to calculate all disclosed amounts as simple averages of the components used to calculate its monthly LCR over the quarter. A modified LCR holding company that becomes subject to the modified LCR requirement in the future will be required to make its first public disclosures for the calendar quarter that begins eighteen months after the date it becomes subject to the modified LCR requirement. For example, if a modified LCR holding company becomes subject to the modified LCR requirement beginning in January 2018, the final rule would require that company to comply with public disclosure requirements beginning July 1, 2019.

IV. Amendment to the Modified LCR Requirement

A company that becomes subject to the modified LCR requirement is currently required to comply with the requirement on the first day of the first quarter after which the company's total consolidated assets equal $50 billion or more. As noted in the Supplemental Information section in the proposed rule, this compliance date may not provide sufficient time for these companies to build the systems required to calculate the LCR. In light of this operational challenge, the proposed rule would have amended the modified LCR requirement to provide these companies with a full year to come into compliance with the LCR requirement after becoming subject to the rule. The Board is clarifying that a covered company subject to the full LCR requirement that subsequently becomes subject to the modified requirement (*e.g.,* following a decrease in the covered company's consolidated assets or on-balance sheet foreign exposure below the thresholds specified in section 249.1(b) of the LCR rule at the most recent year-end) would be required to comply with the modified LCR requirement (including the disclosure requirement) immediately upon becoming subject to the requirement. In this case, the covered company would already have the systems in place to calculate the LCR and would not need additional time to come into compliance with the modified LCR requirement.

The Board received no comments on this aspect of the proposed rule. The final rule includes this amendment to

[16] Under section 249.50 of the LCR rule, covered companies that have $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody were required to calculate their LCR on a daily basis beginning on July 1, 2015, and other covered companies (other than modified LCR holding companies) were required to calculate their LCR on a daily basis beginning on July 1, 2016.

[17] The compliance dates for the FR 2052a report are based on the size of the reporter. Firms with total consolidated assets of $700 billion or more or $10 trillion in assets under custody are already subject to the FR 2052a report. Other firms will be phased in to reporting on this form through January 2018. For a covered company that is a subsidiary of a foreign banking organization (''FBO''), the covered company would be required to disclose publicly its LCR once the parent FBO had been required to submit information on the FR2052a report with respect to the covered company for a full year.

[18] Under 12 CFR 249.1(b)(2)(ii), a covered company that becomes subject to the LCR rule after September 30, 2014 must calculate the LCR on a monthly basis from April 1 to December 31 of the year in which the covered company becomes subject to the LCR rule, and thereafter the covered company must calculate the LCR on a daily basis.

the modified LCR requirement without modification.

V. Plain Language

Section 722 of the Gramm-Leach Bliley Act [19] requires the Board to use plain language in all proposed and final rules published after January 1, 2000. The Board sought to present the proposed rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available for public comment an initial RFA analysis in connection with a notice of proposed rulemaking.[20] The Board solicited public comment on this rule in a notice of proposed rulemaking and has since considered the potential impact of this final rule on small entities in accordance with section 604 of the RFA. The Board received no public comments related to the initial RFA analysis in the proposed rule from the Chief Council for Advocacy of the Small Business Administration or from the general public. Based on the Board's analysis, and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration, a ''small entity'' includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less (a small banking organization). As of June 30, 2016, there were approximately 594 small state member banks, 3,203 small bank holding companies, and 162 small savings and loan holding companies.

As discussed above, the final rule requires certain companies that are subject to the LCR rule to disclose publicly information about components of their LCR. The final rule does not apply to ''small entities'' and applies only to the following Board-regulated institutions: (1) All bank holding companies and certain savings and loan holding companies that, in each case, have $50 billion or more in total consolidated assets or $10 billion or more in total consolidated on-balance sheet foreign exposure; and (2) nonbank financial companies designated by the Financial Stability Oversight Council for Board supervision to which the Board has applied the LCR Rule by separate rule or order. Companies that are subject to the final rule therefore substantially exceed the $550 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations.

No small bank holding company, savings and loan holding company, or state member bank would be subject to the rule, so there would be no additional projected compliance requirements imposed on small bank holding companies, small savings and loan holding companies, or small state member banks.

The Board believes that the final rule will not have a significant impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the rule that would reduce the economic impact on small banking organizations supervised by the Board.

VII. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board's OMB control number is 7100–0367 and will be extended, with revision. The Board reviewed the final rule under the authority delegated to the Board by OMB. The final rule contains requirements subject to the PRA. The disclosure requirements are found in sections 249.64, 249.90, and 249.91. The Board did not receive any public comments on the PRA analysis.

The Board has a continuing interest in the public's opinions of collections of information. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer (1) by mail to U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; (2) by fax to 202–395–6974; or (3) by email to: *oira_submission@omb.eop.gov*.

Proposed Information Collection

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements associated with the Liquidity Risk Measurement Standards (Regulation WW).

Frequency of Response: Event generated, monthly, quarterly, annually.

Affected Public: Insured state member banks, bank holding companies, savings and loan holding companies, and nonbank financial companies supervised by the Board, and any subsidiary thereof.

Current Actions: The final rule requires a depository institution holding company and nonbank financial company subject to the LCR (covered company) to disclose publicly information about certain components of its LCR calculation in a standardized tabular format and include a discussion of factors that have a significant effect on its LCR. Public disclosure of information about covered company LCR calculations will help market participants and other parties consistently assess the liquidity risk profile of covered companies. Under the final rule, a covered company is required to provide timely public disclosures each calendar quarter. A covered company is required to include the completed disclosure template on its public internet site or in a public financial or other public regulatory report and make its disclosures available to the public for at least five years from the time of the initial disclosure.

A covered company must disclose publicly the information required under subpart J beginning on April 1, 2017, if the covered company is subject to the transition period under section 249.50(a) or April 1, 2018, if the covered company is subject to the transition period under section 249.50(b). For modified LCR holding companies, the final rule would require them to comply with the public disclosure requirements beginning on October 1, 2018.

Under the final rule, quantitative disclosures will convey information about a covered company's high-quality liquid assets (HQLA) and short-term cash flows, thereby providing insight into a covered company's liquidity risk profile. Consistent with the BCBS common template, the final rule requires a covered company to disclose both average unweighted amounts and average weighted amounts for the covered company's HQLA, cash outflow amounts, and cash inflow amounts. A covered company is also required to calculate all disclosed amounts as simple averages of the components used to calculate its daily LCR over a calendar quarter, except that modified LCR holding companies are required to calculate all disclosed amounts as simple averages of the components used

[19] Public Law 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809.

[20] *See* 5 U.S.C. 603(a).

to calculate their monthly LCR. A covered company is required to calculate all disclosed amounts on a consolidated basis and express the results in millions of U.S. dollars or as a percentage, as applicable.

In addition, the final rule requires a covered company to provide a discussion of certain features of its LCR. A covered company's qualitative discussion may include, but does not have to be limited to, the following items: (1) The main drivers of the LCR; (2) changes in the LCR over time and causes of such changes; (3) the composition of eligible HQLA; (4) concentration of funding sources; (5) derivative exposures and potential collateral calls; (6) currency mismatch in the LCR; and (7) the covered company's centralized liquidity management function and its interaction with other functional areas of the covered company.

Estimated Paperwork Burden

Estimated Burden per Response: Reporting—0.25 hours; recordkeeping—10 hours and 100 hours; disclosure—24 hours.

Frequency: Reporting—monthly, quarterly, and annually; recordkeeping—annually; disclosure—quarterly.

Estimated Number of Respondents: 39 (only 35 respondents are affected by the new disclosure requirements).

Current Total Estimated Annual Burden: Reporting—13 hours; recordkeeping—1,080 hours.

Proposed Total Estimated Annual Burden: Reporting—13 hours; recordkeeping—1,080 hours; disclosure—3,360 hours.

VIII. Riegle Community Development and Regulatory Improvement Act of 1994

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires a Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, to consider any administrative burdens that such regulations would place on depository institutions, and the benefits of such regulations, consistent with the principles of safety and soundness and the public interest. In addition, new regulations that impose additional reporting disclosures or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[21] Section 302 of the RCDRIA does not apply to this final rule because the final rule does not prescribe additional reporting, disclosures, or other new requirements on insured depository institutions. As discussed above in the Supplementary Information section, the final rule only applies to (1) all bank holding companies and certain savings and loan holding companies that, in each case, have $50 billion or more in total consolidated assets or $10 billion or more in total consolidated on-balance sheet foreign exposure; and (2) nonbank financial companies designated by the Financial Stability Oversight Council for Board supervision to which the Board has applied the LCR rule by separate rule or order. Nevertheless, the final rule becomes effective on April 1, 2017, the first day of a calendar quarter.

List of Subjects in 12 CFR Part 249

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Liquidity, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, the Board amends part 249 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 1. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 2. Amend § 249.60 by revising paragraph (c)(2) to read as follows:

§ 249.60 Applicability.

* * * * *

(c) * * *

(2) A Board-regulated institution that first meets the threshold for applicability of this subpart under paragraph (a) of this section after September 30, 2014, must comply with the requirements of this subpart one year after the date it meets the threshold set forth in paragraph (a); except that a Board-regulated institution that met the applicability criteria in § 249.1(b) immediately prior to meeting this threshold must comply with the requirements of this subpart beginning on the first day of the first quarter after which it meets the threshold set forth in paragraph (a) of this section.

■ 3. Add § 249.64 to subpart G to read as follows:

§ 249.64 Disclosures.

(a) Effective October 1, 2018, a covered depository institution holding company subject to this subpart must disclose publicly the information required under subpart J of this part each calendar quarter, except as provided in paragraph (b) of this section.

(b) Effective 18 months after a covered depository institution holding company first becomes subject to this subpart pursuant to § 249.60(c)(2), the covered depository institution holding company must provide the disclosures required under subpart J of this part each calendar quarter.

Subparts H and I [Reserved]

■ 4. Add reserved subparts H and I.

■ 5. Add subpart J, consisting of §§ 249.90 and 249.91, to read as follows:

Subpart J—Disclosures

Sec.

249.90 Timing, method and retention of disclosures.
249.91 Disclosure requirements.

§ 249.90 Timing, method and retention of disclosures.

(a) *Applicability.* A covered depository institution holding company or covered nonbank company that is subject to the minimum liquidity standards and other requirements of this part under § 249.1 must disclose publicly all the information required under this subpart.

(b) *Timing of disclosure.* (1) A covered depository institution holding company or covered nonbank company subject to this subpart must provide timely public disclosures each calendar quarter of all the information required under this subpart.

(2) A covered depository institution holding company or covered nonbank company subject to this subpart must provide the disclosures required by this subpart for the calendar quarter beginning on:

(i) April 1, 2017, and thereafter if the covered depository institution holding company is subject to the transition period under § 249.50(a); or

(ii) April 1, 2018, and thereafter if the covered depository institution holding company or covered nonbank holding company is subject to the transition period under § 249.50(b).

(3) A covered depository institution holding company or covered nonbank

[21] 12 U.S.C. 4802(b).

company that is subject to the minimum liquidity standard and other requirements of this part pursuant to § 249.1(b)(2)(ii), must provide the disclosures required by this subpart for the first calendar quarter beginning no later than the date it is first required to comply with the requirements of this part pursuant to § 249.1(b)(2)(ii).

(c) *Disclosure method.* A covered depository institution holding company or covered nonbank company subject to this subpart must disclose publicly, in a direct and prominent manner, the information required under this subpart on its public internet site or in its public financial or other public regulatory reports.

(d) *Availability.* The disclosures provided under this subpart must remain publicly available for at least five years after the initial disclosure date.

§ 249.91 Disclosure requirements.

(a) *General.* A covered depository institution holding company or covered nonbank company subject to this subpart must disclose publicly the information required by paragraph (b) of this section in the format provided in the following table.

TABLE 1 TO § 249.91(A)—DISCLOSURE TEMPLATE

XX/XX/XXXX to YY/YY/YYYY (in millions of U.S. dollars)	Average unweighted amount	Average weighted amount
High-Quality Liquid Assets:		
1. Total eligible high-quality liquid assets (HQLA), of which:		
2. Eligible level 1 liquid assets.		
3. Eligible level 2A liquid assets.		
4. Eligible level 2B liquid assets.		
Cash Outflow Amounts:		
5. Deposit outflow from retail customers and counterparties, of which:		
6. Stable retail deposit outflow.		
7. Other retail funding outflow.		
8. Brokered deposit outflow.		
9. Unsecured wholesale funding outflow, of which:		
10. Operational deposit outflow.		
11. Non-operational funding outflow.		
12. Unsecured debt outflow.		
13. Secured wholesale funding and asset exchange outflow.		
14. Additional outflow requirements, of which:		
15. Outflow related to derivative exposures and other collateral requirements.		
16. Outflow related to credit and liquidity facilities including unconsolidated structured transactions and mortgage commitments.		
17. Other contractual funding obligation outflow.		
18. Other contingent funding obligations outflow.		
19. Total Cash Outflow.		
Cash Inflow Amounts:		
20. Secured lending and asset exchange cash inflow.		
21. Retail cash inflow.		
22. Unsecured wholesale cash inflow.		
23. Other cash inflows, of which:.		
24. Net derivative cash inflow.		
25. Securities cash inflow.		
26. Broker-dealer segregated account inflow.		
27. Other cash inflow.		
28. Total Cash Inflow.		
Average Amount [1]		
29. HQLA Amount.		
30. Total Net Cash Outflow Amount Excluding the Maturity Mismatch Add-on.		
31. Maturity Mismatch Add-on.		
32. Total Net Cash Outflow Amount.		
33. Liquidity Coverage Ratio (%).		

[1] The amounts reported in this column may not equal the calculation of those amounts using component amounts reported in rows 1–28 due to technical factors such as the application of the level 2 liquid asset caps, the total inflow cap, and for depository institution holding companies subject to subpart G, the application of the modification to total net cash outflows.

(b) *Calculation of disclosed average amounts*—(1) *General.* (i) A covered depository institution holding company or covered nonbank company subject to this subpart must calculate its disclosed average amounts:

(A) On a consolidated basis and presented in millions of U.S. dollars or as a percentage, as applicable; and

(B) With the exception of amounts disclosed pursuant to paragraphs (c)(1), (c)(5), (c)(9), (c)(14), (c)(19), (c)(23), and (c)(28) of this section, as simple averages of daily amounts over the calendar quarter;

(ii) A covered depository institution holding company that is required to calculate its liquidity coverage ratio on a monthly basis pursuant to § 249.61 must calculate its disclosed average amounts as provided in paragraph (b)(1)(i), except that those amounts must be calculated as simple averages of monthly amounts over a calendar quarter;

(iii) A covered depository institution holding company or covered nonbank company subject to this subpart must

disclose the beginning date and end date for each calendar quarter.

(2) *Calculation of average unweighted amounts.* (i) A covered depository institution holding company or covered nonbank company subject to this subpart must calculate the average unweighted amount of HQLA as the average amount of eligible HQLA that meet the requirements specified in §§ 249.20 and 249.22 and is calculated prior to applying the haircuts required under § 249.21(b) to the amounts of eligible HQLA.

(ii) A covered depository institution holding company or covered nonbank company subject to this subpart must calculate the average unweighted amount of cash outflows and cash inflows before applying the outflow and inflow rates specified in §§ 249.32 and 249.33, respectively.

(3) *Calculation of average weighted amounts.* (i) A covered depository institution holding company or covered nonbank company subject to this subpart must calculate the average weighted amount of HQLA after applying the haircuts required under § 249.21(b) to the amounts of eligible HQLA.

(ii) A covered depository institution holding company or covered nonbank company subject to this subpart must calculate the average weighted amount of cash outflows and cash inflows after applying the outflow and inflow rates specified in §§ 249.32 and 249.33, respectively.

(c) *Quantitative disclosures.* A covered depository institution holding company or covered nonbank company subject to this subpart must disclose all the information required under Table 1 to § 249.91(a)—Disclosure Template, including:

(1) The sum of the average unweighted amounts and average weighted amounts calculated under paragraphs (c)(2) through (4) of this section (row 1);

(2) The average unweighted amount and average weighted amount of level 1 liquid assets that are eligible HQLA under § 249.21(b)(1) (row 2);

(3) The average unweighted amount and average weighted amount of level 2A liquid assets that are eligible HQLA under § 249.21(b)(2) (row 3);

(4) The average unweighted amount and average weighted amount of level 2B liquid assets that are eligible HQLA under § 249.21(b)(3) (row 4);

(5) The sum of the average unweighted amounts and average weighted amounts of cash outflows calculated under paragraphs (c)(6) through (8) of this section (row 5);

(6) The average unweighted amount and average weighted amount of cash outflows under § 249.32(a)(1) (row 6);

(7) The average unweighted amount and average weighted amount of cash outflows under § 249.32(a)(2) through (5) (row 7);

(8) The average unweighted amount and average weighted amount of cash outflows under § 249.32(g) (row 8);

(9) The sum of the average unweighted amounts and average weighted amounts of cash outflows calculated under paragraphs (c)(10) through (12) of this section (row 9);

(10) The average unweighted amount and average weighted amount of cash outflows under § 249.32(h)(3) and (4) (row 10);

(11) The average unweighted amount and average weighted amount of cash outflows under § 249.32(h)(1), (2), and (5), excluding (h)(2)(ii) (row 11);

(12) The average unweighted amount and average weighted amount of cash outflows under § 249.32(h)(2)(ii) (row 12);

(13) The average unweighted amount and average weighted amount of cash outflows under § 249.32(j) and (k) (row 13);

(14) The sum of the average unweighted amounts and average weighted amounts of cash outflows calculated under paragraphs (c)(15) and (16) of this section (row 14);

(15) The average unweighted amount and average weighted amount of cash outflows under § 249.32(c) and (f) (row 15);

(16) The average unweighted amount and average weighted amount of cash outflows under § 249.32(b), (d), and (e) (row 16);

(17) The average unweighted amount and average weighted amount of cash outflows under § 249.32(l) (row 17);

(18) The average unweighted amount and average weighted amount of cash outflows under § 249.32(i) (row 18);

(19) The sum of average unweighted amounts and average weighted amounts of cash outflows calculated under paragraphs (c)(5), (9), (13), (14), (17), and (18) of this section (row 19);

(20) The average unweighted amount and average weighted amount of cash inflows under § 249.33(f) (row 20);

(21) The average unweighted amount and average weighted amount of cash inflows under § 249.33(c) (row 21);

(22) The average unweighted amount and average weighted amount of cash inflows under § 249.33(d) (row 22);

(23) The sum of average unweighted amounts and average weighted amounts of cash inflows calculated under paragraphs (c)(24) through (27) of this section (row 23);

(24) The average unweighted amount and average weighted amount of cash inflows under § 249.33(b) (row 24);

(25) The average unweighted amount and average weighted amount of cash inflows under § 249.33(e) (row 25);

(26) The average unweighted amount and average weighted amount of cash inflows under § 249.33(g) (row 26);

(27) The average unweighted amount and average weighted amount of cash inflows under § 249.33(h) (row 27);

(28) The sum of average unweighted amounts and average weighted amounts of cash inflows reported under paragraphs (c)(20) through (23) of this section (row 28);

(29) The average amount of the HQLA amounts as calculated under § 249.21(a) (row 29);

(30) The average amount of the total net cash outflow amounts excluding the maturity mismatch add-on as calculated under § 249.30(a)(1) and (2) (row 30);

(31) The average amount of the maturity mismatch add-ons as calculated under § 249.30(b) (row 31);

(32) The average amount of the total net cash outflow amounts as calculated under § 249.30 or § 249.63, as applicable (row 32);

(33) The average of the liquidity coverage ratios as calculated under § 249.10(b) (row 33).

(d) *Qualitative disclosures.* (1) A covered depository institution holding company or covered nonbank company subject to this subpart must provide a qualitative discussion of the factors that have a significant effect on its liquidity coverage ratio, which may include the following:

(i) The main drivers of the liquidity coverage ratio;

(ii) Changes in the liquidity coverage ratio over time and causes of such changes;

(iii) The composition of eligible HQLA;

(iv) Concentration of funding sources;

(v) Derivative exposures and potential collateral calls;

(vi) Currency mismatch in the liquidity coverage ratio; or

(vii) The centralized liquidity management function of the covered depository institution holding company or covered nonbank company and its interaction with other functional areas of the covered depository institution holding company or covered nonbank company.

(2) If a covered depository institution holding company or covered nonbank company subject to this subpart believes that the qualitative discussion required in paragraph (d)(1) of this section would prejudice seriously its position by resulting in public disclosure of specific

commercial or financial information that is either proprietary or confidential in nature, the covered depository institution holding company or covered nonbank company is not required to include those specific items in its qualitative discussion, but must provide more general information about the items that had a significant effect on its liquidity coverage ratio, together with the fact that, and the reason why, more specific information was not discussed.

By order of the Board of Governors of the Federal Reserve System, December 19, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–30859 Filed 12–23–16; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R–1556]

RIN 7100 AE 65

Rules Regarding Availability of Information

AGENCIES: Board of Governors of the Federal Reserve System (''Board'').

ACTION: Interim final rule.

SUMMARY: The Board is adopting, and inviting comment on, an interim final rule to amend its regulations for processing requests under the Freedom of Information Act (''FOIA'') pursuant to the FOIA Improvement Act of 2016 (the ''Act''). The amendments clarify and update procedures for requesting information from the Board, extend the deadline for administrative appeals, and add information on dispute resolution services.

DATES: This interim final rule is effective December 27, 2016. Comments should be received on or before February 27, 2017.

ADDRESSES: You may submit comments, identified by Docket No. R–1556 and RIN No. 7100 AE–65, by any of the following methods:

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

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.), Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT:

Board: Katherine Wheatley, Associate General Counsel, (202) 452–3779; or Misty Mirpuri, Senior Attorney, (202) 452–2597; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule reflects changes to the Board's Rules Regarding Availability of Information (''Board's Rules'') required by the FOIA Improvement Act of 2016 (the ''Improvement Act'').[1] The Improvement Act addresses a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute resolution services at various times throughout the FOIA process. Accordingly, the Board is adopting this interim final rule to comply with the statutory requirements of the Improvement Act.

II. Description of the Final Rule

This interim final rule makes conforming amendments throughout part 261 of the Board's Rules to adopt the statutory exemptions and exceptions required by the Improvement Act. It also explains general policies and procedures for requesters seeking access to records and for processing requests by the Board's Freedom of Information Office.

Section 261.10—Published information. The Improvement Act requires agencies to make certain records available in an electronic format. Thus, we are amending this section to include language that the Index to Board Actions will be maintained in an electronic format. In addition, we are removing the reference to the pedestrian entrance for Publications Services because it is no longer accurate.

Section 261.11—Records available for public inspection. We are amending this section, including its heading, to clarify when and how the Board's records will be available for public inspection. Specifically, we are removing references to ''copying'' and adding in the text of the rule that records will be available ''in an electronic format'' to reflect the Improvement Act's change.[2] We are also removing outdated information about records created after 1996 and incorrect information about procedures for obtaining certain reporting forms from the National Technical Information Service. As required by the Improvement Act, this section will now also provide that the Board will make available for public inspection records that have been released under section 261.12 and have been requested three or more times.

Section 261.12—Records available to public upon request. We are amending this section to remove one of the Board's FOI Office's incorrect facsimile number and adding the Board's Web site address for individuals to submit FOIA requests to the Board online.

Section 261.13—Processing requests. We are amending this section to describe the process for the Board to extend its time for response in unusual circumstances. We are also adding language reflecting that all responses to FOIA requests will advise the requester of his or her right to seek assistance from the Board's FOIA Public Liaison. In keeping with the language of FOIA, the new language refers to ''adverse determinations'' rather than ''denials.'' The new language describes adverse determinations that may be appealed, and extends the time for appeal from 10 days to 90 days in accordance with the Improvement Act. The revised language also provides that when making an adverse determination, the Board will advise the requester of the right to seek dispute resolution services from the Board's FOIA Public Liaison or from the Office of Government Information Services. We are also adding an email address for requesters to submit an appeal to the Board.

Section 261.14—Exemptions from disclosure. We are adding language to state that the Board will not withhold records based on the deliberative process privilege if the records were created 25 years or more before the date on which the records were requested, and that the Board will withhold records only when it reasonably foresees that disclosure would harm an interest

[1] Public Law 114–185, 130 Stat. 538 (2016).

[2] 5 U.S.C. 552(a)(2).

protected by an exemption described in the section, as required by the Improvement Act.

Section 261.17—Fee schedules; waiver of fees. We are amending this section to provide restrictions on the Board's ability to charge fees as required by the Improvement Act.

The Board notes that the Improvement Act provides federal agencies with no discretion in the implementation of the rule, and requires that conforming amendments to agency-specific rules become effective within 180 days of the Act's enactment. Accordingly, this interim rule is final and effective on December 27, 2016. The Board is providing an opportunity for comment and will address any comments received in a subsequent rulemaking.

III. Administrative Law Matters

Administrative Procedure Act

This rule is not subject to the provisions of the Administrative Procedure Act (''APA''), 5 U.S.C. 553, requiring notice, public participation, and deferred effective date. The FOIA Improvement Act of 2016 provides federal agencies with no discretion in the implementation of the substantive amendments made in this rule, and it also requires that conforming amendments to agency-specific rules become effective as of December 27, 2016. For these reasons, the Board finds good cause to determine that public notice and comment for these amendments is unnecessary, impracticable, or contrary to the public interest, pursuant to the APA, 5 U.S.C. 553(b)(B), and that good cause exists to dispense with a deferred effective date pursuant to 5 U.S.C. 553(d)(3). The Board is providing, however, an opportunity for comment and will address any comments received in the final rule that adopts the interim rule as final.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* applies only to rules for which an agency publishes a general notice of proposed rulemaking. Because the Board has determined for good cause that a notice of proposed rulemaking for this rule is unnecessary, the Regulatory Flexibility Act does not apply to this final rule.

Paperwork Reduction Act Analysis

There is no collection of information required by this interim final rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires each federal banking agency to use plain language in all rules published after January 1, 2000. In light of this requirement, the Board believes this interim rule is presented in a simple and straightforward manner and is consistent with this ''plain language'' directive.

List of Subjects in 12 CFR Part 261

Administrative practice and procedure, Confidential business information, Freedom of information, Reporting and recordkeeping requirements.

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.,* 611 *et seq.,* 1442, 1467a, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.,* 2601, 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.;* 15 U.S.C. 77uuu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.;* 42 U.S.C. 3601; 44 U.S.C. 3510.

■ 2. In § 261.10 paragraphs (e) and (f) are revised to read as follows:

§ 261.10 Published information.

* * * * *

(e) *Index to Board actions.* The Board's Freedom of Information Office maintains, in electronic format, an index to Board actions, which is updated weekly and provides identifying information about any matters issued, adopted, and promulgated by the Board since July 4, 1967. Copies of the index may be obtained upon request to the Freedom of Information Office subject to the current schedule of fees in § 261.17.

(f) *Obtaining Board publications.* The Publications Services Section maintains a list of Board publications that are available to the public. In addition, a partial list of publications is published in the Federal Reserve Bulletin. All publications issued by the Board, including available back issues, may be obtained from Publications Services, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Subscription or other charges may apply to some publications.

■ 3. In § 261.11, the section heading and paragraphs (a) introductory text, (a)(4), (b)(1) and (c) are revised, to read as follows:

§ 261.11 Records available for public inspection.

(a) *Types of records made available.* Unless they were published promptly and made available for sale or without charge, the following records shall be made available for inspection in an electronic format:

* * * * *

(4) Copies of all records, regardless of form or format—

(i) That have been released to any person under § 261.12; and

(ii)(A) That because of the nature of their subject matter, the Board determines have become or are likely to become the subject of subsequent requests for substantially the same records; or

(B) That have been requested three or more times;

* * * * *

(b)(1) Information available under this section is available for inspection and copying, from 9:00 a.m. to 5:00 p.m. weekdays, at the Freedom of Information Office of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

* * * * *

(c) *Privacy protection.* The Board may delete identifying details from any record to prevent a clearly unwarranted invasion of personal privacy.

■ 4. In § 261.12, paragraph (b)(2) is revised to read as follows:

§ 261.12 Records available to public upon request.

* * * * *

(b) * * *

(2) The request shall be submitted in writing to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Street NW., Washington, DC 20551; or sent by facsimile to the Freedom of Information Office, (202) 872–7565; or submitted electronically to *http://www.federalreserve.gov/forms/efoiaform.aspx.* The request shall be clearly marked FREEDOM OF INFORMATION ACT REQUEST.

* * * * *

■ 5. In § 261.13, paragraphs (e)(3), (f)(4), (f)(5), (i) introductory text, (i)(1), and (i)(3) are revised to read as follows:

§ 261.13 Processing requests.

* * * * *

(e) * * *

(3) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B), the Board may:

(i) Extend the 20-day time limit for a period of time not to exceed 10 working days, where the Board has provided written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; and

(ii) Extend the 20-day time limit for a period of more than 10 working days where the Board has provided the requester with an opportunity to modify the scope of the FOIA request so that it can be processed within that time frame or with an opportunity to arrange an alternative time frame for processing the original request or a modified request, and has notified the requester that the Board's FOIA Public Liaison is available to assist the requester for this purpose and in the resolution of any disputes between the requester and the Board and of the requester's right to seek dispute resolution services from the Office of Government Information Services.

(f) * * *

(4) The right of the requester to seek assistance from the Board's FOIA Public Liaison; and

(5) When an adverse determination is made (including determinations that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; the requested record is not readily reproducible in the form or format sought by the requester; deny fee waiver requests or other fee categorization matters; and deny requests for expedited processing), the Secretary will advise the requester in writing of that determination and will further advise the requester of:

(i) The right of the requester to appeal to the Board any adverse determination within 90 days after the date of the determination as specified in paragraph (i) of this section;

(ii) The right of the requester to seek dispute resolution services from the Board's FOIA Public Liaison or the Office of Government Information Services; and

(iii) The name and title or position of the person responsible for the adverse determination.

* * * * *

(i) *Appeal of an adverse determination.* In the case of an adverse determination, the requester may file a written appeal with the Board, as follows:

(1) The appeal shall prominently display the phrase FREEDOM OF INFORMATION ACT APPEAL on the first page, and shall be addressed to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Streets NW., Washington, DC 20551; or sent by facsimile to the Freedom of Information Office, (202) 872–7562 or 7565; or sent by email to *FOIA-Appeals@frb.gov.*

* * * * *

(3) The appeal shall be filed within 90 days of the date on which the adverse determination was issued, or the date on which documents in partial response to the request were transmitted to the requester, whichever is later. The Board may consider an untimely appeal if:

* * * * *

■ 6. In § 261.14, paragraph (a) introductory text is revised to read as follows:

§ 261.14 Exemptions from disclosure.

(a) *Types of records exempt from disclosure.* Pursuant to 5 U.S.C. 552(b), the following records of the Board are exempt from disclosure under this part. The Board shall withhold records or information only when it reasonably foresees that disclosure would harm an interest protected by an exemption described in this paragraph 261.14(a) or when disclosure is prohibited by law. In applying the exemption in subparagraph (a)(5) of this section, the Board will not withhold records based on the deliberative process privilege if the records were created 25 years or more before the date on which the records were requested.

* * * * *

■ 7. In § 261.17, paragraph (i) is added to read as follows:

§ 261.17 Fee schedules; waiver of fees.

* * * * *

(i) *Restrictions on charging fees.* (1) If the Board fails to comply with the FOIA's time limits in which to respond to a request, the Board may not charge search fees, or, in the instances of requests from requesters described in paragraph (c)(2) of this section, may not charge duplication fees, except as permitted under paragraphs (i)(2) through (4) of this section.

(2) If the Board determines that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and has provided timely written notice to the requester and subsequently responds within the additional 10 working days as provided in § 261.13(e)(3), the Board may charge search fees, or, in the case of requests from requesters described in paragraph (c)(2) of this section, may charge duplication fees.

(3) If the Board determines that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and more than 5,000 pages are necessary to respond to the request, then the Board may charge search fees, or, in the case of requesters described in paragraph (c)(2) of this section, may charge duplication fees, if the Board has:

(i) Provided timely written notice to the requester in accordance with the FOIA; and

(ii) Discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(4) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

By order of the Board of Governors of the Federal Reserve System, December 15, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–30670 Filed 12–23–16; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 271

Rules Regarding Availability of Information

AGENCY: Federal Open Market Committee, Federal Reserve System.

ACTION: Interim final rule.

SUMMARY: The Federal Open Market Committee (Committee) invites comments on this interim final rule amending its Rules Regarding Availability of Information (Rules). These revisions conform to recent statutory amendments to the Freedom of Information Act (FOIA) made by the FOIA Improvement Act of 2016 (FOIA Improvement Act), as well as other technical changes intended to clarify existing procedures for requesting information and updating contact information.

DATES: This interim final rule is effective on December 27, 2016. Comments shall be received on or before February 27, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this interim final rule, identified by ''Federal Reserve System: Federal Open Market Committee 12 CR Part 271,'' by any of the following methods:

• *Electronic submission of comments:* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Committee to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

• *Facsimile:* (202) 452–2921.

• *Mail:* Mr. Brian Madigan, Secretary, Federal Open Market Committee, 20th Street and Constitution Avenue NW., Washington, DC 20551.

• *Public Inspection of Comments:* All public comments may be viewed electronically or in paper form at the Freedom of Information Office of the Board of Governors of the Federal Reserve System (Board) in Room 3515, at 1801 K Street NW., (between 18th and 19th Streets) Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. Please be advised that your comments are part of the public record and will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Matthew M. Luecke, Deputy Secretary, (202) 452–2576, Federal Open Market Committee, 20th Street and Constitution Avenue NW., Washington, DC 20551; or Amory Goldberg, Counsel, (202) 452–3124, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunications Device for Deaf (TDD) *only,* please call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

On June 30, 2016, the Freedom of Information Act [1] (FOIA) was amended by the FOIA Improvement Act of 2016 [2] (FOIA Improvement Act). Among other things, section 3 of the FOIA Improvement Act requires each federal agency to revise its disclosure regulations and procedures for processing FOIA requests in order to conform to the substantive amendments made by section 2 of the FOIA Improvement Act by December 27, 2016. As it pertains to the Committee's Rules Regarding Availability of Information (Rules), the Committee is required to make a number of changes to comply with the FOIA Improvement Act's amendments. In addition, the Committee is making certain technical changes to the Rules to make the FOIA process easier for the public to navigate, to make certain provisions clearer (removing obsolete language), and inform the public of additional electronic methods for submitting FOIA requests and administrative appeals. In drafting the amendments to the Rules, the Committee consulted the ''Guidance for Agency FOIA Regulations'' issued by the U.S. Department of Justice's Office for Information Policy. The following is a section-by-section discussion of the changes.

II. Description of the Interim Final Rule

This interim final rule amends the Committee's Rules, as described below.

Section 271.3—Published Information

The Committee has made a technical change to section 271.3(c) of its Rules to delete certain outdated information about publishing Committee information in the *Federal Reserve Bulletin* and to clarify that members of the public no longer need to contact the Publications Services section of the Federal Reserve Board (Board) to obtain certain information, because such information is already made publicly available on the Web sites of the Board or Federal Reserve Banks.

Section 271.4—Records Available for Public Inspection

As required by the FOIA Improvement Act, the Committee is revising this section to clarify that the Committee's records, which are available for public inspection pursuant to 5 U.S.C. 552(a)(2), specifically include records requested three or more times, and that such records will be made available in electronic format. Thus, the Committee is revising section 271.4(a) and (b) of its Rules to specifically reference the availability of records described in 5 U.S.C. 552(a)(2) for public inspection in electronic format. The Committee also is adding language to paragraph (b)(1) of section 271.4 to direct members of the public to the Web site of the Committee's electronic reading room. Additionally, in paragraph (b)(1) of section 271.4, the Committee updated information on how to obtain access to the Committee's reading room at the Board's Freedom of Information Office to reflect updated security procedures and because the Board's Freedom of Information Office has moved from the location at 20th Street and Constitution Avenue NW. Lastly, because all the records described in 5 U.S.C. 552(a)(2) are now required to be made available in electronic format, which necessarily would also include records created on or after 1996, the Committee removed and reserved paragraph (c) of section 271.4.

Section 271.5—Records Available to the Public on Request

The Committee is adding language to section 271.5 of its Rules to inform members of the public that they have the option to electronically submit FOIA requests using the Committee's online FOIA request form.

Section 271.6—Processing Requests

The Committee is making a technical correction to paragraph (c)(2) of section 271.6 of its Rules, to remove the reference to paragraph (i) and replace it with paragraph (h).

The FOIA, as revised by the FOIA Improvement Act, requires that, whenever an agency extends the 20-day time limit to respond to a FOIA request by more than ten working days due to ''unusual circumstances,'' then the agency must provide the requester with an opportunity to limit the request's scope and must notify the requester of the availability of dispute resolution services from the FOIA Public Liaison and the Office of Government Information Services (OGIS). Accordingly, the revisions to paragraph (d) of section 271.6 reflect these statutory requirements.

The Committee's amendments to paragraph (e) of section 271.6 conform to the amendments of the FOIA Improvement Act, which require that all determination letters advise requesters of the right to seek assistance from the Committee's FOIA Public Liaison and, in the case of an adverse determination, that requesters be informed of the right to seek dispute resolution services from the Committee's FOIA Public Liaison or OGIS.

In order to mirror the more expansive language of the FOIA and to reflect the Committee's current practice, the Committee also has made technical edits to paragraphs (e) and (h) of section 271.6 to clarify that a requester has the right to administratively appeal any ''adverse determination'' by the Secretary of the Committee (not just to

[1] 5 U.S.C. 552.

[2] Public Law 114–185, 130 Stat. 538 (June 30, 2016).

appeal denials or partial denials of requests for records). The new language in paragraph (e) provides examples of the adverse determinations that may be appealed. In paragraph (h) of section 271.6, the Committee is adding language to inform members of the public that they also have the option to submit administrative appeals via email to the Secretary of the Committee and providing the email address to use for such administrative appeals.

Lastly, in paragraph (g) of section 271.6, the Committee has added language providing that a requester also may be sent copies of requested records in electronic format to the requester's email address. This technical change clarifies that requesters are not limited to receiving records by U.S. postal mail.

Section 271.9—Fee Schedules; Waiver of Fees

The FOIA Improvement Act restricts an agency's ability to charge search or duplication fees in certain circumstances. The Committee has added paragraph (i) to section 271.9 to reflect the statutory restrictions on charging fees.

III. Request for Comments

The Committee invites comment on all aspects of the interim final rule.

IV. Administrative Law Matters

A. Administrative Procedure Act

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' As discussed above, this interim final rule implements the substantive amendments made by the FOIA Improvement Act. Congress provided federal agencies with no discretion in amending their disclosure rules to comply with the statutory amendments made to the FOIA, and required that such conforming amendments become effective by December 27, 2016. Given that the substantive amendments to the Committee's Rules are mandated by the FOIA Improvement Act, and that the other amendments made to the Committee's Rules are technical in nature, the Committee for good cause finds that prior notice and comment on this rulemaking is impracticable, unnecessary, or contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). For these same reasons, the Committee finds good cause to dispense with the delayed effective date otherwise required by 5 U.S.C. 553(d)(3). While the interim final rule is effective immediately upon publication, the Committee is inviting public comment on the interim final rule during a 60-day period and will consider all comments in developing a final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* applies only to rules for which an agency publishes a general notice of proposed rulemaking. Because the Committee has determined for good cause that a notice of proposed rulemaking for this rule is unnecessary, the Regulatory Flexibility Act does not apply to this final rule. 5 U.S.C. 601(2).

List of Subjects in 12 CFR Part 271

Federal Open Market Committee, Freedom of Information.

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Federal Open Market Committee amends part 271 to 12 CFR chapter II to read as follows:

PART 271—RULES REGARDING AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 271 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 263.

■ 2. Section 271.3 (c) is revised to read as follows:

§ 271.3 Published information.

* * * * *

(c) *Other published information.* Other information relating to the Committee, including its open market operations, is made publicly available on the Web sites of the Board and the Federal Reserve Banks.

■ 3. In § 271.4, revise the section heading and paragraphs (a) and (b), and remove and reserve paragraph (c) to read as follows:

§ 271.4 Records available for public inspection.

(a) *Types of records made available.* Unless they were published promptly and made available for sale or without charge, records described in 5 U.S.C. 552(a)(2) shall be made available for inspection in an electronic format by the Committee.

(b) *Reading room procedures.* (1) Information described in 5 U.S.C. 552(a)(2), such as statements of policy and records requested three or more times under § 271.5, is made available for public inspection in the Committee's electronic reading room at *https://www.federalreserve.gov/foia/fomc/readingrooms.htm#rr1,* in its conventional reading room located in the Freedom of Information Office of the Board of Governors of the Federal Reserve System, or both. For security reasons, the Board requires that visitors make an appointment to inspect documents. You may do so by calling the Board's Freedom of Information Office at (202) 452–3684.

(2) The Committee may determine that certain classes of publicly available filings shall be made available for inspection in electronic format only by the Federal Reserve Bank where those records are maintained.

(c) [Reserved]

* * * * *

■ 4. In § 271.5, revise paragraph (b)(2) to read as follows:

§ 271.5 Records available to the public on request.

* * * * *

(b) * * *

(2) The request shall be submitted in writing to the Secretary of the Committee, Federal Open Market Committee, 20th & C Streets NW., Washington, DC 20551; or sent by facsimile to the Secretary of the Committee, (202) 452–2921; or sent electronically using the online request form located at *www.federalreserve.gov/forms/FOMCForm.aspx.* The request shall be clearly marked FREEDOM OF INFORMATION ACT REQUEST.

* * * * *

■ 5. In § 271.6, revise paragraphs (c)(2), (d)(3), (e)(4), (e)(5), (g)(1), introductory text to paragraph (h), and (h)(1) to read as follows:

§ 271.6 Processing requests.

* * * * *

(c) * * *

(2) In response to a request for expedited processing, the Secretary of the Committee shall notify a requester of the determination within ten working days of receipt of the request. In exceptional situations, the Secretary of the Committee has the discretion to waive the formality of certification. If the Secretary of the Committee denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (h) of this section, and the Committee shall respond to the appeal within ten working days after the appeal was received by the Committee.

(d) * * *

(3) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B), the Committee may:

(i) Extend the 20-day time limit for a period of time not to exceed 10 working

days, where the Committee has provided written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; and

(ii) Extend the 20-day time limit for a period of more than 10 working days where the Committee has provided the requester with an opportunity to limit the scope of the request so that it may be processed within that time frame or with an opportunity to arrange an alternative time frame for processing the original request or a modified request, and has notified the requester that the Committee's FOIA Public Liaison is available to assist the requester for this purpose and in the resolution of any disputes between the requester and the Committee and of the requester's right to seek dispute resolution services from the Office of Government Information Services.

(e) * * *

(4) The right of the requester to seek assistance from the Committee's FOIA Public Liaison; and

(5) When an adverse determination is made (including determinations that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; the requested record is not readily reproducible in the form or format sought by the requester; to deny a fee waiver request or other fee categorization matter; and to deny a request for expedited processing), the Secretary will advise the requester in writing of that determination and will further advise the requester of:

(i) The right to appeal to the Committee any adverse determination, as specified in paragraph (h) of this section;

(ii) The right to seek dispute resolution services from the Committee's FOIA Public Liaison or from the Office of Government Information Services; and

(iii) The name and title or position of the person responsible for the adverse determination.

* * * * *

(g) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, or sent in electronic format to the email address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office or makes other acceptable arrangements, or the Committee deems it appropriate to send the documents by another means.

* * * * *

(h) *Appeal of an adverse determination.* A requester may appeal an adverse determination by filing a written appeal with the Committee, as follows:

(1) The appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to the Secretary of the Committee, Federal Open Market Committee, 20th and C Streets NW., Washington, DC 20551; or sent by facsimile to the Secretary of the Committee, (202) 452–2921; or sent by email to the Secretary of the Committee at *FOMC-FOIA-Mailbox@frb.gov.*

* * * * *

■ 6. In § 271.7, revise paragraph (a) to read as follows:

§ 271.7 Exemptions from disclosure.

(a) *Types of records exempt from disclosure.* Pursuant to 5 U.S.C. 552(b), the following records of the Committee are exempt from disclosure under this part. The Committee will withhold records or information only when it reasonably foresees that disclosure would harm an interest protected by an exemption described in 5 U.S.C. 552(b) and in this paragraph (a), or when disclosure is prohibited by law. In applying the exemption in paragraph (a)(5) of this section, the Committee will not withhold records based on the deliberative process privilege if the records were created 25 years or more before the date on which the records were requested.

* * * * *

■ 7. In § 271.9, add paragraph (i) to read as follows:

§ 271.9 Fee schedules; waiver of fees.

* * * * *

(i) *Restrictions on charging fees.* (1) If the Committee fails to comply with the time limits specified in the FOIA in which to respond to a request, the Committee will not charge search fees, or, in the case of requests from requesters described in paragraph (c)(2) of this section, will not charge duplication fees, except as permitted under paragraphs (i)(2) through (i)(4) of this section.

(2) If the Committee has determined that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and has provided timely written notice to the requester and subsequently responds within the additional 10 days provided in § 271.6(d)(3), the Board may charge search fees, or in the case of requesters described in paragraph (c)(2) of this section, may charge duplication fees.

(3) If the Committee has determined that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and more than 5,000 pages are necessary to respond to the request, the Committee may charge search fees, or, in the case of requesters described in paragraph (c)(2) of this section, may charge duplication fees, if the Committee has:

(i) Provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and

(ii) Discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(4) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

* * * * *

By order of the Federal Open Market Committee, December 13, 2016.

Brian Madigan,

Secretary, Federal Open Market Committee.

[FR Doc. 2016–30674 Filed 12–23–16; 8:45 am]

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1101

[Docket No. FFIEC–2016–0004]

Description of Office, Procedures, and Public Information

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Interim final rule.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC or Council), on behalf of its members, is amending its regulations to incorporate changes to the Freedom of Information Act (FOIA). This interim final rule reflects the required changes necessitated by the FOIA Improvement Act of 2016 (Act) consisting of extending the deadline for administrative appeals, including information on dispute resolution services, and amends parts of the fee determination. This interim final rule also corrects a duplicate entry that occurred in the 2010 update of the regulations. The Council has reviewed the proposed regulations and adopt them in this interim final rule.

DATES: Effective December 27, 2016.

FOR FURTHER INFORMATION CONTACT: Judith Dupre, Executive Secretary, Federal Financial Institutions Examination Council, via telephone: (703) 516–5590, or via email: *JDupre@FDIC.gov.*

SUPPLEMENTARY INFORMATION: The members of the FFIEC are the Board of Governors of the Federal Reserve System (FRB), the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the State Liaison Committee (SLC) (Agencies).

The Council is publishing an interim final rule revising its regulations implementing the FOIA as necessitated by the passage of the FOIA Improvement Act of 2016 Public Law 114–185, 130 Stat. 538. This interim file rule serves to achieve the mandated changes required by December 31, 2016. The Council expects to conduct a review and further updating of its regulations in the next year based on recent guidance issued by the United States Department of Justice's Office of Information Policy on agency FOIA regulations.

I. Background

The Council modifies its existing regulations to reflect a number of substantive and procedural amendments to the FOIA contained in the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538.

II. Section-by-Section Analysis

In 12 CFR 1101.4(a), the Council revises the paragraph by providing public inspection in electronic format along with an index of records referred to in this section.

In 12 CFR 1101.4(b)(1), the Council adds language to the paragraph on exempt from disclosure to reference 5 U.S.C. 552(b) and where disclosure is prohibited by law except as provided in subparagraph (2) of this paragraph (b).

In 12 CFR 1101.4(b)(1)(v), the Council adds language to explain that the Council will not withhold records based on the deliberative process privilege if the records were created 25 years or more before the date of the records request.

In 12 CFR 1101.4(b)(2), the Council adds language that the Council will only withhold records requested under this paragraph (b) if disclosure has a foreseeable harm to the interests protected by an exemption listed in 5 U.S.C. 552(b), and that the Council will consider partial disclosures were possible by segregating and releasing the nonexempt portion of the record.

In 12 CFR 1101.4(b)(3)(v)(A) the Council adds language for defining when the Council can extend the time for response by 10 days in unusual circumstances as defined in 5 U.S.C. 552(a)(6)(B) and provide notice in writing to the requestor including the reasons for the delay and the expected date for determination. In addition the Council adds language explaining when the requestor would be provided the opportunity to modify the scope of their request and offering both the FFIEC FOIA Public Liaison and the Office of Government Information Services contact information for dispute resolution.

The Council adds a new 12 CFR 1101.4(b)(3)(v)(B)(3) with language that the requestor has the right to seek assistance from the FFIEC FOIA Public Liaison.

The Council reassigns the text from the previous 12 CFR 1101.4(b)(3)(v)(B)(3) to the new 12 CFR 1101.4(b)(3)(v)(B)(4) and details the procedures in the event that an adverse determination is made.

In 12 CFR 1101.4(b)(3)(v)(B)(4)(iv) the Council replaces the words ''the denial'' with the words ''any adverse determination'' and replaces the reference of ''10 working days'' with the new requirement of ''90 days.''

The Council adds 12 CFR 1101.4(b)(3)(v)(B)(4) (v) to offer the requester the right to seek dispute resolution services from both the FFIEC FOIA Public Liaison and the Office of Government Information Services.

In 12 CFR 1101.4(b)(3)(vi) the Council replaces the phrase ''If a request is denied in whole or in part, the requester may appeal'' with the phrase ''A requestor may appeal any adverse determination.'' The Council also and replaces the reference of ''10 working days'' with the new requirement of ''90 days'' and replaces the word ''denial'' with the word ''adverse.'' The Council adds the option to file an appeal by email.

In 12 CFR 1101.4(b)(4)(i) the Council adds the words ''in an electronic format'' for defining how the Council will provide access to the requester for inspection when records requests are granted in whole or in part.

In 12 CFR 1101.4(b)(5)(ii) the Council revises the language to include that charging of fees for search and/or duplication is subject to the restrictions of paragraph (b)(5)(ii)(G) of this section.

In 12 CFR 1101.4(b)(5)(ii)(E) the Council replaces the words ''Council personnel'' with ''the Council's FOIA Public Liaison.''

In 12 CFR 1101.4(b)(5)(ii)(G) the Council adds sections (1), (2)(i), (2)(ii), (2)(iii), and (2)(iv) to update and define the procedures for restrictions on assessing fees if the Council fails to comply with time limits specified, if the Council determines that unusual circumstances apply, and where a court determines that exceptional circumstances exist.

The Council deletes the duplicate entry for section 12 CFR 1101.4(b)(5)(iii) ''Categories of requestors.''

In 12 CFR 1101.4(b)(5)(iii)(A) the Council replaces the words ''which recover the'' with the words ''sufficient to recover the'' and makes a typographical correction to replace ''the'' with ''and.''

The Council deletes the duplicate entry for section 12 CFR 1101.4(b)(5)(iv) which was inadvertently left in the 2010 regulation update along with its replacement section. Therefore the second appearance of 12 CFR 1101.4(b)(5)(iv) is fully deleted.

The Council adds 12 CFR 1101.4(b)(5)(v) which was inadvertently removed from the 2010 regulation update in error. Therefore the full text from the previous regulation is reinstated as follows: ''*Fees for unsuccessful search and review.* The Council may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.''

III. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA), the Council certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities. The interim final rule addresses only the procedures to be followed to request records of the Council. Small entities, like any other individual or entity, may request information from the Council pursuant to the FOIA that has not been generally made available to the public. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for certain categories of requesters. The Council's fee structure is in accordance with Department of Justice and Office of Management and Budget (OMB) guidelines, and is based upon the category of requester. Thus, fees assessed by the Council are nominal and will not have a significant economic impact on a substantial

number of small entities within the meaning of the RFA.

B. Paperwork Reduction Act

The Council has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these rules do not contain any information collection requirements that require the approval of the OMB.

C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The Council has determined that the interim final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

D. Small Business Regulatory Enforcement Fairness Act

OMB has determined that the rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the Council will file the appropriate reports with Congress and the General Accounting Office so that the rule may be reviewed.

E. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Council has sought to present the interim final rule in a simple, comprehensible, and straightforward manner.

Lists of Subjects in 12 CFR Part 1101

Freedom of information, FOIA exemptions, Schedule of fees, Waivers or reductions of fees.

For the reasons set forth in the preamble, the Council amends 12 CFR part 1101 as follows:

PART 1101—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

■ 1. The authority citation for part 1101 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 3307.

■ 2. Amend § 1101.4 as follows:
■ a. By revising paragraph (a);
■ b. By revising paragraphs (b)(1) introductory text and (b)(1)(v);
■ c. By revising paragraph (b)(2);
■ d. By revising paragraphs (b)(3)(v)(A) and (b)(3)(v)(B)(*3*);
■ e. By adding paragraph (b)(3)(v)(B)(*4*);
■ f. By redesignating paragraphs (b)(3)(v)(B)(*3*)(*i*) through (*iv*) as paragraphs (b)(3)(v)(B)(*4*)(*i*) through (*iv*);
■ g. By revising newly redesignated paragraph (b)(3)(v)(B)(*4*)(*iv*), and by adding paragraph (b)(3)(v)(B)(*4*)(*v*);
■ h. By revising paragraph (b)(3)(vi);
■ i. By revising paragraph (b)(4)(i);
■ j. By revising paragraphs (b)(5)(ii) introductory text and (b)(5)(ii)(E) and (G);
■ k. By removing the first paragraph (b)(5)(iii) subject heading and first paragraph (b)(5)(iii)(A);
■ l. By revising paragraph (b)(5)(iii)(A);
■ m. By removing the second paragraph (b)(5)(iv);
■ n. By adding paragraph (b)(5)(v);

The revisions and additions read as follows:

§ 1101.4 Disclosure of information, policies, and records.

(a) *Statements of policy published in the* ***Federal Register*** *or available for public inspection in an electronic format; indices.* (1) Under 5 U.S.C. 552(a)(l), the Council publishes general rules, policies and interpretations in the **Federal Register**.

(2) Under 5 U.S.C. 552(a)(2), policies and interpretations adopted by the Council, including instructions to Council staff affecting members of the public are available for public inspection in an electronic format at the office of the Executive Secretary of the Council, 3501 Fairfax Drive, Room B–7081a, Arlington, VA, 22226–3550, during regular business hours. Policies and interpretations of the Council may be withheld from disclosure under the principles stated in paragraph (b)(1) of this section.

(3) Copies of all records, regardless of form or format, are available for public inspection in an electronic format if they—

(i) Have been released to any person under paragraph (b) of this section; and

(ii)(A) Because of the nature of their subject matter, the Council determines that they have become or are likely to become the subject of subsequent requests for substantially the same records; or

(B) They have been requested three or more times.

(4) An index of the records referred to in paragraphs (a)(1) through (3) of this section is available for public inspection in an electronic format..

(b) * * *

(1) *General rule and exemptions.* Under 5 U.S.C. 552(a)(3), all other records of the Council are available to the public upon request, except to the extent exempted from disclosure as provided in 5 U.S.C. 552(b) and described of this paragraph (b)(1), or if disclosure is prohibited by law. Unless specifically authorized by the Council, or as set forth in paragraph (b)(2) of this section, the following records, and portions thereof, are not available to the public:

* * * * *

(v) An intra-agency or interagency memorandum or letter that would not be routinely available by law to a private party in litigation, including, but not limited to, memoranda, reports, and other documents prepared by the personnel of the Council or its constituent agencies, and records of deliberations of the Council and discussions of meetings of the Council, any Council Committee, or Council staff, that are not subject to 5 U.S.C. 552b (the Government in the Sunshine Act). In applying this exemption, the Council will not withhold records based on the deliberative process privilege if the records were created 25 years or more before the date on which the records were requested.

* * * * *

(2) *Discretionary release of exempt information.* Notwithstanding the applicability of an exemption, the Council will only withhold records requested under this paragraph (b) if the Council reasonably foresees that disclosure would harm an interest protected by an exemption listed in 5 U.S.C. 552(b) and described in paragraph (b)(1) of this section. In addition, whenever the Council determines that full disclosure of a requested record is not possible, the Council will consider whether partial disclosure is possible and will take reasonable steps necessary to segregate and release the nonexempt portion of a record. The Council or the Council's designee may elect, under the circumstances of a particular request, to disclose all or a portion of any requested record where permitted by law. Such disclosure has no precedential significance.

(3) * * *

(v) * * *

(A) Except where the Executive Secretary has determined to expedite the processing of a request, the Executive Secretary will respond by mail or electronic mail to all properly submitted initial requests within 20 working days of receipt. The time for response may be extended up to 10 additional working days in unusual circumstances, as defined in 5 U.S.C.

552(a)(6)(B), where the Council has provided written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. In addition, where the extension of the 20-day time limit exceeds 10 working days, as described by the FOIA, the requester shall be provided with an opportunity to modify the scope of the FOIA request so that it can be processed within that time frame or provided an opportunity to arrange an alternative time frame for processing the request or a modified request. To aid the requester, the Council's FOIA Public Liaison is available to assist the requester for this purpose and in the resolution of any disputes between the requester and the Council. The Council's FOIA Public Liaison's contact information is available at *http://www.ffiec.gov/foia.htm.* The requester may also seek dispute resolution services from the Office of Government Information Services.

(B) * * *

(*3*) The right of the requester to seek assistance from the Council's FOIA Public Liaison; and

(*4*) When an adverse determination is made (including a determination that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; the requested record is not readily reproducible in the form or format sought by the requester; a fee waiver request or other fee categorization matter is denied; and a request for expedited processing is denied), the Executive Secretary will advise the requester in writing of that determination and will further advise the requester:

* * * * *

(*iv*) The right of the requester to appeal any adverse determination to the Chairman of the Council within 90 days following the date of issuance of the notification, as specified in paragraph (b)(3)(vi) of this section; and

(*v*) The right of the requester to seek dispute resolution services from the Council's FOIA Public Liaison or the Office of Government Information Services.

(vi)(A) *Appeals of responses to initial requests.* A requester may appeal any adverse determination in writing, within 90 days of the date of issuance of the adverse determination. Appeals shall be submitted to the Chairman of the Council:

(*1*) By sending a letter to: FFIEC, Attn: Executive Secretary, 3501 Fairfax Drive, Room B–7081a, Arlington, VA, 22226–3550. Both the mailing envelope and the request should be marked ''Freedom of Information Act Appeal,'' ''FOIA Appeal,'' or the like; or

(*2*) By facsimile clearly marked ''Freedom of Information Act Appeal,'' ''FOIA Appeal,'' or the like to the Executive Secretary at (703) 562–6446; or

(*3*) By email with the subject line marked ''Freedom of Information Act Appeal,'' ''FOIA Appeal,'' or the like to *FOIA@ffiec.gov.*

(B) Appeals should refer to the date and tracking number of the original request and the date of the Council's initial ruling. Appeals should include an explanation of the basis for the appeal.

* * * * *

(4) *Procedure for access to records if request is granted.* (i) When a request for access to records is granted, in whole or in part, a copy of the records to be disclosed will be promptly delivered to the requester or made available for inspection in an electronic format, whichever was requested. Inspection of records, or duplication and delivery of copies of records will be arranged so as not to interfere with their use by the Council and other users of the records.

* * * * *

(5) * * *

(ii) *Fees to be charged.* The Council will charge fees that recoup the full allowable direct costs it incurs, except that the charging of search and/or duplication fees is subject to the restrictions of paragraph (b)(5)(ii)(G) of this section. The Council may contract with the private sector to locate, reproduce, and/or disseminate records. Provided, however, that the Council has ensured that the ultimate cost to the requester is no greater than it would be if the Council performed these tasks. Fees are subject to change as costs change. In no case will the Council contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

* * * * *

(E) *Fees to exceed $25.* If the Council estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. In the case of such notification by the Council, the requester will then have the opportunity to confer with the Council's FOIA Public Liaison with the object of reformulating the request to meet his/her needs at a lower cost.

* * * * *

(G) *Restriction on assessing fees.* (*1*) The Council will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(*2*)(*i*) If the Council fails to comply with the time limits specified in the FOIA in which to respond to a request, the Council will not charge search fees, or, in the case of a requester described in paragraph (b)(5)(iii)(B) of this section, will not charge duplication fees, except as described in paragraphs (b)(5)(ii)(G)(*2*)(*ii*) through (*iv*) of this section.

(*ii*) If the Council has determined that unusual circumstances apply (as the term is defined in the FOIA) and the Council provided a timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 working days.

(*iii*) If the Council has determined that unusual circumstances apply (as the term is defined in the FOIA) and more than 5,000 pages are necessary to respond to the request, the Council may charge search fees, or, in the case of requesters described in paragraph (b)(5)(iii)(B) of this section, may charge duplication fees, if the following steps are taken: The Council provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and The Council discussed with the requester via written mail, email message, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Council may charge all applicable fees incurred in the processing of the request.

(*iv*) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

* * * * *

(iii) *Categories of requesters*—(A) *Commercial use requesters.* The Council will assess fees for commercial use requesters sufficient to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search

time nor 100 free pages of reproduction of documents.

* * * * *

(v) *Fees for unsuccessful search and review.* The Council may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

* * * * *

Federal Financial Institutions Examination Council.

Judith E. Dupre,

FFIEC Executive Secretary.

[FR Doc. 2016–30696 Filed 12–23–16; 8:45 am]

BILLING CODE 7535–01–P 6714–01–P 6210–01–P 4810–33–P 4810–AM–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 125, 126, and 127

RIN 3245–AG24

Small Business Mentor Protégé Programs; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Correcting amendments.

SUMMARY: The U.S. Small Business Administration (SBA) published a final rule in the **Federal Register** on July 25, 2016, amending its regulations to establish a new Government-wide mentor-protégé program for all small business concerns, consistent with SBA's mentor-protégé program for Participants in SBA's 8(a) Business Development (BD) program. The rule also made several additional changes to current size, 8(a), Office of Hearings and Appeals, and HUBZone regulations, concerning among other things, ownership and control, changes in primary industry, economic disadvantage of a Native Hawaiian Organization (NHO), standards of review, and interested party status for some appeals. This document makes several technical corrections to that final rule, eliminating a portion of a sentence concerning joint venture profits.

DATES: Effective December 27, 2016.

FOR FURTHER INFORMATION CONTACT: Michael McLaughlin, Office of Policy, Planning & Liaison, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416; 202–205–5353; *michael.mclaughlin@sba.gov*.

SUPPLEMENTARY INFORMATION: The final rule published on July 25, 2016, at 81 FR 48557, contained errors that must be corrected in order ensure consistency within the regulations and to avoid public uncertainty or confusion.

On October 19, 2016, SBA issued a correction pertaining to 8(a) joint venture profits. 81 FR 71981. As SBA explained, due to the change made to § 121.103(h), which eliminated the ability of a joint venture to be populated with individuals intended to perform contracts awarded to the joint venture, a conforming correction was needed to § 124.513(c), which references populated joint ventures. Specifically, § 124.513(c)(4) provided that in the case of a populated separate legal entity joint venture, 8(a) Participant(s) must receive profits from the joint venture commensurate with their ownership interests in the joint venture. Because SBA eliminated populated joint ventures, that provision was superfluous and was deleted. SBA's 8(a) joint venture rule now states that the 8(a) Participant(s) in a joint venture must receive profits from the joint venture commensurate with the work performed by the 8(a) Participant(s). 13 CFR 124.513(c)(4). This change was necessary because under the mentor protégé program, a protégé may perform as little as 40% of the total work performed by the joint venture in aggregate. It would not make sense to require a firm to receive 51% of the profits for doing only 40% of the work.

The same language that SBA corrected in the 8(a) regulations is currently in place for joint ventures under all small mentor protégé, Service-Disabled Veteran-Owned, Women-Owned and HUBZone small business programs. SBA's intent was for profits to be commensurate with the work performed by each member of the joint venture. These rules currently state that in the case of a separate legal entity, the firm must receive profits commensurate with their ownership interests in the joint venture, which is contrary to SBA's intent. Consequently, SBA is correcting §§ 125.8(b)(2)(iv), 125.18(b)(2)(iv), 126.616(c)(4) and 127.506(c)(4) to the make the rules consistent with 124.513(c)(4) and across all programs.

List of Subjects

13 CFR 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance, Veterans.

13 CFR 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

13 CFR 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

Accordingly, 13 CFR parts 125, 126, and 127 are corrected by making the following correcting amendments:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 1. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657f, and 657q.

■ 2. In § 125.8, revise paragraph (b)(2)(iv) to read as follows:

§ 125.8 What requirements must a joint venture satisfy to submit an offer for a procurement or sale set aside or reserved for small business?

* * * * *

(c) * * *

(2) * * *

(iv) Stating that each participant must receive profits from the joint venture commensurate with the work performed by the concern;

* * * * *

■ 3. In § 125.18, revise paragraph (b)(2)(iv) to read as follows:

§ 125.18 What requirements must an SDVO SBC meet to submit an offer on a contract?

* * * * *

(b) * * *

(2) * * *

(iv) Stating that the SDVO SBC(s) must receive profits from the joint venture commensurate with the work performed by the SDVO SBC;

* * * * *

PART 126—HUBZONE PROGRAM

■ 4. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644; and 657a; Pub. L. 111–240, 24 Stat. 2504.

■ 5. In § 126.616, revise paragraph (c)(4) to read as follows:

§ 126.616 What requirements must a joint venture satisfy to submit an offer on a HUBZone contract?

* * * * *

(c) * * *

(4) Stating that the HUBZone SBC(s) must receive profits from the joint venture commensurate with the work performed by the HUBZone SBC;

* * * * *

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 6. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

■ 7. In § 127.506, revise paragraph (c)(4) to read as follows:

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

* * * * *

(c) * * *

(4) Stating that the WOSB(s) must receive profits from the joint venture commensurate with the work performed by the WOSB;

* * * * *

Dated: December 16, 2016.

A. John Shoraka,

Associate Administrator, Office of Government Contracting & Business Development.

[FR Doc. 2016–30873 Filed 12–23–16; 8:45 am]

BILLING CODE 8205–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–5807; Directorate Identifier 2015–SW–063–AD; Amendment 39–18754; AD 2016–25–28]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Model AS355NP helicopters. This AD requires removing and installing the fire extinguishing system pipes. This AD is prompted by the discovery that the left-hand and right-hand fire extinguishing discharge systems were incorrectly connected. The actions of this AD are intended to correct the unsafe condition on these products.

DATES: This AD is effective January 31, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of January 31, 2017.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5807.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5807; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) ADs, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *george.schwab@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On April 12, 2016, at 81 FR 21493, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model AS355NP helicopters with an Arrius 1A1 fire extinguishing system installed. The NPRM proposed to require removing and correctly installing the fire extinguishing system pipes in accordance with Airbus Helicopters' service information and removing any placards on the instrument panel if installed. The proposed requirements were intended to correct the connections and to prevent the fire extinguishing system from discharging to the wrong engine compartment, failure of the fire extinguishing system to control a fire, and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2011–0192–E, dated October 4, 2011, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Eurocopter (now Airbus Helicopters) Model AS355NP helicopters with an Arrius 1A1 fire extinguishing system installed through production modification (mod) OP–3931.

EASA advises that during an inspection of the engine fire extinguishing system on an AS355NP helicopter, the left-hand (LH) fire extinguisher discharge system was found connected to the right-hand (RH) engine compartment and the RH discharge system was connected to the LH engine compartment. An investigation showed that this erroneous installation was inherent in Eurocopter production modification (mod) OP–3931. According to EASA, this condition, if not detected and corrected, could lead to the discharge of the fire extinguisher in the wrong engine compartment in the event of a fire. Pending the development of a modified extinguishing system, EASA Emergency AD No. 2011–0192–E required installing a placard warning the flight crew of the erroneous installation until the squibs on each fire extinguisher are exchanged.

After EASA issued Emergency AD No. 2011–0192–E, Airbus Helicopters developed a permanent modification of the discharge system to reconfigure the position of the squibs on each fire extinguisher to line up with the control buttons. EASA subsequently issued superseding EASA AD No. 2015–0181, dated August 31, 2015, to retain the requirements of its previous Emergency AD and require the modification of the engine fire extinguishing discharge system within 12 months.

Comments

After our NPRM (81 FR 21493, April 12, 2016) was published, we received two comments from Airbus Helicopters.

Request

Airbus Helicopters requested that the proposed AD have mod 073990 as a terminating action and exempt Model AS355NP aircraft that are ''post mod 073990'' from the AD's requirements.

We agree with the comment but disagree that a change to the AD is necessary. The AD requires compliance with the service information that Airbus Helicopters has identified as mod 073990. A Model AS355NP helicopter in a ''post mod 073990'' configuration has complied with the service information, and therefore has also previously complied with the required

actions of the AD under paragraph (d). We have added a note to the required actions to specify that the service information is the equivalent of Mod 073990.

Airbus Helicopters also requested that we clarify that the AD requires removing and installing certain pipes and not removing and installing the entire fire extinguishing system.

We agree and revised the Required Actions paragraph to clarify that compliance means removing and installing the pipes.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA, reviewed the relevant information, considered the comments received, and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed with the changes described previously. These changes are consistent with the intent of the proposals in the NPRM (81 FR 21493, April 12, 2016) and will not increase the economic burden on any operator nor increase the scope of this AD.

Differences Between This AD and the EASA AD

The EASA AD requires installing a placard on the instrument panel to warn the flight crew of the erroneous installation until the squibs on each fire extinguisher are exchanged, and then, within 12 months, removing and re-installing certain pipes in the fire extinguishing system to position the squibs in line with the control buttons. This AD does not require installation of the placards or the temporary exchange of the squibs. Also, this AD requires removing and re-installing the fire extinguisher system pipes within 600 hours time-in-service or at the next annual inspection, whichever occurs first.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Alert Service Bulletin No. AS355–26.00.10, Revision 0, dated July 2, 2015 (ASB AS355–26.00.10). ASB AS355–26.00.10 provides procedures for removing the fire extinguishing system's pipes and re-installing them in a configuration where the squibs match the positioning of the fire extinguisher discharge heads. ASB AS355–26.00.10 also specifies removing any previously-affixed placard on the instrument panel and installing new discharge system pipes. Helicopters with mod 073990 installed have already complied with ASB AS355–26.00.10.

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

Other Related Service Information

We also reviewed Eurocopter Emergency Alert Service Bulletin No. 26.00.09, Revision 0, dated September 15, 2011 (EASB 26.00.09), issued prior to the permanent modification developed by Airbus Helicopters. EASB 26.00.09 provided procedures for interchanging the squibs on each fire extinguisher. Until this was accomplished, EASB 26.00.09 specified affixing a label on the instrument panel to make the flight crew aware of the crossed connection.

Costs of Compliance

We estimate that this AD affects 2 helicopters of U.S. Registry and that labor costs average $85 per work hour. We expect that removing and installing the fire extinguishing system requires 24 work hours and required parts cost $6,367. Based on these estimates, we expect a total cost of $8,407 per helicopter and $16,814 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–25–28 Airbus Helicopters: Amendment 39–18754; Docket No. FAA–2015–5807; Directorate Identifier 2015–SW–063–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS355NP helicopters, certificated in any category, with an Arrius 1A1 fire extinguishing system installed.

(b) Unsafe Condition

This AD defines the unsafe condition as an incorrectly connected fire extinguishing discharge system. This condition could result in the fire extinguishing system discharging to the wrong engine compartment, failure of the fire extinguishing system to contain a fire, and loss of control of the helicopter.

(c) Effective Date

This AD becomes effective January 31, 2017.

(d) Compliance

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

(e) Required Actions

Within 600 hours time-in-service or at the next annual inspection, whichever occurs first, remove and install the fire extinguishing system pipes, and remove any placards on the instrument panel if installed, in accordance with the Accomplishment Instructions, paragraph 3.B. and 3.B.1 through 3.B.2, of Airbus Helicopters Alert Service Bulletin No. AS355–26.00.10, Revision 0, dated July 2, 2015.

Note 1 to paragraph (e) of this AD: Airbus Helicopters identifies Alert Service Bulletin No. AS355–26.00.10, Revision 0, dated July 2, 2015, as mod 073990.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: George Schwab, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(g) Additional Information

(1) Eurocopter Emergency Alert Service Bulletin No. AS–355–26.00.09, Revision 0, dated September 15, 2011, which is not incorporated by reference, contains additional information about the subject of this final rule. For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0181, dated August 31, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* in AD Docket No. FAA–2016–2015–5807.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2620, Extinguishing System.

(i) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Alert Service Bulletin No. AS355–26.00.10, Revision 0, dated July 2, 2015.

(ii) Reserved.

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on December 8, 2016.

Scott A Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–30116 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5247; Directorate Identifier 2015–SW–008–AD; Amendment 39–18740; AD 2016–25–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model BO–105LS A–3 helicopters. This AD requires establishing a life limit for the tension-torsion (TT) straps. This AD is prompted by an error in the Airworthiness Limitations section of the maintenance manual. These actions are intended to prevent the unsafe condition on these products.

DATES: This AD is effective January 31, 2017.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5247; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, Texas 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 25, 2016, at 81 FR 16100, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model BO–105LS A–3 helicopters with a TT strap part number (P/N) 2604067 or P/N 117–14110 installed. The NPRM proposed to require inspecting the helicopter records to determine if there is a life limit for the TT straps installed in the helicopter lifting system, establishing a life limit if none exists, and replacing each TT strap that has met or exceeded its life limit. The proposed requirements were intended to prevent failure of a TT strap and subsequent loss of control of a helicopter.

The NPRM was prompted by AD No. 2015–0042, dated March 9, 2015, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for the Airbus Helicopters Model BO105 LS A–3 helicopters. EASA advises that life limits have been introduced for TT

strap P/N 2604067 and P/N 117–14110 installed on the helicopter lifting system. During a revision of the Airworthiness Limitations section of the Model BO105LS A–3 maintenance manual, the life limit for the TT strap was inadvertently deleted. Accordingly, EASA issued AD No. 2015–0042 to correct this error. EASA AD No. 2015–0042 requires replacing TT straps upon reaching their life limit and entering the life limit into the aircraft maintenance manual. EASA states that failure to comply with the life limit could result in an unsafe condition.

Comments

After our NPRM (81 FR 16100, March 25, 2016) was published, we received comments from one commenter.

Request

The commenter supported the NPRM but asked why the FAA proposed a drastically shorter compliance time of 20 hours time-in-service (TIS) instead of the two-month compliance time that EASA requires. We disagree that the compliance time in this AD is drastically shorter. We determined that, because of the average utilization of this model helicopter, 20 hours TIS is roughly equivalent to EASA's two-month compliance time.

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA, reviewed the relevant information, considered the comment received, and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

This AD requires compliance within 20 hours TIS. The EASA AD allows two months to calculate the flight cycles or calendar time of each TT strap.

Related Service Information

Airbus Helicopters issued Alert Service Bulletin ASB BO105LS–10A–013, Revision 0, dated March 9, 2015 (ASB). The ASB specifies adding a life limit for the TT strap P/N 2604067 or 117–14110 of 25,000 flights or 10 years, whichever occurs first, in the list of life-limited parts and corresponding log cards. The ASB also states TT straps that have exceeded the retirement time must be replaced and that only TT straps that have not exceeded the retirement time may be installed.

Costs of Compliance

We estimate that this AD affects 8 helicopters of U.S. Registry. Labor costs are estimated at $85 per work hour. We estimate that it takes 2 work hours to inspect and revise the Airworthiness Limitations section and to calculate and record a life limit for the TT strap for a total cost of $170 per helicopter and $1,360 for the fleet. If a TT strap is replaced, we estimate it takes 8 work hours and $16,617 for required parts for a total cost of $17,297 per helicopter per TT strap.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–25–14 Airbus Helicopters Deutschland GmbH Helicopters: Amendment 39–18740; Docket No. FAA–2016–5247; Directorate Identifier 2015–SW–008–AD.

(a) Applicability

This AD applies to Model BO–105LS A–3 helicopters with a tension torsion (TT) strap part number (P/N) 2604067 or P/N 117–14110 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a TT strap remaining in service beyond its fatigue life. This condition could result in failure of a TT strap and loss of control of a helicopter.

(c) Effective Date

This AD becomes effective January 31, 2017.

(d) Compliance

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

(e) Required Actions

Within 20 hours time-in-service:

(1) Inspect the Airworthiness Limitations section of the applicable maintenance manual or Instructions for Continued Airworthiness (ICA) and the component history card or equivalent record for TT strap P/N 2604067 and P/N 117–14110. Determine whether those records specify a life limit of 25,000 flights or 10 years since the date of manufacture, whichever occurs first.

(2) If the Airworthiness Limitations section of the applicable maintenance manual or ICA

or the component history card or equivalent record do not specify a life limit for the TT strap, or if they specify a different life limit than in paragraph (e)(1), do the following:

(i) Revise the Airworthiness Limitations section of the applicable maintenance manual or ICA by establishing a life limit of 25,000 flights or 10 years since date of manufacture, whichever occurs first, for each TT strap P/N 2604067 and P/N 117–14110 by making pen-and-ink changes or by inserting a copy of this AD into the Airworthiness Limitations section of the maintenance manual or the ICA. For purposes of this AD, a flight would be counted anytime the helicopter lifts off into the air and then lands again regardless of the duration of the landing and regardless of whether the engine is shut down.

(ii) Create a component history card or equivalent record for each TT strap P/N 2604067 and P/N 117–14110, if one does not exist, and record a life limit of 25,000 flights or 10 years since date of manufacture, whichever occurs first.

(3) Remove from service each TT strap that has reached or exceeded its life limit.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, Texas 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(h) Additional Information

(1) Airbus Helicopters Alert Service Bulletin ASB BO105LS–10A–013, Revision 0, dated March 9, 2015, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0042, dated March 9, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2016–5247.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6200 Main Rotor System.

Issued in Fort Worth, Texas, on December 1, 2016.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–30053 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4278; Directorate Identifier 2012–SW–022–AD; Amendment 39–18758; AD 2016–26–01]

RIN 2120–AA64

Airworthiness Directives; AgustaWestland S.p.A. (Agusta) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Agusta Model AB139 and AW139 helicopters. This AD requires performing operational checks of both hydraulic systems. This AD was prompted by an assessment of the hydraulic systems of the helicopter following an accident. These actions are intended to prevent the unsafe condition on these products.

DATES: This AD is effective January 31, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of January 31, 2017.

ADDRESSES: For service information identified in this final rule, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39 0331–664680; or at *http://www.agustawestland.com/technical-bulletins.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4278; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any incorporated-by-reference service information, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Parkway, Fort Worth, Texas 76177; telephone (817) 222–5110; email *matt.wilbanks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 11, 2016, at 81 FR 12838, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Agusta Model AB139 and AW139 helicopters. The NPRM proposed to require, within 50 hours time-in-service (TIS), performing operational tests of the Number 1 and Number 2 hydraulic systems power control modules (PCMs), the tail shut-off valve, the PCM1 and PCM2 flight control shut-off valves, and the emergency landing gear shut-off valve for correct functionality. Depending on the results of the operational checks, the NPRM proposed to require replacing a PCM, the tail shut-off valve, a flight control shut-off valve, the number 2 hydraulic control panel, the number 1 hydraulic module, the number 1 or number 2 PCM pressure switch, or repairing the electrical wiring. The proposed requirements were intended to prevent loss of hydraulic power to the flight controls and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2011–0207, dated October 20, 2011 (AD No. 2011–0207), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for certain serial-numbered Agusta Model AB139 and AW139 helicopters. EASA advises that an accident involving a Model AW139 helicopter caused the tail rotor (T/R), the T/R gearbox, and part of the fin to detach from the aircraft, rupturing the hydraulic lines and draining all of the hydraulic fluid. According to EASA, an

assessment of the helicopter's hydraulic systems following the accident revealed that an operational check of the hydraulic systems is necessary to ensure its functionality. EASA advises that this condition, if not corrected, could lead, in the case of multiple failures, to loss of hydraulic power and subsequent loss of control of the helicopter. To address this, EASA AD No. 2011–0207 requires, within 50 flight hours or 2 months, operational checks of the power control modules and shutoff valves and reporting the results to the manufacturer.

Comments

After our NPRM (81 FR 12838, March 11, 2016) was published, we received comments from one commenter.

Request

The commenter requested we not adopt the proposed AD, as it is unnecessary. The commenter stated that following the release of EASA AD No. 2011–0207 and Agusta Bollettino Tecnico No. 139–269, dated September 30, 2011 (BT 139–269), they already have a 600 hour/12 month inspection and operational check of the hydraulic systems as part of their maintenance program that covers all of the proposed actions in the NPRM. Finally, the commenter stated that the proposed AD would not change any of their maintenance procedures, but it would add an additional burden of required paper work for the same results.

We disagree. EASA AD No. 2011–0207 is not mandatory for U.S. operators. Additionally, while an operator may incorporate the procedures described in BT 139–269 into its maintenance program, not all operators are required to do so. In order for the corrective actions in BT 139–269 to become mandatory, and to correct the unsafe condition identified in the NPRM, the FAA must issue an AD.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA, reviewed the relevant information, considered the comment received, and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

The EASA AD requires reporting the results of the operational checks to Agusta, while this AD does not. The EASA AD also requires compliance within 50 flight-hours or 2 months, while this AD requires compliance within 50 hours TIS.

Related Service Information Under 1 CFR Part 51

We reviewed BT 139–269 for Model AB139 and AW139 helicopters. BT 139–269 contains procedures for conducting operational checks of both hydraulic systems to confirm correct functionality.

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

Costs of Compliance

We estimate this AD will affect 102 helicopters of U.S. Registry.

Based on an average labor rate of $85 per hour, we estimate that operators may incur the following costs in order to comply with this AD. Performing the operational checks of the hydraulic systems requires about 2 work-hours for a total cost per helicopter of $170 and a total cost to U.S. operators of $17,340.

If required, replacing a PCM will require about 3 work-hours and required parts will cost about $87,136, for a cost per helicopter of $87,391.

If required, replacing a tail or flight control shut-off valve will require about 2 work-hours, and required parts will cost about $7,512, for a cost per helicopter of $7,682. If required, replacing the number 2 hydraulic control panel will require about 2 work-hours, and required parts will cost about $8,165, for a cost per helicopter of $8,335.

If required, replacing the number 1 hydraulic module will require about 4 work-hours, and required parts will cost about $87,137, for a cost per helicopter of $87,477.

If required, replacing a PCM pressure switch will require about 2 work-hours, and required parts will cost about $6,974, for a cost per helicopter of $7,144.

If required, repairing the electrical wiring will require about 2 work-hours, and required parts will cost about $45, for a cost per helicopter of $215.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–26–01 AGUSTAWESTLAND S.P.A. (AGUSTA): Amendment 39–18758; Docket No. FAA–2016–4278; Directorate Identifier 2012–SW–022–AD.

(a) Applicability

This AD applies to Agusta Model AB139 and AW139 helicopters, all serial numbers except serial number 31007, 31094, 31293, 31301, 31303, 31313, and 31329, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an inoperative hydraulic shut-off valve, which could result in loss of hydraulic power and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective January 31, 2017.

(d) Compliance

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

(e) Required Actions

Within 50 hours time-in service:

(1) Perform an operational test of each Number 1 and Number 2 power control module (PCM). If the fluid level in the reservoir changes more than 5mm (0.196 in) in an hour, replace the affected PCM.

(2) Perform an operational test of each tail shut-off valve. If the 2 SERVO caution message is not illuminated and the UTIL SOV2 and TR SOV indications are in the open position:

(i) Disconnect the Tail Shutoff valve connector, HP4P1.

(ii) Disconnect the PCM2 connectors, A44P3 and A44P12.

(iii) Disconnect the TB38 terminal board connector, TB38P1.

(iv) Perform a continuity test from HP4P1–1 to A44P12–16, from HP4P1–2 to TB38P1–D, and from HP4P1–4 to A44P3–6.

(v) If there is no continuity, repair or replace the defective wiring.

(vi) If there is continuity, release the test lever of the PCM2 to the DOWN NORM position.

(vii) If the TRSVO indication stays in the closed position, replace the tail shutoff valve.

(3) Perform an operational test of the PCM 2 flight control shut-off valve as described in the Compliance Instructions, paragraphs 5.1. through 5.5., of Agusta Bollettino Tecnico No. 139–269, dated September 30, 2011 (BT 139–269).

(i) If the 2 SERVO caution message is illuminated:

(A) On the hydraulic control panel, lift the guard of the SOV1/SOV2 switch and set it to SOV2 (closed position). Make sure that the 2 HYD PRESS caution message and the HYD 2 PRESS warning light on the hydraulic control panel are illuminated.

(B) Reset the SOV1/SOV2 switch to the open position.

(C) If the 2 HYD PRESS and 2 SERVO caution messages remain illuminated:

(*1*) Disconnect the PL14P1 and PL14P2 connectors from the hydraulic control panel.

(*2*) Disconnect the A1–1P4 connector from the MAU1.

(*3*) Disconnect the A2–1P3 connector from the MAU2.

(*4*) Disconnect the A44P3 connector from the Number 2 PCM.

(*5*) Disconnect the PL1P3 connector from the circuit breaker panel.

(*6*) Perform a continuity test from PL14P1–J to A1–1P4–18, from PL14P1–D to PL1P3–q, from PL14P2–J to A44P3–5, and from PL14P2–T to A2–1P3–34. If there is no continuity, repair or replace the defective wiring.

(*7*) If the HYD PRESS and 2 SERVO caution messages remain illuminated, replace the number 2 hydraulic power module.

(ii) If the 2 HYD PRESS caution message is illuminated, the HYD 2 pressure indication is more than 190 bar (2,755 lbf/sq in), and the SOV2 shutoff valve is in the open position, replace the pressure switch on the Number 2 PCM.

(iii) If the closure of SOV 2 is indicated on the MFD hydraulic synoptic page, before further flight, replace the Number 2 PCM.

(4) Perform an operational test of the PCM 1 flight control shut-off valve as described in the Compliance Instructions, paragraphs 6.1. through 6.4., of BT 139–269.

(i) If the 1 SERVO caution message is illuminated:

(A) On the hydraulic control panel, lift the guard of the SOV1/SOV2 switch and set it to SOV1 (closed position). Make sure that the 1 HYD PRESS caution message and the HYD 1 PRESS warning light on the hydraulic control panel are illuminated.

(B) Reset the SOV1/SOV2 switch to the open position. If the 1 HYD PRESS and 1 SERVO caution messages remain illuminated:

(*1*) Disconnect the PL14P1 and PL14P2 connectors from the hydraulic control panel.

(*2*) Disconnect the A1–1P4 connector from the MAU1.

(*3*) Disconnect the A2–1P3 connector from the MAU2.

(*4*) Disconnect the A45P3 connector from the Number 1 PCM.

(*5*) Disconnect the PL1P3 connector from the circuit breaker panel.

(*6*) Perform a continuity test from PL14P1–J to A1–1P4–18, from PL14P1–E to A45P3–5, from PL14P1–D to PL1P3-q, and from PL14P2–T to A2–1P3–34. If there is no continuity, repair or replace the defective wiring.

(*7*) If the HYD PRESS and 1 SERVO caution messages remain illuminated, replace the Number 1 hydraulic control panel.

(ii) If the 1 HYD PRESS caution message is illuminated, the HYD 1 pressure indication is more than 190 bar (2,755 lbf/sq in), and the SOV1 shutoff valve is in the open position, replace the pressure switch on the Number 1 PCM.

(iii) If the closure of SOV 1 is indicated on the MFD hydraulic synoptic page, before further flight, replace the Number 1 PCM.

(4) Perform an operational test of the emergency landing gear shutoff valve as described in the Compliance Instructions, paragraphs 7.1. through 7.4., of BT 139–269.

(i) If the EMERG L/G PRESS caution message is illuminated, the HYD 1 pressure indication is more than 190 bar (2,755 lbf/sq in), and the UTIL SOV1 (LDG GEAR EMER) shutoff valve is in the open position, replace the pressure switch on the Number 1 PCM.

(ii) If the 1 HYD MIN caution message is illuminated, inspect the fluid level on the Number 1 PCM and inspect the Number 1 main hydraulic system for leaks.

(A) If the fluid level is between the FULL and ADD marks, or if there are no hydraulic fluid leaks, perform an operational test of the level switches. If the 1 HYD MIN caution message is illuminated, replace the Number 1 PCM.

(B) If there is a hydraulic fluid leak:

(*1*) Replace all leaking parts and lines or repair the leak.

(2) If the 1 HYD MIN caution message remains illuminated, perform an operational test of the level switches.

(3) If the 1 HYD MIN caution message remains illuminated, replace the Number 1 PCM.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Wilbanks, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Parkway, Fort Worth, Texas 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2011–0207, dated October 20, 2011. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA-2016–4278.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2900: Hydraulic Power.

(i) Material Incorporated by Reference

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

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

(i) Agusta Bollettino Tecnico No. 139–269, dated September 30, 2011.

(ii) Reserved.

(3) For Agusta service information identified in this final rule, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio

D'Angelo; telephone 39–0331–664757; fax 39 0331–664680; or at *http://www.agustawestland.com/technical-bulletins.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on December 9, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–30285 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7525; Directorate Identifier 2015–NM–064–AD; Amendment 39–18727; AD 2016–25–01]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes; Model 757 airplanes; and Model 767–200, –300, –300F, and –400ER series airplanes. This AD was prompted by reports of uncommanded autopilot engagement events resulting in incorrect stabilizer trim adjustment during takeoff. This AD requires, depending on the model/configuration, installing an on-ground stabilizer autotrim inhibit system, relays and related wiring to open and close the flight control computer (FCC) analog output, and new operational program software (OPS) into the FCCs. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 31, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 31, 2017.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7525.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7525; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Fnu Winarto, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6659; fax: 425–917–6590; email: *fnu.winarto@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes; Model 757 airplanes; and Model 767–200, –300, –300F, and –400ER series airplanes. The NPRM published in the **Federal Register** on December 23, 2015 (80 FR 79735) (''the NPRM''). The NPRM was prompted by reports of uncommanded autopilot engagement events resulting in incorrect stabilizer trim adjustment during takeoff. The NPRM proposed to require, depending on the model/configuration for Model 747 airplanes, installing an on-ground stabilizer autotrim inhibit system, doing routine functional testing of the system, and doing corrective actions if necessary; for Model 757 airplanes and Model 767 airplanes, installing relays and related wiring to open and close the FCC analog output that controls the stabilizer trim adjustment, doing routine functional testing of the on-ground auto stabilizer trim inhibit system, and doing corrective actions if necessary; and for Model 767–300, and –300F series airplanes, installing new OPS into the FCCs. We are issuing this AD to prevent stabilizer mistrim, which could result in a high-speed rejected takeoff and runway overrun, or reduced controllability of the airplane after takeoff due to insufficient pitch control.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

The Airline Pilots Association, International stated that it fully supports the intent of the NPRM.

Requests To Withdraw the NPRM

United Parcel Service (UPS) requested that the NPRM be withdrawn until the actual root cause of the unsafe condition can be determined and a validated and confirmed solution is developed.

FedEx Express (FedEx) requested that we withdraw the NPRM. FedEx stated that the burden of the actions proposed in the NPRM is not justified based on data presented in Boeing Fleet Team Digest 757–FTD–22–12001 or its operational experience. FedEx believes this is an extremely isolated and unlikely anomaly on the Model 757 fleet. FedEx stated that it operates over 100 Model 757 aircraft and has completed over 210,000 flight cycles with no reports of uncommanded autopilot engagement.

We disagree with the commenters' request to withdraw the NPRM. The quantitative and qualitative risks analyzed for this identified unsafe condition present an unacceptable risk that must be addressed on both passenger and freighter models. The manufacturer also considers the condition a safety issue and has developed an on-ground stabilizer autotrim inhibit system that addresses the unsafe condition. We have determined that it is necessary to proceed with issuance of this AD.

Requests To Clarify Root Cause

Boeing requested that we revise the Discussion section of the NPRM. Boeing

acknowledged that the root cause is unknown, but requested that we revise the speculation that ''the erroneous autopilot engage request is believed to have come from the mode control panel (MCP) and to have been caused by contamination within the MCP.'' Boeing requested that we instead indicate that possible failures in the autopilot flight director system can cause an uncommanded engagement of the autopilot. Boeing stated that the revised statement would be less speculative.

We partially agree with the commenter's request. We agree that the revised statement would be less speculative. However, since the pertinent part of the Discussion section is not repeated in this final rule, no change is necessary to this final rule.

One commenter, Geoffrey Barrance, requested that we take immediate action to require examination for contamination of all MCPs on all affected airplanes. Mr. Barrance stated that the exposure to the problem will persist until all (or some critical part) of the actions specified by the NPRM are completed.

We do not agree with the commenter's request. As stated above, the manufacturer and the FAA agree that pointing to MCP contamination as the root cause is speculative. We concur with the manufacturer's conclusion that the on-ground stabilizer autotrim inhibit system of this AD mitigates possible failures in the autopilot flight director system. The compliance times specified in this AD are established to ensure an acceptable level of risk. We have not changed this final rule in this regard.

Request To Revise SUMMARY

Boeing requested that we revise the SUMMARY of the NPRM to describe the specific Model 767 airplanes identified in the applicability of this AD, rather than using the term ''Model 767 airplanes.'' Boeing stated that this will clarify that the applicability will not apply to future Model 767 series airplanes, such as the Model 767–2C, which will be designed to inhibit autopilot engagement on the ground with the flaps down, preventing the unsafe condition addressed by the NPRM.

We agree with the commenter's request. In the SUMMARY of this final rule we refer to ''certain'' airplanes, and we identify the subgroup of Model 767 airplanes by referring to the effectivity of the service information in paragraph (c) of this AD. We are not including future production airplanes in the applicability of this AD.

Request To Clarify Differences Between NPRM and Service Information

United Airlines (UAL) requested that we revise the NPRM to specify using Boeing Special Attention Service Bulletin 747–22–2256, Revision 1, dated January 6, 2016 (''SASB 747–22–2256 R1''), and that we give credit for Boeing Special Attention Service Bulletin 747–22–2256, dated March 6, 2015.

We agree with UAL's request. We have revised paragraphs (c)(1) and (g) of this AD to specify using SASB 747–22–2256 R1, as an appropriate source of service information for accomplishing the required actions in these paragraphs. SASB 747–22–2256 R1 specifies doing functional testing of the automatic stabilizer trim inhibit system. Since paragraph (g) of the proposed AD specified doing the functional testing of the automatic stabilizer trim inhibit, there is no increase in the economic burden on any operator or increase of the scope of this AD. We added credit for using Boeing Special Attention Service Bulletin 747–22–2256, dated March 6, 2015, to paragraph (k) of this AD.

EVA Airways (EVA) requested that we consider the complexity of Boeing Special Attention Service Bulletin 747–22–2256, dated March 6, 2015, and noted that Boeing Information Notice 747–22–2256 IN 02, dated June 10, 2015, has been issued to revise Boeing Special Attention Service Bulletin 747–22–2256, dated March 6, 2015.

We agree with the commenter's request. As previously stated, we have revised this AD to specify SASB 747–22–2256 R1 as an appropriate source of service information. This service information has incorporated the information in Boeing Information Notice 747–22–2256 IN 02, dated June 10, 2015. No further change is necessary in this regard in this final rule.

Boeing requested that we delete the ''Differences Between this Proposed AD and the Service Information'' section in the NPRM, which stated that, for Model 747 airplanes, the proposed AD would require doing post-modification routine functional testing of the on-ground stabilizer auto trim inhibit system, and corrective actions if necessary, at intervals not to exceed 1,500 flight hours. Boeing stated that SASB 747–22–2256 R1 now includes the functional testing of the on-ground stabilizer auto trim inhibit system.

We agree with Boeing that SASB 747–22–2256 R1 specifies doing the functional testing of the on-ground auto stabilizer trim inhibit system specified in ''Differences Between this Proposed AD and the Service Information'' in the NPRM, and in paragraph (i) of this AD. However, the ''Differences Between this Proposed AD and the Service Information'' section is not repeated in this final rule. We have not changed this final rule in this regard.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing (APB) stated that the installation of winglets per Supplemental Type Certificate (STC) ST01518SE does not affect the accomplishment of the manufacturer's service instructions.

We agree with APB that STC ST01518SE does not affect the accomplishment of the manufacturer's service instructions for Model 757 airplanes. Therefore, the installation of STC ST01518SE does not affect the ability to accomplish the actions required by this AD for Model 757 airplanes. Therefore, we have not changed this AD in this regard.

Requests To Address Airplanes Equipped With Aviation Partners Boeing (APB) Winglets

All Nippon Airways (ANA), American Airlines (AA), APB, Boeing, Thompson Airways, UAL, and UPS requested that we revise the NPRM to address the Model 767 airplanes equipped with winglets installed under APB STC ST01920SE. The commenters explained that the Model 767 equipped with APB winglets have a different compliance time and modification specified in APB Service Bulletin AP767–22–005, Revision 1, dated June 16, 2015 (''SB AP767–22–005 R1''), than those that have not been modified by the APB STC.

We agree with the commenters' requests to revise this AD to address Model 767 airplanes equipped with APB winglets. The Model 767–300 and –300F series airplanes identified in Boeing Special Attention Service Bulletin 767–22–0143, Revision 1, dated July 6, 2015 (''SASB 767–22–0143 R1''), that have been modified with the installation of APB winglets are identified in SB AP767–22–005 R1.

We have revised applicability paragraph (c)(3) of this AD to exclude Model 767–300 and –300F series airplanes that are identified in SB AP767–22–005 R1. We have added a new paragraph (c)(5) to this AD to include Model 767–300 and –300F series airplanes with winglets installed per STC ST01920SE having part number (P/N) 2276–COL–AF2–03 installed, as identified in APB Service Bulletin AP767–22–005, dated May 8, 2015; or SB AP767–22–005 R1.

We have redesignated paragraph (j) of the proposed AD as paragraph (j)(1) of this AD and added paragraph (j)(2) to this AD to require the actions specified in SB AP767–22–005 R1, for Model 767 airplanes that are identified in paragraph (c)(5) of this AD. These actions were previously proposed in the NPRM; therefore, there is no increase in scope of the requirements of this AD and no supplemental comment period is necessary. We have also added paragraph (j)(3) to this AD which states that, for airplanes identified in paragraph (c)(5) of this AD, no additional action is required by this AD.

Requests To Reference Revised Service Information and Provide Credit

AIRDO Company, ANA, Boeing, British Airways, Thomson Airways, and UAL requested that we revise the NPRM to specify using Boeing Special Attention Service Bulletin 757–22–0096, Revision 1, dated February 8, 2016 (''SASB 757–22–0096 R1''); Boeing Special Attention Service Bulletin 767–22–0143, Revision 2, dated May 25, 2016 (''SASB 767–22–0143 R2''); certain Boeing Information Notices that provide revisions to the service information; and to provide credit for actions using the previous issues of service information.

We agree with the commenters' requests to reference the revised service information, which incorporates the revisions in the Boeing Information Notices, and to provide credit. This service information incorporates small editorial changes and requires no additional work on airplanes that have had prior revisions of this service information accomplished on them. We have revised paragraphs (c)(2) and (h) of this AD to reference SASB 757–22–0096 R1. We have revised paragraphs (c)(3) and (i) of this AD to reference SASB 767–22–0143 R2. In paragraph (k) of this AD, we have added credit for previous actions using Boeing Special Attention Service Bulletin 757–22–0096, dated March 23, 2015; and Boeing Special Attention Service Bulletin 767–22–0143, Revision 1, dated July 6, 2015.

Request To Approve Alternative Method of Compliance (AMOC)

AAL requested that we approve SB AP767–22–005 R1, or later FAA-approved revisions, as an AMOC to the NPRM requirements. AAL also requested that we approve later FAA-approved revisions to the service information in the NPRM.

We do not agree with the commenter's requests. As stated previously, we have included SB AP767–22–005 R1 as a source of service information in this AD. AMOCs provide an alternative method of compliance to the methods required to be used in the associated AD. An AMOC is issued only after an AD has been issued and only after data are provided to show that the proposed alternative adequately addresses the unsafe condition.

Referring to specific service information in an AD and using the phrase ''or later FAA-approved revisions'' violates Office of the Federal Register regulations for approving materials that are incorporated by reference. However, operators may request approval to use a later revision of the referenced service information as an AMOC, under the provisions of paragraph (l) of this AD. We have not changed this AD in this regard.

Requests To Revise Compliance Times

AAL, AIRDO Company, FedEx, British Airways, EVA Airways, Thomson Airways, and UAL requested that we revise the NPRM compliance times. The revision requests for the Model 747 airplanes 24-month compliance time range from 48 months to 60 months to the next scheduled heavy airplane check. The revision requests for the Model 757 airplanes 24-month compliance time range from 36 months to 48 months. The revision requests for the Model 767 airplanes 24-month compliance time is 36 months. UAL requested that operators installing the APB winglets in the near future, have 24 months instead of 16 months after the effective date of the AD to comply with the AD requirements. The commenters requested the compliance time changes to accommodate maintenance schedules, parts availability, and airplane down times.

We do not agree with the commenters' compliance time requests. In developing appropriate compliance times, we considered the safety implications, normal maintenance schedules for timely accomplishment of the modification, and parts availability. In light of these items, we have determined that the compliance times, as proposed, represent the maximum interval of time allowable for the affected airplanes to continue to safely operate before the modification is done. In addition, since maintenance schedules vary among operators, there would be no assurance that the airplane would be modified during that maximum interval. The manufacturer has concurred with the compliance times as proposed. We have not changed this final rule in this regard. However, under the provisions of paragraph (l) of this AD, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed this final rule in this regard.

Request To Conduct Compliance Time Risk Assessment

Mr. Geoffrey Barrance requested that we do a risk assessment and probability safety analysis in setting the compliance time. Mr. Barrance stated that steps must be immediately taken to assess whether the specified compliance time is adequate to keep the fleet risk within proper limits.

We agree with the commenter. We have done an assessment of the risk posed by the identified unsafe condition. The compliance times following the effective date of this AD were determined to be appropriate. The manufacturer has concurred with the compliance times as proposed. No change to this final rule is needed in this regard.

Request To Revise Airplane Checklist

Mr. Geoffrey Barrance requested that, until the modification of any specific airframe has been accomplished, we include an additional step in the pre-flight checklist to check that the stabilizer is in the correct position.

We agree that this step is necessary. However, the existing pre-flight checklist already requires checking the stabilizer position prior to departure. Therefore, no change is needed to this AD in this regard.

Request To Revise Cost Estimate

UAL requested that we revise the cost estimate to reflect the additional financial burden imposed on the operator in order to comply with the NPRM. UAL stated that the compliance times do not coincide with UAL's maintenance intervals for heavy aircraft checks. UAL explained that, as a result, it will need to take a number of airplanes out of service for several days.

We do not agree with the commenter's request. In establishing the requirements of all ADs, we consider the cost impact to operators for parts and labor costs. We attempt to set compliance times that generally coincide with operators' maintenance schedules where possible in consideration of the safety risk. However, because operators' schedules vary substantially, we cannot accommodate every operator's optimal scheduling in each AD. Each AD has an allowable provision for individual operators to obtain approval for extensions of compliance times, based on a showing that the extension provides an acceptable level of safety.

We have not changed this AD regarding this issue.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Related Service Information Under 1 CFR part 51

We reviewed the following service information. These documents are distinct since they apply to different airplane models in different configurations.

- SB AP767–22–005 R1. This service information describes procedures for modifying relays and wiring to open and close the FCC analog output that controls the stabilizer trim adjustment, and doing functional testing.
- SASB 747–22–2256 R1. This service information describes procedures for installing an on-ground stabilizer autotrim inhibit system, and doing functional testing.
- SASB 757–22–0096 R1. This service information describes procedures for modifying relays and wiring to open and close the FCC analog output that controls the stabilizer trim adjustment, and doing functional testing.
- SASB 767–22–0143 R2. This service information describes procedures for modifying relays and wiring to open and close the FCC analog output that controls the stabilizer trim adjustment, and doing functional testing.
- Boeing Special Attention Service Bulletin 767–22–0146, Revision 1, dated June 25, 2015. This service information describes procedures for installing new OPS into the FCCs.

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

Costs of Compliance

We estimate that this AD affects 1,220 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Model 747 series airplane modification (136 airplanes).	123 work-hours × $85 per hour = $10,455	$2,714	$13,169	$1,790,984.
Model 747 series airplane functional test (136 airplanes).	4 work-hours × $85 per hour = $340	0	$340 per test	$46,240 per test.
Model 757 series airplane modification (678 airplanes).	83 work-hours × $85 per hour = $7,055	3,236	$10,291	$6,977,298.
Model 757 series airplane functional test (678 airplanes).	3 work-hours × $85 per hour = $255 per test	0	$255 per test	$172,890 per test.
Model 767 series airplane modification (406 airplanes).	121 work-hours × $85 per hour = $10,285	6,076	$16,361	$6,642,566.
Model 767 series airplane software modification (23 airplanes).	1 work-hour × $85 per hour = $85	0	$85	$1,955.
Model 767 series airplane functional test (406 airplanes).	5 work-hours × $85 per hour = $425 per test	0	$425 per test	$172,550 per test.

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–25–01 The Boeing Company: Amendment 39–18727; Docket No. FAA–2015–7525; Directorate Identifier 2015–NM–064–AD.

(a) Effective Date

This AD is effective January 31, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(5) of this AD.

(1) Model 747–400, 747–400D, and 747–400F series airplanes, as identified in Boeing Special Attention Service Bulletin 747–22–2256, Revision 1, dated January 6, 2016 (''SASB 747–22–2256 R1'').

(2) Model 757–200, –200PF, –200CB, and –300 series airplanes, as identified in Boeing Special Attention Service Bulletin 757–22–0096, Revision 1, dated February 8, 2016 (''SASB 757–22–0096 R1'').

(3) Model 767–200, –300, –300F, and –400ER series airplanes, as identified in Boeing Special Attention Service Bulletin 767–22–0143, Revision 2, dated May 25, 2016 (''SASB 767–22–0143 R2''), except those Model 767–300 and –300F series airplanes with winglets installed in accordance with Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027f43b9a7486e86257b1d006591ee/Body/0.48A!OpenElement&FieldElemFormat=gif*), and that are identified in Aviation Partners Boeing (APB) Service Bulletin AP767–22–005, Revision 1, dated June 16, 2015 (''SB AP767–22–005 R1'').

(4) Model 767–300 and –300F series airplanes, as identified in Boeing Special Attention Service Bulletin 767–22–0146, Revision 1, dated June 25, 2015 (''SASB 767–22–0146 R1'').

(5) Model 767–300 and –300F series airplanes with winglets installed per STC ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027f43b9a7486e86257b1d006591ee/Body/0.48A!OpenElement&FieldElemFormat=gif*) having part number (P/N) 2276–COL–AF2–03 installed, as identified in APB Service Bulletin AP767–22–005, dated May 8, 2015; or SB AP767–22–005 R1.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Unsafe Condition

This AD was prompted by reports of uncommanded autopilot engagement events resulting in incorrect stabilizer trim adjustment during takeoff. We are issuing this AD to prevent stabilizer mistrim, which could result in a high-speed rejected takeoff and runway overrun, or reduced controllability of the airplane after takeoff due to insufficient pitch control.

(f) Compliance

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

(g) Model 747 Airplane Modification and Repetitive Functional Testing

For airplanes identified in paragraph (c)(1) of this AD: Within 24 months after the effective date of this AD, install new wiring and relays to reroute the four autotrim arm signals through new or existing air/ground determination source select switches, and do functional testing, in accordance with the Accomplishment Instructions of SASB 747–22–2256 R1. If the functional test fails, before further flight, do corrective actions, repeat the test, and do all applicable corrective actions until the functional test is passed, in accordance with the Accomplishment Instructions of SASB 747–22–2256 R1. Repeat the functional test of the automatic stabilizer trim system specified in step 250. of paragraph 3.B. of the Accomplishment Instructions of SASB 747–22–2256 R1, thereafter at intervals not to exceed 1,500 flight hours. If the functional test fails, before further flight, do corrective actions, repeat the test, and do all applicable corrective actions until the functional test is passed, in accordance with the Accomplishment Instructions of SASB 747–22–2256 R1.

(h) Model 757 Airplane Modification and Repetitive Functional Testing

For airplanes identified in paragraph (c)(2) of this AD: Within 24 months after the effective date of this AD, install wiring to inhibit the automatic stabilizer trim arm discrete when the airplane is on ground, install a two-position momentary contact test switch in the main equipment center, and do the functional test and all applicable corrective actions until the functional test is passed, in accordance with the Accomplishment Instructions of SASB 757–22–0096 R1. Repeat the functional test of the on-ground automatic stabilizer auto trim inhibit system and all applicable corrective actions specified in step 11. of paragraph 3.B. of the Accomplishment Instructions of SASB 757–22–0096 R1, thereafter at intervals not to exceed 1,500 flight hours. If the functional test fails, before further flight, do corrective actions, repeat the test, and do all applicable corrective actions until the functional test is passed, in accordance with the Accomplishment Instructions of SASB 757–22–0096 R1.

(i) Model 767–200, –300, –300F, and –400ER Series Airplane Modification and Repetitive Functional Testing

For airplanes identified in paragraph (c)(3) of this AD: Within 24 months after the effective date of this AD, install relays and wiring to open and close the flight control computer (FCC) analog output that controls the stabilizer trim adjustment, install a momentary action ground test switch, and do the functional testing and all applicable corrective actions, in accordance with the Accomplishment Instructions of SASB 767–22–0143 R2. Repeat the functional test of the on-ground automatic stabilizer auto trim inhibit system and all applicable corrective actions specified in steps 5.a. through 5.g. of Paragraph 3.B. of the Accomplishment Instructions of SASB 767–22–0143 R2, thereafter at intervals not to exceed 1,500 flight hours. If the functional test fails, before further flight, do corrective actions, repeat the test, and do all applicable corrective actions until the functional test is passed, in accordance with the Accomplishment Instructions of SASB 767–22–0143 R2.

(j) Model 767–300 and –300F Series Airplane Modification

(1) For airplanes identified in paragraph (c)(4) of this AD: Within 16 months after the effective date of this AD, install new operational program software into the FCCs, in accordance with the Accomplishment Instructions of SASB 767–22–0146 R1.

(2) For airplanes identified in paragraph (c)(5) of this AD: Within 16 months after the effective date of this AD, install new operational program software into the FCCs, in accordance with the Accomplishment Instructions of SB AP767–22–005 R1.

(k) Credit for Actions Accomplished in Accordance With Previous Service Information

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 747–22–2256, dated March 6, 2015.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 757–22–0096, dated March 23, 2015.

(3) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 767–22–0143, dated March 6, 2015; or Boeing Special Attention Service Bulletin 767–22–0143, Revision 1, dated July 6, 2015.

(4) This paragraph provides credit for actions required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 767–22–0146, dated March 24, 2015.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly

to the manager of the ACO, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(4)(i) and (l)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or sub-step is labeled ''RC Exempt,'' then the RC requirement is removed from that step or sub-step. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

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

(m) Related Information

(1) For more information about this AD, contact Fnu Winarto, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6659; fax: 425–917–6590; email: *fnu.winarto@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(n) Material Incorporated by Reference

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

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

(i) Aviation Partners Boeing Service Bulletin AP767–22–005, Revision 1, dated June 16, 2015.

(ii) Boeing Special Attention Service Bulletin 747–22–2256, Revision 1, dated January 6, 2016.

(iii) Boeing Special Attention Service Bulletin 757–22–0096, Revision 1, dated February 8, 2016.

(iv) Boeing Special Attention Service Bulletin 767–22–0143, Revision 2, dated May 25, 2016.

(v) Boeing Special Attention Service Bulletin 767–22–0146, Revision 1, dated June 25, 2015.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on November 23, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–29247 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3929; Directorate Identifier 2015–SW–031–AD; Amendment 39–18746; AD 2016–25–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Model EC130B4, EC130T2, AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. This AD requires inspecting each bi-directional suspension cross-bar (cross-bar). This AD was prompted by two reports of cracks in a cross-bar. These actions are intended to prevent the unsafe condition on these products.

DATES: This AD is effective January 31, 2017.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3929; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On April 11, 2016, at 81 FR 21284, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model EC130B4, EC130T2, AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters with a cross-bar part number (P/N) 350A38–1040–20 or P/N 350A38–1040–00 installed. The NPRM proposed to require repetitively inspecting each cross-bar for a crack and replacing any cracked cross-bar before further flight. The proposed requirements were intended to detect cracks in a cross-bar and prevent failure of the cross-bar and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2015–0094, dated May 29, 2015, issued by EASA, which is the Technical Agent

for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters Model AS350B, AS350BA, AS350BB, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, AS355NP, EC130B4, and EC130T2 helicopters. EASA advises that two cases of cracks in a cross-bar were reported on AS350B3 helicopters. The cracks were found at the transmission deck attachment fitting holes in helicopters equipped with a cargo hook that had completed missions with a significant number of torque cycles. Because of common design features, cracks may also occur on other Model AS350-series, AS355-series, and EC130-series helicopters. EASA advises that crack growth may lead to failure of one of the four yokes and significantly increase stress loads on the remaining yokes. This condition, if not detected or corrected, could lead to cracks on the remaining yokes and increased load on the cross-bar, possibly resulting in cross-bar failure and consequently loss of the helicopter. To correct this condition, EASA AD No. 2015–0094 requires repetitive cross-bar inspections and, depending on the findings, replacing the cross-bar.

Comments

One commenter submitted comments supporting the NPRM (81 FR 21284, April 11, 2016).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

The EASA AD applies to Airbus Helicopters Model AS350BB helicopters. This AD does not apply to the Model AS350BB because it does not have an FAA type certificate. However, this AD applies to Model AS350C and AS350D1 helicopters, while the EASA AD does not. The EASA AD requires a florescent dye-penetrant inspection if the visual inspection of the bi-directional suspension cross-bar causes doubts. This AD does not require a florescent dye-penetrant inspection. The EASA AD requires returning the damaged bi-directional suspension cross-bar to Airbus Helicopters, and this AD does not.

Related Service Information

Airbus Helicopters has issued Alert Service Bulletin (ASB) No. EC130–05A021 for Model EC130B4 helicopters; ASB No. EC130–05A022 for Model EC130T2 helicopters; ASB No. AS350–05.00.84 for Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350BB, AS350D, and military Model AS350L1 helicopters; and ASB No. 355–05.00.73 for Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355 NP helicopters (ASBs). All of the ASBs are Revision 0 and dated May 21, 2015. The ASBs specify visually inspecting the cross-bar. If there is any doubt after the visual inspection, the ASBs call for a dye-penetrant inspection to make sure there are no cracks. If a crack is detected, the ASBs call for replacing the cross-bar before further flight and sending the damaged cross-bar to Airbus Helicopters.

Costs of Compliance

We estimate that this AD affects 1,132 helicopters of U.S. Registry and that labor costs average $85 a work-hour. Based on these estimates, we expect the following costs:

- Visually inspecting the cross-bar requires 16.5 work-hours for a labor cost of about $1,403. No parts are needed so that the cost for the U.S. fleet totals $1,588,196 per inspection cycle.
- Replacing the cross-bar costs $1,630 for parts. No additional labor costs are needed.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–25–20 Airbus Helicopters: Amendment 39–18746; Docket No. FAA–2015–3929; Directorate Identifier 2015–SW–031–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model EC130B4, EC130T2, AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters with a bi-directional suspension cross-bar (cross-bar) part number (P/N) 350A38–1040–20 or P/N 350A38–1040–00 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a bi-directional cross-bar, which could result in failure of a cross-bar and loss of control of the helicopter.

(c) Effective Date

This AD becomes effective January 31, 2017.

(d) Compliance

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

(e) Required Actions

(1) Within the initial inspection times shown in Table 1 to paragraph (e) of this AD or the next time maintenance of the helicopter involves removing the main gearbox, whichever comes first; and thereafter at intervals not to exceed the compliance times shown in Table 1 to paragraph (e) of this AD, inspect each cross-bar for a crack. For purposes of this AD, a torque cycle is defined as one landing with or without stopping the rotor or one external load-carrying operation; an external load-carrying operation occurs each time a helicopter picks up an external load and drops it off.

TABLE 1 TO PARAGRAPH (e)

Helicopter model	Initial and recurrent inspection interval
AS350B, AS350BA, AS350B1, AS350B2, AS350C, AS350D, and AS350D1.	4,500 hours time-in-service (TIS) or 60,000 torque cycles, whichever occurs first.
AS350B3, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355 NP.	3,300 hours TIS or 60,000 torque cycles, whichever occurs first.
EC130B4	
EC130T2	3,300 hours TIS or 40,000 torque cycles, whichever occurs first.

(2) If there is a crack, before further flight, replace the cross-bar.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(h) Additional Information

(1) Airbus Helicopters Alert Service Bulletin No. EC130–05A021, No. EC130–05A022, No. AS350–05.00.84, and No. AS355–05.00.73, all Revision 0 and all dated May 21, 2015, which are not incorporated by reference, contain additional information about the subject of this final rule. For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0094, dated May 29, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–3929.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6300, Main Rotor Drive System.

Issued in Fort Worth, Texas, on December 6, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–30048 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8850; Directorate Identifier 2016–NM–031–AD; Amendment 39–18755; AD 2016–25–29]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 767–200 and –300 series airplanes. This AD was prompted by a report of a fire in the bilge area of the cargo compartment that burned through the insulation blankets that were intended to prevent smoke from migrating behind the cargo compartment sidewall liners and upward into the main cabin. This AD requires replacing the cargo compartment insulation blankets on the left and right sides with new insulation blankets that incorporate fire stops. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 31, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 31, 2017.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8850.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8850; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer,

Cabin Safety & Environmental Control Systems, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 767–200 and –300 series airplanes. The NPRM published in the **Federal Register** on August 30, 2016 (81 FR 59549) (''the NPRM''). The NPRM was prompted by a report of a fire in the bilge area of the cargo compartment that burned through the insulation blankets that were intended to prevent smoke from migrating behind the cargo compartment sidewall liners and upward into the main cabin. The NPRM proposed to require replacing the cargo compartment insulation blankets on the left and right sides with new insulation blankets that incorporate fire stops. We are issuing this AD to prevent a fire in the bilge area of the cargo compartment burning through the insulation blankets and consequently allowing smoke to migrate behind the cargo compartment sidewall liners and upward into the main cabin.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Boeing and United Airlines expressed support for the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that the installation of winglets per Supplemental Type Certificate (STC) ST01920SE does not affect the accomplishment of the manufacturer's service instructions.

We agree with the commenter that STC ST01920SE does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST01920SE does not affect the ability to accomplish the actions required by this AD. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Related Service Information Under 1 CFR part 51

We reviewed Boeing Special Attention Service Bulletin 767–25–0550, dated January 30, 2015. The service information describes procedures for replacing the cargo compartment insulation blankets on the left and right sides between stringers 29 and 33 with new insulation blankets that incorporate fire stops. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 26 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	Up to 54 work-hours × $85 per hour = $4,590	(1)	Up to $4,590	Up to $119,340.

[1] We have received no definitive data that will enable us to provide parts cost estimates for the actions specified in this AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–25–29 The Boeing Company: Amendment 39–18755; Docket No. FAA–2016–8850; Directorate Identifier 2016–NM–031–AD.

(a) Effective Date

This AD is effective January 31, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200 and –300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 767–25–0550, dated January 30, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 25; Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by a report of a fire in the bilge area of the cargo compartment that burned through the insulation blankets that were intended to prevent smoke from migrating behind the cargo compartment sidewall liners and upward into the main cabin. We are issuing this AD to prevent a fire in the bilge area of the cargo compartment burning through the insulation blankets and consequently allowing smoke to migrate behind the cargo compartment sidewall liners and upward into the main cabin.

(f) Compliance

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

(g) Insulation Blanket Replacement

Within 36 months after the effective date of this AD: Replace the cargo compartment insulation blankets on the left and right sides between stringers 29 and 33 with new insulation blankets that incorporate fire stops, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0550, dated January 30, 2015. For Groups 1 through 4, Configurations 1 and 2, airplanes identified in Boeing Special Attention Service Bulletin 767–25–0550, dated January 30, 2015, no action is required by this AD.

(h) Alternative Methods of Compliance (AMOCs)

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

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

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

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

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

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

(i) Related Information

For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Control Systems, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov*.

(j) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 767–25–0550, dated January 30, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on December 9, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–30278 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2014–0708; Amendment No. 91–334A]

RIN 2120–AK93

Extension of the Prohibition Against Certain Flights Within the Damascus (OSTT) Flight Information Region (FIR)

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

ACTION: Final rule.

SUMMARY: This action extends the prohibition of certain flight operations in the Damascus (OSTT) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds that this action continues to be necessary to address a potential hazard to persons and aircraft engaged in such flight operations.

DATES: This final rule is effective on December 30, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Filippell, Air Transportation Division, AFS–220, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8166; email: *Michael.e.filippell@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action continues the prohibition against certain flight operations in the

Damascus (OSTT) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action necessary to address a continuing hazard to persons and aircraft engaged in such flight operations. This rule extends SFAR No. 114, § 91.1609, (SFAR 114) from December 30, 2016, to December 30, 2018.

II. Authority and Good Cause

A. Legal Authority

The FAA is responsible for the safety of flight in the United States and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in title 49 of the U.S. Code. Subtitle I, section 106(f), describes the authority of the FAA Administrator. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This SFAR is promulgated under the authority described in Title 49, Subtitle VII, Part A, Subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority because it continues the prohibition against certain flight operations in the OSTT FIR due to the hazard to persons and aircraft engaged in such flight operations that is described in the Background section of this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' In this instance, the FAA finds that notice and public comment to this final rule, as well as any delay in the effective date of this rule, are contrary to the public interest due to the immediate need to address the continuing hazard to civil aviation that exists in the Damascus (OSTT) FIR, as described in the Background section of this final rule.

III. Background

The significant threat identified when the FAA first published SFAR 114 to civil aviation operating in the Damascus (OSTT) FIR continues due to the presence of anti-aircraft weapons controlled by non-state actors, threats made by the extremist groups, de-confliction concerns, and ongoing military fighting. Flight safety risks associated with a lack of de-confliction between various military forces conducting operations in Syria and civil aviation, as identified in the original prohibition, also continue unabated.

Due to the presence of foreign national military forces and non-state actors operating in Syria, the FAA has determined that safety of flight continues to be a serious safety concern for U.S. civil aviation flight operations in the Damascus (OSTT) FIR. There are multiple extremist groups, known to be equipped with a variety of anti-aircraft weapons including radar-guided surface-to-air missiles (SAMs) and man-portable air defense systems (MANPADs), which have the capability to threaten civil aircraft. Syrian and Russian military aircraft have been shot down during the course of the current conflict and these groups have previously warned civilian air carriers against operating within (or providing service to) Syria.

In 2015 and in support of the Asad regime, Russia began conducting military operations using fighter and bomber aircraft and employed advanced cruise missiles. These operations further increase the risk to civilian flight operations within the Damascus (OSTT) FIR.

The FAA continues to assess the situation in the Damascus (OSTT) FIR and believes there is a significant threat to civil aviation operating in the Damascus (OSTT) FIR at all altitudes due to the presence of anti-aircraft weapons controlled by non-state actors, threats made by the extremist groups, de-confliction concerns, and ongoing military fighting.

Due to the continuation of the previously described hazards to U.S. civil aviation operations, the FAA is extending the expiration date of SFAR No. 114, § 91.1609, from December 30, 2016 to December 30, 2018, to maintain the prohibition on flight operations in the Damascus (OSTT) FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers.

The FAA will continue to actively monitor the situation and, based on evaluations, determine the extent U.S. civil operators may be able to safely operate in the Damascus (OSTT) FIR in the future. Amendments to this SFAR No. 114, § 91.1609, may be appropriate if the risk to aviation safety and security changes. Thus, the FAA may amend or rescind this SFAR No. 114, § 91.1609, as necessary prior to its expiration date.

Because the circumstances described herein warrant a continuation of the flight restrictions imposed by SFAR 114, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. I also find that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

IV. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39), as amended, 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by

State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive Order; further, this rule is ''significant'' as defined in DOT's Regulatory Policies and Procedures. This rule will not have a significant economic impact on a substantial number of small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

A. Regulatory Evaluation

Department of Transportation (DOT) Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

For SFAR No. 114, § 91.1609, the FAA determined that incremental costs were minimal for U.S. operators of large transport category airplanes (four part 121 operators and two part 125M operators) because they had voluntarily ended their overflights in March, 2011, before the FAA's August 18, 2014 issuance of FDC NOTAM 4/4936. The FAA also determined that the incremental costs of SFAR No. 114 were minimal for about 15 ''on-demand'' large carriers (part 121 and part 121/135) and about 75 small ''on-demand'' operators (parts 135, 125, 125M, and 91K). These operators had previously flown into and out of Syria or conducted overflights in the OSTT FIR. But because of sanctions imposed by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the ongoing conflict, the FAA believed that few, if any, of these ''on-demand'' operators were still operating in the OSTT FIR immediately before the FAA issued FDC NOTAM 4/4936.

Due to significant and increased hostilities, and because the OFAC sanctions remain in place, the reasons for the FAA's previous finding of minimal cost for SFAR No. 114 remain unchanged. Therefore, the FAA finds that the incremental cost of the SFAR No. 114 extension will be minimal.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, ''RFA''), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, 5 U.S.C. 605(b) provides that the head of the agency may so certify and a regulatory flexibility analysis will not be required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Prior to the hostilities leading to the earlier published SFAR No. 114, § 91.1609, there were many small entities conducting operations through the now restricted airspace. After the FAA published SFAR No. 114, § 91.1609, the FAA received no request to use this airspace. Given no requests have occurred, the FAA believes the earlier determination of minimal cost is accurate. Thus, extending the airspace restriction will not impose a significant economic impact. Therefore, as provided in § 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended, prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from a hazard outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155.0 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO

Standards and Recommended Practices that correspond to this regulation.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition. Further, following the downing of Malaysian Airlines Flight 17, there is increased attention in the international community and ICAO to conflict-related threats to civil aircraft. Foreign air carriers and other foreign operators may choose to avoid, or be advised/directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f of this order and involves no extraordinary circumstances.

The FAA has reviewed the implementation of this SFAR and determined it is categorically excluded from further environmental review according to FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.6f. The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the action, the FAA finds that this Federal action does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

V. Executive Order Determinations

A. Executive Order 13132, ''Federalism''

The FAA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, ''Federalism.'' The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Availability of Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

- Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
- Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
- Accessing the Government Publishing Office's Web page at *http://www.fdsys.gov*.

Copies may also be obtained by sending a request (identified by docket or amendment number of the rule) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** section at the beginning of the preamble. You can find out more about SBREFA on the Internet at: *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Syria.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Revise § 91.1609, paragraph (e), to read as follows:

§ 91.1609 Special Federal Aviation Regulation No. 114—Prohibition Against Certain Flights in the Damascus (OSTT) Flight Information Region (FIR).

* * * * *

(e) *Expiration.* This SFAR will remain in effect until December 30, 2018. The FAA may amend, rescind, or extend this SFAR No. 114, § 91.1609, as necessary.

Issued under authority provided by 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), in Washington, DC, on December 19, 2016.

Michael P. Huerta,

Administrator.

[FR Doc. 2016–31237 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 744

[Docket No. 161005929–6929–01]

RIN 0694–AH18

Burma: Amendment of the Export Administration Regulations Consistent With an Executive Order That Terminated U.S. Government's Sanctions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) consistent with Executive Order 13742 of October 7, 2016. That Executive Order terminated the national emergency with respect to the actions and policies of the Government of Burma (Burma) and revoked several Burma-related Executive Orders in recognition of Burma's substantial advances to promote democracy, including historic elections held in November 2015 that resulted in the formation of a democratically elected, civilian-led government. Specifically, in this rule, BIS removes license requirements and other restrictions on exports, reexports or transfers (in country) of items subject to the EAR made to persons whose property and interests in property were blocked pursuant to three Burma-related Executive Orders that were revoked on October 7, 2016. Consistent with the revised U.S. policy toward Burma, this rule also moves Burma from Country Group D:1 to Country Group B, a less restrictive country group placement under the EAR.

DATES: This rule is effective December 27, 2016.

FOR FURTHER INFORMATION CONTACT: Tracy Patts, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance at telephone (202) 482–4252 or email *Tracy.Patts@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

U.S. Sanctions Against Burma

In Executive Order 13047 of May 20, 1997, President Bill Clinton declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Government of Burma in response to a deepening pattern of severe repression by the State Law and Order Restoration Council, the then-governing regime in Burma, and prohibited new investment in Burma by U.S. persons.

To take additional steps with respect to the national emergency and to implement the Burmese Freedom and Democracy Act of 2003 (Pub. L. 108–61, 50 U.S.C. 1701 note) signed into law on July 28, 2003, President George W. Bush issued on the same day Executive Order 13310 (E.O. 13310), which banned all imports into the United States of products of Burma and the export of financial services from the United States or by U.S. persons, wherever located, to Burma. E.O. 13310 also blocked the property and property interests of persons listed in its Annex or designated pursuant to criteria set forth in E.O. 13310. To address the Government of Burma's continued repression of the country's democratic opposition, President Bush issued two additional Executive Orders, Executive Order 13448 of October 18, 2007 and Executive Order 13464 of April 30, 2008, that further expanded the scope of the national emergency and took additional steps with respect to it. Each of these two Executive Orders blocked the property and interests in property of persons listed in its Annex or designated pursuant to criteria set forth in the Executive Orders. President Barack Obama subsequently issued two Burma-related Executive Orders, Executive Order 13619 of July 11, 2012 (E.O. 13619) and Executive Order 13651 of August 6, 2013 (E.O. 13651), that further modified the scope of the national emergency and took additional steps with respect to it. E.O. 13619 blocked the property and interests in property of persons listed in its Annex or designated pursuant to criteria set forth in the Executive Order. E.O. 13651 revoked the ban imposed in E.O. 13310 on the importation of products of Burma and imposed a ban on importing into the United States jadeite or rubies, and articles of jewelry containing jadeite or rubies, mined or extracted from Burma.

Consistent with Executive Orders 13310, 13448, and 13464, and the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7201 *et seq.*), BIS amended the EAR by creating new § 744.22 (*see* 72 FR 60248, October 24, 2007; 74 FR 770, January 8, 2009), to impose a license requirement for exports, reexports, or transfers (in country) of items subject to the EAR, except agricultural commodities, medicine, or medical devices designated as EAR99, to persons listed in or designated pursuant to Executive Orders 13310, 13448, or 13464. As part of the initial October 2007 regulatory changes, Burma was moved from Computer Tier 1 to Computer Tier 3 in part 740 of the EAR (License Exceptions), thereby restricting Burma's access to high-performance computers and certain related technology and software under License Exception APP (§ 740.7). In Supplement No. 1 to part 740 (Country Groups), Burma was moved from Country Group B (countries raising few national security concerns) to Country Group D:1 (countries raising national security concerns). This move further limited the number of license exceptions available for exports or reexports to Burma. Burma remained in Country Group D:3 (countries raising proliferation concerns related to chemical and biological weapons).

As set forth in § 744.22 of the EAR, exports, reexports or transfers of items subject to the EAR, except agricultural commodities, medicine, or medical devices designated as EAR99, to any person whose property and interests in property were blocked pursuant to Executive Orders 13310, 13448 or 13464, required a license under the EAR and were reviewed under a general policy of denial. The requirement applied to such ''blocked'' persons either listed in the Annexes to one of these three Executive Orders or to persons designated pursuant to one of the Executive Orders. Persons included in an Annex or designated pursuant to one of these Executive Orders were identified with the reference [BURMA] on Treasury's Office of Foreign Assets Control (OFAC's) list of Specially Designated Nationals and Blocked Persons on OFAC's Web site at *http://www.treas.gov/OFAC.*

Termination of U.S. Sanctions Against Burma

In Executive Order 13742 of October 7, 2016, President Obama terminated the national emergency declared in Executive Order 13047 and revoked that Executive Order and the five additional Burma-related Executive Orders, including Executive Orders 13310, 13448 and 13464. Consistent with the President's action, in this final rule, BIS removes and reserves § 744.22 of the EAR.

In recognition of Burma's substantial advances to promote democracy identified by President Obama in Executive Order 13742, BIS is also removing Burma from Country Group D:1 and placing it in Country Group B, a change that typically broadens the scope of license exceptions which may be available for exports and reexports of items under the EAR. Note, however, that Burma will remain in Country

Group D:3 (countries raising proliferation concerns related to chemical and biological weapons). Burma will also remain in Country Group D:5 (U.S. Arms Embargoes), consistent with § 126.1 of the International Traffic in Arms Regulations, 22 CFR 120–130, and State Department **Federal Register** notices. Therefore, the country is subject to the general license exception restrictions described in section 740.2(a)(12) of the EAR that apply to 9x515 or ''600 series'' items destined to, shipped from, or manufactured in a destination listed in Country Group D:5, except as narrowly provided in subparagraphs (a)(12)(i) and (ii). Further, Burma will remain in Computer Tier 3 in part 740 (License Exceptions) pending additional consideration. Finally, as a general matter, exports and reexports to Burma, and transfers (in country), remain subject to EAR part 744 end user and end-use based controls.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule affects one approved collection: The Simplified Network Application Processing + Redesign system (control number 0694–0088), which carries a burden hour estimate of 43.8 minutes, including the time necessary to submit license applications, among other things, as well as miscellaneous and other recordkeeping activities that account for 12 minutes per submission. This rule is expected to decrease the number of submissions under this collection.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States under 5 U.S.C. 553(a)(1). This final rule implements the President's Executive Order 13742 of October 7, 2016, terminating the national emergency with respect to Burma that had been in effect since May 20, 1997, revoking certain Burma-related Executive Orders that expanded or otherwise modified the national emergency, and waiving other statutory blocking and financial sanctions on Burma. This rule serves the foreign policy interests of the United States by removing Burma sanctions under the EAR that were directly related to three of the revoked Executive Orders and conforming the treatment of Burma under the EAR with the change in U.S. foreign policy toward the country already in effect pursuant to Executive Order 13742. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Therefore, this regulation is issued in final form and is made effective immediately upon publication.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Burma, Exports, Reporting and recordkeeping requirements.

15 CFR Part 744

Burma, Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 740 and 744 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

Supplement No. 1 to Part 740—[Amended]

■ 2. Supplement No. 1 to part 740 is amended by:

■ a. Adding ''Burma'' in Country Group B in alphabetical order; and

■ b. Removing the ''X'' from the row for Burma in the D:1 column of the Country Group D table.

PART 744—[AMENDED]

■ 3. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016).

§ 744.22 [Removed and Reserved]

■ 4. Remove and reserve § 744.22.

Dated: December 20, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–31208 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 744

[Docket No. 161206999–6999–01]

RIN 0694–AH25

Russian Sanctions: Addition of Certain Entities to the Entity List, and Clarification of License Review Policy

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding twenty-three entities to the Entity List. The twenty-three entities who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy

interests of the United States. BIS is taking this action to ensure the efficacy of existing sanctions on the Russian Federation (Russia) for violating international law and fueling the conflict in eastern Ukraine. These entities will be listed on the Entity List under the destinations of Russia and the Crimea region of Ukraine.

In addition to the Entity List changes described above, this final rule revises the licensing policy in three sections of the Commerce Control List (CCL)-based controls in the EAR to clarify that BIS's review of license applications for exports, reexports and transfers (in-country) to Russia will take into account and protect U.S. national security interests.

DATES: This rule is effective December 27, 2016.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744 of the EAR) identifies entities and other persons reasonably believed to be involved in, or that pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy of the United States. The EAR imposes additional licensing requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to those persons or entities listed on the Entity List. The license review policy for each listed entity is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-user Review Committee (ERC) is composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy, and where appropriate, the Treasury. The ERC makes decisions to add an entry to the Entity List by majority vote and to remove or modify an entry by unanimous vote. The Departments represented on the ERC have approved these changes to the Entity List.

Entity List Additions

Additions to the Entity List

This rule implements the decision of the ERC to add twenty-three entities to the Entity List. These twenty-three entities are being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The twenty-three entries being added to the Entity List consist of two entries in the Crimea region of Ukraine, and twenty-one entries in Russia.

Under § 744.11(b) (Criteria for revising the Entity List) of the EAR, persons for whom there is reasonable cause to believe, based on specific and articulable facts, have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List. The entities being added to the Entity List have been determined to be involved in activities that are contrary to the national security or foreign policy interests of the United States. Specifically, in this rule, BIS adds entities to the Entity List for violating international law and fueling the conflict in eastern Ukraine. These additions ensure the efficacy of existing sanctions on Russia. The specific additions to the Entity List and related authorities are as follows:

A. Entity Additions Consistent With Executive Order 13661

Fifteen entities are added based on activities that are described in Executive Order 13661 (79 FR 15533), *Blocking Property of Additional Persons Contributing to the Situation in Ukraine,* issued by the President on March 16, 2014. This Order expanded the scope of the national emergency declared in Executive Order 13660, finding that the actions and policies of the Government of the Russian Federation with respect to Ukraine—including the deployment of Russian military forces in the Crimea region of Ukraine—undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

Executive Order 13661 includes a directive that all property and interests in property that are in the United States, that hereafter come within the United States, or that are or thereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State to have either materially assisted, sponsored or provided financial, material or technological support for, or goods and services to or in support of a senior official of the government of the Russian Federation or to operate in the defense or related materiel sector in Russia. Under Section 8 of the Order, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the Order.

BIS, pursuant to Executive Order 13661, and in consultation with the Departments of State, Defense, Energy, and the Treasury, has designated the fifteen entities specified in the next two paragraphs.

Seven subsidiaries of Almaz-Antey Air Defense Concern Main System Design Bureau, JSC, an entity listed on the Entity List on September 17, 2014 (79 FR 55608), as follows: DJSC Factory Krasnoe Znamya; FSUE FNPC Nizhegorodsky Scientific Research Institute of Radiotechnics (NNIIRT); OAO All-Russia Research Institute of Radio Equipment (JSC VNIIRA); JSC GOZ Obukhov Plant; JSC Institute of Instrumentation—Novosibirsk Plant Comintern (NPO NIIP–NZIK); OJSC Ural Production Company Vector (UPP Vector); and Scientific and Production Association ''Lianozovo Electromechanical Plant'' (NPO LEMZ).

Eight subsidiaries of Joint-Stock Company Concern Radio-Electronic Technologies, an entity listed on the Entity List on July 22, 2014 (79 FR 42455), as follows: ElTom Research and Production Company; Ekran Scientific Research Institute, FSUE; JSC Scientific Research Institute of Aircraft Equipment (NIIAO); Kaluga Scientific Research Radio Technology Institute (KRRTI); Research and Production Association KVANT; Research and Production Association M.V. Frunze; Ryazan State Instrument Enterprise (RSIE); and Svyaz Design Bureau, OJSC.

The fifteen entities added to the Entity List under Executive Order 13661 meet the criteria of Section 1, subparagraph B of the Order, as did the two parent entities identified above and added to the Entity List in 2014, because they operate in Russia's arms or related materiel sector. BIS adds the thirteen entities to the Entity List under this

rule, and imposes a license requirement for exports, reexports, or transfers (in-country) of all items subject to the EAR and a license review policy of presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the entities or in which such entities act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule. This license requirement implements an appropriate measure within the authority of the EAR to carry out the provisions of Executive Order 13661.

B. Entity Additions Consistent With Executive Order 13685

Eight entities are added based on activities that are described in Executive Order 13685 (79 FR 77357), *Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine,* issued by the President on December 19, 2014. This Order took additional steps to address the Russian occupation of the Crimea region of Ukraine with respect to the national emergency declared in Executive Order 13660 of March 6, 2014, and expanded in Executive Order 13661 of March 16, 2014, and Executive Order 13662 of March 20, 2014. In particular, Executive Order 13685 prohibited the export, reexport, sale or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods, services, or technology to the Crimea region of Ukraine. Under Section 10 of the Order, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the Order.

The Department of the Treasury's Office of Foreign Assets Control (OFAC), pursuant to Executive Order 13685 on behalf of the Secretary of the Treasury and in consultation with the Secretary of State, has designated the following eight entities operating in the Crimea region of Ukraine: Crimean Ports; Crimean Railway; Institut Stroiproekt, AO; Karst, OOO; LLC Ruschemtrade; OLID Ltd.; Trans-Flot JSC; and Transpetrochart Co. Ltd. Four of these entities (LLC Ruschemtrade; OLID Ltd.; Trans-Flot JSC; and Transpetrochart Co. Ltd.) are also linked to OJSC Sofracht. OJSC Sovfracht was added to the Entity List on September 7, 2016 (81 FR 61601) and is an OFAC-designated Specially Designated National (SDN).

In conjunction with OFAC's designation of the eight entities, BIS adds all eight of the entities to the Entity List under this rule and imposes a license requirement for exports, reexports, or transfers (in-country) of all items subject to the EAR and a license review policy of presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the entities or in which such entities act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule. This license requirement implements an appropriate measure within the authority of the EAR to carry out the provisions of Executive Order 13685.

The acronyms ''a.k.a.'' (also known as) and ''f.k.a.'' (formerly known as) are used in entries on the Entity List to help exporters, reexporters and transferors to better identify listed persons on the Entity List.

This final rule adds the following twenty-three entities to the Entity List:

Crimea Region of Ukraine

(1) *Crimean Ports,* a.k.a., the following three aliases:

—State Unitary Enterprise of the Republic of Crimea 'Crimean Ports';
—Sue RC 'KMP'; *and*
—Sue RK 'Crimean Ports'.

28 Kirov Street, Kerch, Crimea Region of Ukraine 98312; *and*

(2) *Crimean Railway,* a.k.a., the following three aliases:

—Federal State Unitary Enterprise 'Crimean Railway';
—Krymzhd; *and*
—The Railways of Crimea.

34 Pavlenko Street, Simferopol, Crimea Region of Ukraine 95006.

Russia

(1) *DJSC Factory Krasnoe Znamya,* a.k.a., the following five aliases:

—OJSC Factory Krasnoe Znamya;
—OAO Zavod Krasnoe Znamya;
—AO Krasnoye Znamya;
—Krasnoye Znamya Plant OAO; *and*
—Krasnoye Znamya Plant JSC.

Shabulina Travel 2a, Ryazan, 390043, Russia;

(2) *Ekran Scientific Research Institute, FSUE,* a.k.a., the following one alias:

—FGUP Ekran.

Kirov Avenue 24, Samara 443022, Russia; *and* Krzhizhanovskogo Street 20/30, Moscow, 117218, Russia;

(3) *ElTom Research and Production Company,* a.k.a., the following one alias:

—NPP ElTom.

Garshin Street 11, Tomilino, Lyuberetsky, Moscow, 140070, Russia;

(4) *FSUE FNPC Nizhegorodsky Scientific Research Institute of Radiotechnics* (NNIIRT),

Shaposhnikov Street 5, Nizhny Novgorod, 603950, Russia;

(5) *Institut Stroiproekt, AO,* a.k.a., the following six aliases:

—Aktsionernoe Obshcestvo Institut Stroiproekt;
—AO Institut Stroiproekt;
—AO Institute Stroyproekt (f.k.a., Institut Stroiproekt Zakrytoe Aktsionernoe Obshchestvo);
—Institute Stroyproect;
—Stroyproekt; *and*
—Stroyproekt Engineering Group.

D. 13 Korp. 2 LiteraA Prospekt Dunaiski, St. Petersburg 196158, Russia; *and* 13/2 Dunaisky Prospect, St. Petersburg 196158, Russia;

(6) *JSC GOZ Obukhov Plant,* a.k.a., the following one alias:

—GOZ Obukhov Plant.

Prospekt Obukhovskoi Oboroni 120, Saint Petersburg, 192012, Russia;

(7) *JSC Institute of Instrumentation—Novosibirsk Plant Comintern (NPO NIIP–NZIK),*

Planetnaya Street 32, Novosibirsk, 630015, Russia;

(8) *JSC Scientific Research Institute of Aircraft Equipment (NIIAO),* a.k.a., the following three aliases:

—SRIAE;
—NIIAO; *and*
—Aviation Instrument Scientific Research Institute.

Tupoleva 18, Zhukovsky, Moscow, 140182, Russia;

(9) *Kaluga Scientific Research Radio Technology Institute (KRRTI),* a.k.a., the following two aliases:

—KNIRTI; *and*
—KRRTI.

Lenin Street 2, Zhukov, Kaluga Oblast, 249192, Russia;

(10) *Karst, OOO,* a.k.a., the following four aliases:

—Construction Holding Company Old City—Karst;
—Karst Ltd.;
—LLC Karst; *and*
—Obshcestvo S Ogranichennoi Otvetstvennostyu Karst.

D. 4 Litera A Pomeshchenie 69 ul. Kapitanskaya, St. Petersburg 199397, Russia; *and* 4 Kapitanskaya Street, Unit A, Office 69–N, St. Petersburg 199397, Russia;

(11) *LLC Ruschemtrade,*

St. Mashinostroitelnyj, 3, Rostov-on-Don 344090, Russia; *and* 86/1, Temryuk, Krasnodar 353500, Russia;

(12) *OAO All-Russia Research Institute of Radio Equipment (JSC VNIIRA),* a.k.a., the following three aliases:

—OJSC VNIIRA;

—OAO All-Russia Research Institute of Radio Technology; *and* All-Russian Scientific Research Institute of Radio Equipment.

Shkipersky Protok 19, V.I. St. Petersburg, 199106, Russia;

(13) *OJSC Ural Production Company Vector (UPP Vector),* a.k.a., the following two aliases:

—JSC 'SCP' Vector; *and*

—JSC PPM Vector.

Gagarin Street 28, Ekaterinburg, 620078, Russia;

(14) *Olid Ltd.,* a.k.a., the following one alias:

—OOO Solid.

ul Mira 4, Novorossiysk, Krasnodarskiy kray 630024, Russia;

(15) *Research and Production Association KVANT,* a.k.a., the following one alias:

—NPO Kvant.

Bolshaya Saint Petersburg 73, Velikii-Novgorod 173003, Russia;

(16) *Research and Production Association M.V. Frunze,* a.k.a., the following two aliases:

—NNPO Frunze; *and*

—NZIF.

Gagarin Prospect 174, Nizhny Novgorod, 606950, Russia;

(17) *Ryazan State Instrument Enterprise (RSIE),* a.k.a., the following two aliases:

—RSIE; *and*

—GRPZ.

Seminarskaya Street 32, Ryazan, 390000, Russia;

(18) *Scientific and Production Association ''Lianozovo Electromechanical Plant'' (NPO LEMZ),* a.k.a., the following four aliases:

—JSC LEMZ R&P Corporation;

—OAO Design Bureau Lianozovsky Radars Moscow;

—Lianozovsky Electromechanical factory; *and*

—OAO Design Bureau Lianozovsky Radars Moscow.

Dmitrovskoye Shosse 110, Moscow, 127411, Russia;

(19) *Svyaz Design Bureau, OJSC,* a.k.a., the following one alias:

—KB Svyaz.

Prospect Sokolova 96, Rostov-on-Don 344010, Russia;

(20) *Trans-Flot JSC,* a.k.a., the following one alias:

—JSC Trans-Flot.

ul Ventseka 1/97, Samara 443099, Russia; *and*

(21) *Transpetrochart Co. Ltd.,*

Prospekt Engelsa 30, St. Petersburg 194156, Russia.

Changes to CB, NP and NS Licensing Policy To Reflect That Certain License Applications for CB and NP Items to Russia Will Be Reviewed in Accordance With NS Licensing Policy

In addition to the Entity List changes described above, this final rule revises the licensing policy in three sections of part 742 of the EAR to clarify that BIS's review of license applications for exports, reexports and transfers (in-country) to Russia will take into account and protect U.S. national security interests.

Part 742 of the EAR specifies the licensing policy for CCL based controls. The licensing policies in the respective sections of part 742 provide applicants with advance notice of the likelihood of any particular license application's approval or denial. In addition to considering the licensing policies described in these CCL based controls, BIS reviews each application on its own merits, taking into account the *bona fides* of the parties involved in the transaction, as well as whether the transaction would be detrimental to U.S. national security and foreign policy interests or not, and considering recent international events that may be relevant to whether the U.S. Government should approve or deny a license application.

In this final rule, BIS revises the CCL based controls sections of the EAR to clarify that it will review license applications to export or reexport to Russia items subject to the EAR and controlled for chemical and biological weapons proliferation (CB), nuclear nonproliferation (NP) or national security (NS) reasons under a presumption of denial, if the items proposed for export or reexport would make a direct and significant contribution to Russia's military capabilities. This final rules revises §§ 742.2 and 742.3 of the EAR to clarify that license applications for items controlled for CB and NP reasons will be reviewed in accordance with the revised licensing policies in paragraph (b)(4) of both §§ 742.2 and 742.3 and with the revised licensing policy in paragraph (b)(7) of § 742.4 of the EAR. This rule revises § 742.4(b)(7) of the EAR to clarify that license applications for items controlled for NS reasons will be reviewed under a presumption of denial if the items would make a direct and significant contribution to Russia's military capabilities, including but not limited to, the major weapons systems described in Supplement No. 7 to part 742 of the EAR.

BIS is imposing this review policy in order to protect U.S. national security interests and to ensure the efficacy of existing sanctions on Russia for violating international law and fueling the conflict in eastern Ukraine. These changes will also assist applicants because they provide advance warning that BIS's review of license applications will specifically take into account these considerations that are needed in order to protect U.S. national security interests.

As noted above, the U.S. Government has already been taking into account these national security concerns when reviewing license applications for items subject to the EAR proposed for shipment to Russia. Therefore, BIS does not anticipate that the changes in this final rule will result in an increase in the number of license applications for items destined to Russia that are denied. However, BIS anticipates that license applicants will benefit by this clarification of existing policy in part 742 of the EAR.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the entities being added to the Entity List. If the effective date of this rule were delayed to allow for notice and comment, then the entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a proposed rule would give these parties notice of the U.S. Government's intention to place them on the Entity List and would create an incentive for these persons to either accelerate their receipt of items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and/or take other measures to try to limit the impact of the listing on the Entity List once a final rule is published.

In addition to the Entity List changes described above, the changes this regulation makes to the licensing policy in three sections of the CCL based controls part of the EAR (§§ 742.2, 742.3, and 742.4) involve a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). These licensing policy changes are needed in order to protect U.S. national and foreign policy interests. These changes make clear that BIS's review of license applications for exports, reexports and transfers (in-country) to Russia will take into account and protect U.S. national security interests. This review policy is needed in order to protect U.S. national security interests and to ensure the efficacy of existing sanctions on Russia for violating international law and fueling the conflict in eastern Ukraine.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

For the reasons stated in the preamble, the Bureau of Industry and Security amends parts 742 and 744 of the Export Administration Regulations (15 CFR parts 730–774) as follows:

PART 742—[AMENDED]

■ 1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 2. Section 742.2 is amended by revising paragraph (b)(4) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined for the People's Republic of China or Russia, will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7).

* * * * *

■ 3. Section 742.3 is amended by revising paragraph (b)(4) to read as follows:

§ 742.3 Nuclear nonproliferation.

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined to the People's Republic of China or Russia, will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7).

* * * * *

■ 4. Section 742.4 is amended by revising paragraph (b)(7) to read as follows:

§ 742.4 National security.

* * * * *

(b) * * *

(7) For the People's Republic of China (PRC), there is a general policy of approval for license applications to export, reexport, or transfer items to civil end-uses. There is a presumption of denial for license applications to export, reexport or transfer items that would make a direct and significant contribution to the PRC's or Russia's military capabilities such as, but not limited to, the major weapons systems described in Supplement No. 7 to part 742 of the EAR.

* * * * *

PART 744—[AMENDED]

■ 5. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p.

786; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016).

■ 6. Supplement No. 4 to part 744 is amended:

■ a. By adding under the destination of Crimea region of Ukraine, in alphabetical order, two entities; and

■ b. By adding under the destination of Russia, in alphabetical order, twenty-one Russian entities.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	* *	*	*
CRIMEA REGION OF UKRAINE.	* *	* *	*	*
	Crimean Ports, a.k.a., the following three aliases: —State Unitary Enterprise of the Republic of Crimea 'Crimean Ports'; —Sue RC 'KMP'; *and* —Sue RK 'Crimean Ports'. 28 Kirov Street, Kerch, Crimea Region of Ukraine 98312.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	Crimean Railway, a.k.a., the following three aliases: —Federal State Unitary Enterprise 'Crimean Railway'; —Krymzhd; *and* —The Railways of Crimea. 34 Pavlenko Street, Simferopol, Crimea Region of Ukraine 95006.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND DATE OF 12/27/16].
	* *	* *	*	*
*	* *	* *	*	*
RUSSIA	* *	* *	*	*
	DJSC Factory Krasnoe Znamya, a.k.a., the following five aliases: —OJSC Factory Krasnoe Znamya; —OAO Zavod Krasnoe Znamya; —AO Krasnoye Znamya; —Krasnoye Znamya Plant OAO; *and* —Krasnoye Znamya Plant JSC. Shabulina Travel 2a, Ryazan, 390043, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	Ekran Scientific Research Institute, FSUE, a.k.a., the following one alias: —FGUP Ekran. Kirov Avenue 24, Samara 443022, Russia; *and* Krzhizhanovskogo Street 20/30, Moscow, 117218, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	ElTom Research and Production Company, a.k.a., the following one alias: —NPP ElTom. Garshin Street 11, Tomilino, Lyuberetsky, Moscow, 140070, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	FSUE FNPC Nizhegorodsky Scientific Research Institute of Radiotechnics (NNIIRT), Shaposhnikov Street 5, Nizhny Novgorod, 603950, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Institut Stroiproekt, AO, a.k.a., the following six aliases: —Aktsionernoe Obshcestvo Institut Stroiproekt; —AO Institut Stroiproekt; —AO Institute Stroyproekt (f.k.a., Institut Stroiproekt Zakrytoe Aktsionernoe Obshchestvo); —Institute Stroyproect; —Stroyproekt; *and* —Stroyproekt Engineering Group. D. 13 Korp. 2 LiteraA Prospekt Dunaiski, St. Petersburg 196158, Russia; *and* 13/2 Dunaisky Prospect, St. Petersburg 196158, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	JSC GOZ Obukhov Plant, a.k.a., the following one alias: —GOZ Obukhov Plant. Prospekt Obukhovskoi Oboroni 120, Saint Petersburg, 192012, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	JSC Institute of Instrumentation—Novosibirsk Plant Comintern (NPO NIIP–NZIK), Planetnaya Street 32, Novosibirsk, 630015, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	JSC Scientific Research Institute of Aircraft Equipment (NIIAO), a.k.a., the following three aliases: —SRIAE; —NIIAO; *and* —Aviation Instrument Scientific Research Institute. Tupoleva 18, Zhukovsky, Moscow, 140182, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	Kaluga Scientific Research Radio Technology Institute (KRRTI), a.k.a., the following two aliases: —KNIRTI; *and* —KRRTI. Lenin Street 2, Zhukov, Kaluga Oblast, 249192, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	Karst, OOO, a.k.a., the following four aliases: —Construction Holding Company Old City—Karst; —Karst Ltd.; —LLC Karst; *and* —Obshcestvo S Ogranichennoi Otvetstvennostyu Karst. D. 4 Litera A Pomeshchenie 69 ul. Kapitanskaya, St. Petersburg 199397, Russia; *and* 4 Kapitanskaya Street, Unit A, Office 69–N, St. Petersburg 199397, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	LLC Ruschemtrade, St. Mashinostroitelnyj, 3, Rostov-on-Don 344090, Russia; and 86/1, Temryuk, Krasnodar 353500, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	OAO All-Russia Research Institute of Radio Equipment (JSC VNIIRA), a.k.a., the following three aliases: —OJSC VNIIRA; —OAO All-Russia Research Institute of Radio Technology; *and* All-Russian Scientific Research Institute of Radio Equipment. Shkipersky Protok 19, V.I. St. Petersburg, 199106, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	OJSC Ural Production Company Vector (UPP Vector), a.k.a., the following two aliases: —JSC 'SCP' Vector; *and* —JSC PPM Vector. Gagarin Street 28, Ekaterinburg, 620078, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	Olid Ltd., a.k.a., the following one alias: —OOO Solid. ul Mira 4, Novorossiysk, Krasnodarskiy kray 630024, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	Research and Production Association KVANT, a.k.a., the following one alias: —NPO Kvant. Bolshaya Saint Petersburg 73, Velikii-Novgorod 173003, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	Research and Production Association M.V. Frunze, a.k.a., the following two aliases: —NNPO Frunze; *and* —NZIF. Gagarin Prospect 174, Nizhny Novgorod, 606950, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	Ryazan State Instrument Enterprise (RSIE), a.k.a., the following two aliases: —RSIE; *and* —GRPZ. Seminarskaya Street 32, Ryazan, 390000, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	Scientific and Production Association "Lianozovo Electromechanical Plant" (NPO LEMZ), a.k.a., the following four aliases: —JSC LEMZ R&P Corporation; —OAO Design Bureau Lianozovsky Radars Moscow; —Lianozovsky Electromechanical factory; *and* —OAO Design Bureau Lianozovsky Radars Moscow. Dmitrovskoye Shosse 110, Moscow, 127411, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	Svyaz Design Bureau, OJSC, a.k.a., the following one alias: —KB Svyaz. Prospect Sokolova 96, Rostov-on-Don 344010, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	Trans-Flot JSC, a.k.a., the following one alias: —JSC Trans-Flot. ul Ventseka 1/97, Samara 443099, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].
	* *	* *	*	*
	Transpetrochart Co. Ltd., Prospekt Engelsa 30, St. Petersburg 194156, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR [INSERT FR PAGE NUMBER AND 12/27/16].

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*

Dated: December 20, 2016.

Eric L. Hirschhorn,

Under Secretary of Commerce for Industry and Security.

[FR Doc. 2016–31124 Filed 12–23–16; 8:45 am].

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 161102999–6999–01]

RIN 0694–AH20

Commerce Control List: Updates Based on the 2015 and 2016 Nuclear Suppliers Group (NSG) Plenary Meetings; Conforming Changes and Corrections to Certain Nuclear Nonproliferation (NP) Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to reflect the understandings reached at the June 2015 Nuclear Suppliers Group (NSG) Plenary meeting held in Bariloche, Argentina, and certain understandings reached at the 2016 NSG Plenary meeting held in Seoul, Republic of Korea. The amendments to the EAR based on the 2015 meeting address the nuclear nonproliferation (NP) controls that apply to certain centrifugal multiplane balancing machines described on the Commerce Control List (CCL). The amendments to the EAR based on the 2016 meeting address the NP controls that apply to certain linear displacement measuring systems identified on the CCL. This rule also makes additional changes to the description of these systems on the CCL to fully conform to their description on the NSG Annex. In addition, this rule corrects an error in the technical parameters of the CCL entry that describes certain radiation-hardened TV cameras (including lenses therefor) that are subject to NP controls.

DATES: This rule is effective December 27, 2016.

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Director, Nuclear and Missile Technology Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–1641.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to revise the nuclear nonproliferation (NP) controls that apply to certain items identified on the Commerce Control List (CCL), consistent with U.S. commitments as a participating country in the Nuclear Suppliers Group (NSG). The NSG is a multilateral export control forum that consists of 48 participating countries. The NSG maintains a list of dual-use items that could be used for nuclear proliferation activities. The list is maintained in the NSG Annex to the ''Guidelines for the Transfer of Nuclear Related Dual Use Equipment, Materials, Software and Related Technology'' (the NSG Annex). NSG participating countries share a commitment to prevent nuclear proliferation and the development of nuclear related weapons of mass destruction. In furtherance of that commitment, they have undertaken to impose export controls on listed items. The NSG Guidelines and the Annex thereto are designed to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or related proliferation activities.

This final rule amends the CCL by revising Export Control Classification Number (ECCN) 2B206: (1) To reflect the changes affecting certain linear displacement measuring systems listed in the NSG Annex, based on the understandings reached at the NSG Plenary meeting held in Seoul, Republic of Korea, on June 23 and 24, 2016; and (2) to further revise the description of these systems on the CCL to fully conform to their description on the NSG Annex. This rule also revises ECCN 2B229 to reflect the changes affecting certain centrifugal multiplane balancing machines listed in the NSG Annex, based on the understandings reached at the NSG Plenary meeting held in Bariloche, Argentina, on June 3–5, 2015. In addition, this rule corrects an error in the technical parameters of ECCN 6A203.d, which describes certain radiation-hardened TV cameras identified on the NSG Annex.

ECCN 2B206—Amended To Conform the NP Controls on Linear Displacement Measuring Systems With the NSG Annex (as Updated To Reflect the 2016 NSG Plenary Changes)

This rule amends ECCN 2B206 to more accurately and completely reflect the description of certain dimensional inspection machines listed in the NSG Annex. These changes are related to BIS's September 20, 2016, final rule (81 FR 64656) that included certain amendments to ECCN 2B006 to reflect the December 2015 updates to the List of Dual-Use Goods and Technologies maintained by participating governments in the Wassenaar Arrangement (WA). The amendments to ECCN 2B006 also affected the scope of the NP controls in that ECCN. Specifically, the September 20, 2016, final rule revised the controls that applied to certain measuring systems by changing the technical parameters in a manner that removed certain linear displacement measuring systems identified on the NSG Annex from control under ECCN 2B006.

As a result of the aforementioned change in the scope of the NP controls in ECCN 2B006, this rule amends ECCN 2B206 by adding a new paragraph .c, consistent with the description of the measuring systems in NSG Annex 1.B.3.b.3. New 2B206.c controls linear displacement measuring systems that contain a ''laser'' and that maintain, for at least 12 hours over a temperature range of ± 1 K around a standard temperature and a standard pressure, both: (1) A ''resolution'' over their full scale of 0.1μm or better; and (2) a ''measurement uncertainty'' equal to or better (less) than (0.2 + L/2000) μm (L is the measured length in millimeters). This rule also adds a Control Note and a Technical Note for new 2B206.c. The Control Note to new paragraph .c indicates that 2B206.c does not control measuring interferometer systems, without closed or open loop feedback, that contain a ''laser'' to measure slide movement errors of machine tools, dimensional inspection machines, or similar equipment. The Technical Note to new paragraph .c states that ''linear displacement,'' for purposes of 2B206.c, means the change of distance between the measuring probe and the measured object.

The text of new paragraph .c to ECCN 2B206 also reflects the updates to the NSG Annex based on the understandings reached at the 2016 NSG Plenary meeting held in Seoul, Republic of Korea. Specifically, paragraph .c.1 reads ''Containing a laser,'' which replaces the phrase ''Contain a laser'' that was previously used in 1.B.3.b.3.a on the NSG Annex. In addition, paragraph .c.2 contains the phrase ''Capable of maintaining,'' which replaces the word ''Maintain'' that was previously used in 1.B.3.b.3.b on the NSG Annex. Amendments to other ECCNs on the CCL, based on the 2016 NSG Plenary understandings, will be published by BIS in a separate rule.

This rule also moves the ''Control Notes to ECCN 2B206'' and the ''Technical Note to ECCN 2B206,'' which were previously located at the end of this ECCN, to the beginning of the ''Items'' paragraph for ECCN 2B206 (*i.e.,* immediately before 2B206.a), because these notes apply to the entire ECCN, unlike the aforementioned notes for new 2B206.c. In addition, the ''ECCN Controls'' paragraphs, which were previously included under the ''List of Items Controlled'' for this ECCN, have been removed, because they duplicated the text of the ''Control Notes to ECCN 2B206'' and, as such, were redundant and potentially confusing.

In addition, this rule corrects two typographical errors in the ''Items'' paragraph of ECCN 2B206. First, the phrase ''1.7 + 1/800 μm threshold'' in the Technical Note to 2B206.a.2 is revised to read ''1.7 + L/800 μm threshold'' to conform with the threshold indicated in 2B206.a.2. Second, the word ''simultaneously'' in the introductory text of 2B206.b is replaced with the word ''simultaneous''.

ECCN 2B229—Amended To Reflect 2015 NSG Plenary Changes

This final rule amends ECCN 2B229 (Centrifugal multiplane balancing machines) by revising paragraph .b.3 to update certain scientific terminology and clarify the technical parameters, therein, to read as follows: ''A minimum achievable residual specific unbalance equal to or less than 10 g-mm/kg per plane.'' This change reflects the 2015 NSG Plenary changes to the description of centrifugal balancing machines in NSG Annex 3.B.3.b and does not affect the scope of the NP controls on these machines. Instead, this rule revises the previous text in ECCN 2B229.b.3 (*i.e.,* ''Capable of balancing to a residual imbalance equal to or less than 0.01 kg × mm/kg per plane'') only to update and clarify the controls described therein, without changing their scope.

ECCN 6A203—Amended To Correct Controls on Radiation-Hardened TV cameras

This rule amends ECCN 6A203 to correct an error in the technical parameters for radiation-hardened TV cameras described in 6A203.d. Specifically, this rule revises the phrase ''total radiation dose greater than 50×10^4 Gy (silicon)'' to read ''total radiation dose greater than 5×10^4 Gy (silicon),'' consistent with the description of these cameras in NSG Annex 1.A.2. Previously, as amended by BIS's final rule published on September 5, 2014 (79 FR 52958), this technical parameter overstated the total radiation dose by a factor of ten (*i.e.,* incorrectly indicating a multiple of ''50,'' instead of ''5'').

License Requirements

All of the items affected by the amendments to ECCN 2B229, 2B206 or 6A203, as described above, require a license for NP reasons and AT reasons to the destinations indicated under NP Column 1 or AT Column 1, respectively, on the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR). In addition, these items may require a license for reasons described elsewhere in the EAR (*e.g.,* the end-user/end-use controls described in part 744 of the EAR or the embargoes and other special controls described in part 746 of the EAR).

Effect of This Rule on the Scope of Certain EAR Controls

The changes made by this rule only marginally affect the scope of the EAR controls on the affected items in ECCN 2B206, 2B229, or 6A203. Specifically, the amendments in this rule, which add a new paragraph .c to ECCN 2B206 and revise ECCN 2B229.b.3 and ECCN 6A203.d, are not the result of any change in the scope of the controls for these items on the NSG Annex. Therefore, the purpose of this final rule is not to increase the scope of the NP controls in these ECCNs beyond what should have been the case, previously, but merely to accurately reflect the controls on the affected items, consistent with the descriptions in NSG Annex 1.B.3.b.3, 3.B.b.3, and 1.A.2, respectively.

The addition of a new paragraph .c to ECCN 2B206 to control linear displacement measuring systems, consistent with the description of these systems in NSG Annex 1.B.3.b.3, effectively reinstates the NP controls and anti-terrorism (AT) controls, but not the national security (NS) controls, that applied to such systems under ECCN 2B006, prior to the publication of BIS's September 20, 2016, final rule (81 FR 64656) that amended ECCN 2B006 to reflect the December 2015 updates to the Wassenaar Arrangement (WA) List of Dual-Use Goods and Technologies. The September 20, 2016, amendments to ECCN 2B006 removed certain linear displacement measuring systems identified on the NSG Annex from control under ECCN 2B006. This final rule amends ECCN 2B206 to reinstate the NP and AT controls that applied to the affected linear displacement measuring systems prior to the September 20, 2016, final rule. The 2016 NSG Plenary updates reflected in new paragraph 2B206.c.1, and the corrections in the Technical Note to 2B206.a.2 and the introductory text of 2B206.b, do not affect the scope of the controls in ECCN 2B206. Therefore, BIS does not anticipate a significant change in the number of license applications that will have to be submitted, as a result of the amendments made to ECCN 2B206 by this rule.

The amendments to ECCN 2B229 do not affect the scope of the NP controls that apply to centrifugal multiplane balancing machines. These amendments revise 2B229.b.3, consistent with NSG Annex 3.B.3.b, to update certain scientific terminology and clarify the technical parameters, therein, and are not intended to affect the scope of the controls in this ECCN. Therefore, BIS does not anticipate a significant change in the number of license applications that will have to be submitted, as a result of the amendments made to ECCN 2B229 by this rule.

The amendments to ECCN 6A203 correct an error in the technical parameters for radiation-hardened TV cameras described in 6A203.d, which previously misstated the technical parameters for these cameras by indicating a multiple of ''50,'' instead of ''5'' (as indicated in NSG Annex 1.A.2), for the ''total radiation dose.'' Because only a small number of license applications are submitted to BIS for these cameras, BIS does not anticipate a significant change in the number of license applications that will have to be submitted, as a result of the amendments made to ECCN 6A203 by this rule.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016 (81 FR 52587 (Aug. 8, 2016)),

has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, consistent with Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget, by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue NW., Room 2705, Washington, DC 20230 or by email to *RPD2@bis.doc.gov.*

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). Immediate implementation of these amendments is non-discretionary and fulfills the United States' international commitment to administer controls on specified items consistent with the Guidelines, and the Annex thereto, maintained by the Nuclear Suppliers Group (NSG). The NSG contributes to international security and regional stability through the harmonization of export controls and seeks to ensure that exports do not contribute to the development of nuclear weapons. The NSG consists of 48 member countries that act on a consensus basis and the amendments set forth in this rule revise the scope of nuclear nonproliferation controls in the EAR to more fully reflect the controls implemented by other NSG participating countries, consistent with the NSG Guidelines and the Annex thereto. Because the United States is a significant exporter of the items addressed in this rule, immediate implementation of these regulatory provisions is necessary in order for the NSG to continue to meet its objectives. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between the export controls maintained by the United States and the export control measures implemented by other NSG members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely and coordinated manner.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

Supplement No. 1 to Part 774—[Amended]

■ 2. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B206 is amended, under the ''List of Items Controlled'' section, by removing the ''ECCN Controls'' paragraph and by revising the ''Items'' paragraph to read as follows:

2B206 Dimensional inspection machines, instruments or systems, other than those described in 2B006, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: * * *
Related Definitions: * * *
Items:

Control Notes to ECCN 2B206: (1) Machine tools that can be used as measuring machines are controlled by ECCN 2B206 if they meet or exceed the control parameters specified in this entry for the measuring machine function. (2) The machines described in ECCN 2B206 are controlled by this entry if they exceed the specified control threshold anywhere in their operating range.

Technical Note to ECCN 2B206: All parameters of measurement values in this entry represent plus/minus, *i.e.,* not total band.

a. Computer controlled or numerically controlled coordinate measuring machines (CMM) with either of the following characteristics:

a.1. Having only two axes with a maximum permissible error of length measurement along any axis (one dimension), identified as any combination of $E_{0x\ MPE}$, $E_{0y\ MPE}$ or $E_{0z\ MPE}$, equal to or less (better) than (1.25 + L/1000) μm (where L is the measured length in mm) at any point within the operating range of the machine (*i.e.,* within the length of the axis), according to ISO 10360–2 (2009); *or*

a.2. Having three or more axes with a three dimensional (volumetric) maximum permissible error of length measurement, identified as $E_{0,\ MPE}$, equal to or less (better) than (1.7 + L/800) μm (where L is the measured length in mm) at any point within the operating range of the machine (*i.e.,*

within the length of the axis), according to ISO 10360–2 (2009).

Technical Note to 2B206.a.2: The $E_{0,MPE}$ of the most accurate configuration of the CMM specified according to ISO 10360–2 (2009) by the manufacturer (*e.g.,* best of the following: Probe, stylus length, motion parameters, environment) and with all compensations available shall be compared to the 1.7 + L/800 µm threshold.

b. Systems for simultaneous linear-angular inspection of hemishells, having both of the following characteristics:

b.1. ''Measurement uncertainty'' along any linear axis equal to or less (better) than 3.5 µm per 5 mm; *and*

b.2. ''Angular position deviation'' equal to or less than 0.02°.

c. Linear displacement measuring systems having both of the following characteristics:

c.1. Containing a ''laser;'' *and*

c.2. Capable of maintaining, for at least 12 hours over a temperature range of ± 1 K around a standard temperature and a standard pressure, both:

c.2.a. A ''resolution'' over their full scale of 0.1µm or better; *and*

c.2.b. A ''measurement uncertainty'' equal to or better (less) than (0.2 + L/2000) µm (L is the measured length in millimeters).

Control Note to 2B206.c: 2B206.c does not control measuring interferometer systems, without closed or open loop feedback, containing a ''laser'' to measure slide movement errors of machine tools, dimensional inspection machines, or similar equipment.

Technical Note to 2B206.c: In 2B206.c, ''linear displacement'' means the change of distance between the measuring probe and the measured object.

■ 3. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B229 is amended in the ''Items'' paragraph, under the ''List of Items Controlled'' section, by revising paragraph .b.3 to read as follows:

2B229 Centrifugal multiplane balancing machines, fixed or portable, horizontal or vertical, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. * * *

b.3. A minimum achievable residual specific unbalance equal to or less than 10 g-mm/kg per plane; *and*

* * * * *

■ 4. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers, ECCN 6A203 is amended in the ''Items'' paragraph, under the ''List of Items Controlled'' section, by revising paragraph .d to read as follows:

6A203 High-speed cameras, imaging devices and ''components'' therefor, other than those controlled by 6A003 (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

d. Radiation-hardened TV cameras, or lenses therefor, ''specially designed'' or rated as radiation hardened to withstand a total radiation dose greater than 5×10^4 Gy (silicon) without operational degradation.

* * * * *

Dated: December 20, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–31120 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[USCBP–2016–0011; CBP Dec. 16–29]

RIN 1515–AE11

Importations of Certain Vehicles and Engines Subject to Federal Antipollution Emission Standards

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations relating to the importation into the United States of certain vehicles and engines under the Clean Air Act (CAA) in order to harmonize the documentation requirements applicable to different classes of vehicles and engines that are subject to the CAA's emission standards. This document further amends the regulations to permit importers to file the required U.S. Environmental Protection Agency (EPA) Declaration Forms with CBP electronically, and amends non-substantive provisions to update regulatory citations and delete obsolete provisions.

DATES: Effective January 26, 2017.

FOR FURTHER INFORMATION CONTACT: For questions related to the filing of EPA forms with CBP, please contact William Scopa, Partner Government Agencies Interagency Collaboration Division, Office of Trade, Customs and Border Protection, at *William.R.Scopa@cbp.dhs.gov.* For questions related to EPA's vehicle and engine imports program, please contact Holly Pugliese at *pugliese.holly@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 17, 2016, U.S. Customs and Border Protection (CBP) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (81 FR 54763) proposing to amend title 19 of the Code of Federal Regulations (19 CFR) in order to harmonize the documentation requirements applicable to different classes of vehicles and engines that are subject to the Clean Air Act's (CAA's) emission standards.

Sections 203(a) and (b)(2) of the CAA, 42 U.S.C 7522, deal with the importation of new motor vehicles and new motor engines and the requirement of a Certificate of Conformity (COC) as prescribed by regulation authorized by the CAA. Without a valid COC, the admission of new motor vehicles and new motor engines into the United States will be denied. Section 208 of the CAA, 42 U.S.C. 7542, provides that the Administrator of the U.S. Environmental Protection Agency (EPA) may require a manufacturer to produce, among other items, all records, files, and papers necessary to demonstrate compliance with applicable CAA provisions. Section 213(d) of the CAA, 42 U.S.C. 7547, requires that nonroad vehicles and engine standards be enforced in the same manner as those applicable to onroad vehicles and engines.

These statutory provisions are implemented in the CBP regulations at §§ 12.73 and 12.74 of title 19 of the Code of Federal Regulations (19 CFR 12.73 and 12.74). Section 12.73 provides for ''Motor vehicle and engine compliance with Federal antipollution emission requirements,'' and section 12.74 provides for ''Nonroad and stationary engine compliance with Federal antipollution emission requirements.'' EPA makes available Declaration Forms 3520–1 (for the importation of passenger vehicles, highway motorcycles and their corresponding engines) and 3520–21 (for the importation of heavy-duty engines and nonroad engines, including engines already installed in vehicles or equipment) for purposes of compliance with the CAA.

The final rule conforms the entry filing requirements applicable to EPA Declaration Form 3520–21 to those that are currently applicable to EPA Declaration Form 3520–1. Sections 12.73(i) and 12.74(b) and (d) are

amended to require importers of stationary, nonroad or heavy-duty highway engines (including engines incorporated into vehicles or equipment) to file EPA Declaration Form 3520–21 at the time of entry, except when filing a weekly entry from a foreign trade zone (FTZ) in accordance with 19 CFR 146.63(c)(1). An importer of engines is exempt from the requirement to file an EPA Declaration Form 3520–21 if the importer holds a valid EPA COC and the engines are labeled to show compliance with applicable emission requirements.

Further, the final rule permits importers to file the required EPA Declaration Forms with CBP electronically. The electronic transmission of EPA Declaration Forms 3520–1 and 3520–21 to CBP will automate and enhance the interaction between the EPA and CBP by facilitating electronic collection, processing, sharing, and review of requisite trade data and documents during the cargo import and export process. Lastly, this rule updates regulatory citations and deletes obsolete provisions.

The NPRM solicited for public comments on the proposed rulemaking. The public comment period closed on September 16, 2016.

Discussion of Comments

Four commenters responded to the solicitation of comments to the proposed rule. A description of the comments received, together with CBP's analysis, is set forth below.

Comment: Two commenters expressed a concern with regard to EPA's handling of Type 06 (FTZ) ''weekly estimate'' entry filings. According to the proposed rule, EPA is requiring all filers to demonstrate compliance with all applicable laws and regulations at the time of cargo release, in particular the filing of EPA Declaration Forms 3520–1 and 3520–21. (19 CFR 12.73(i)(2)). The commenters stated that many vehicle and engine importers would not be able to provide accurate information, such as VIN or engine serial numbers, at the time of entry. When the weekly estimated entry is prepared and filed, the identity of the vehicles and/or engines is many times unknown since the vehicle/engine has not gone into production or has not been ordered for distribution. Both commenters propose to implement the ''dual option'' system that is being used by other Partner Government Agencies (PGAs), separating the ''regular'' Type 06 entry filers, which are required to present PGA data at time of entry/cargo release, from the ''weekly'' Type 06 entry filers, which are required to present PGA data at the time of entry summary.

CBP Response: CBP reviewed the concerns raised by the commenters and is in agreement with the commenters' proposal. When a Type 06 (FTZ) entry is filed, the vehicle and engine data used by EPA is required at time of entry/ACE cargo release. When a ''weekly estimate'' Type 06 entry is filed, the vehicle and engine data used by EPA is required at time of entry summary.

Comment: One of the commenters asked CBP to extend the exemption from filing EPA Declaration Form 3520–21 to any engines and equipment that are exempt from filing that form under the provisions of 40 CFR 1068.201 (test engines and equipment) and 40 CFR 1068.230 (engines and equipment for export). The commenter stated that 40 CFR part 1068, subpart C, provides for the exemption of certain engines and equipment from ''some or all of the prohibited acts'' of 40 CFR 1068.101(a)(1). The commenter further stated that EPA has deemed such engines and equipment as appropriate for entry into the U.S. commerce and as such are substantively no different from engines and equipment that are covered by a valid COC that is issued under the standard-setting part (*e.g.* 40 CFR part 1033).

CBP Response: CBP does not agree that the exemption for filing EPA Declaration Form 3520–21 should be extended to engines and equipment for testing and export covered by 40 CFR 1068, subpart C. CBP also does not agree that such engines and equipment are ''substantively no different'' from engines produced under a valid COC. If engines and equipment are produced under an exemption for testing or export, the exemption is needed because these engines and equipment are different than the certified engines and equipment. It is therefore not correct to consider any exemption under Part 1068 as a basis for determining engines and equipment to be ''appropriate for entry into the U.S. commerce.'' Exempted engines and equipment are permitted to enter the U.S. commerce subject to certain terms and conditions to ensure compliance with the regulations. Filing import information such as that prescribed by EPA Declaration Form 3520–21 assists with compliance oversight.

Comment: Another commenter expressed a concern with the proposed regulatory language at 19 CFR 12.74(c)(3) which references temporary exemptions, including the partially complete engine exemption under 40 CFR 1068.325(g). The commenter stated that the proposed language requires a CBP bond, whereas the underlying EPA regulation at 40 CFR 1068.325 states that EPA ''may ask'' CBP to require a specific bond amount. It is the opinion of the commenter that the proposed language in 19 CFR 12.74(c)(3) would go beyond the EPA requirements and increase the burden on users of the partially complete engine exemption by making the bond and associated administrative process an absolute requirement. The commenter suggested to use ''may be required'' instead of the proposed ''is required'' language. The commenter further noted that a similar change would be needed at the beginning of 12.74(c) to harmonize the proposed language in the NPRM with the conditional language in 40 CFR 1068.325.

CBP Response: CBP believes that there is a no conflict between the EPA regulation and the proposed rule regarding the bond requirements and that the proposed rule does not need to be harmonized with the EPA regulation. The proposed rule does not change the substantive bond requirement for conditional entry for nonconforming nonroad engines claiming exemption under the EPA regulations, it only allows for conditional release in conjunction with a bond filed in the Automated Commercial Environment (ACE).

The commenter potentially confuses the different contexts of import bond requirements. The confusion stems from the use of the term ''bond'' in EPA regulations and CBP regulations. Under 19 CFR 127.74(c)(3) and 19 CFR 113.62, CBP requires a single entry or a continuous bond, to be applied for the conditional release of imported engines as required in all cases (''Basic Import Entry'' bond). In contrast, the ''bond'' referenced in 40 CFR 1068.325, which ''may be required,'' is addressing situations where EPA ''may'' want to secure compliance with relevant EPA regulations and have CBP require additional bonding.

Lastly, the substance of 19 CFR 12.74(c) is unchanged by the proposed rule, and has been in place since published in 1998. The only change is to provide for the use of Basic Import Entry bonds submitted through ACE.

Comment: The same commenter requested that the proposed language in 19 CFR 12.74 include permanent exemptions listed in 40 CFR 1068.315(a)–(h), including the manufacturer-owned exemption in 40 CFR 1068.315(b), to make it clear that permanent exemptions also present a valid basis for admission. According to the commenter, CBP and EPA

regulations will have apparent inconsistences and it will be easy for users of those regulations to be confused if no clarifying section is added.

CBP Response: CBP agrees with the inclusion of the permanent exemptions listed in 40 CFR 1068.315 with the exemptions listed in 19 CFR 12.74(c)(3). As such, the regulatory language for 19 CFR 12.74(c)(3) will be amended accordingly below. In addition, the introductory text in section 19 CFR 12.73(h) will be amended by adding reference to 40 CFR parts 85, 86 and 1068 to fully cover the current list of both permanent and temporary exemptions and exclusions found in all applicable EPA regulatory parts.

Comment: The commenter also requested clarification as to whether an imported on-highway motorcycle engine that is separate from, and not installed in, an on-highway motorcycle is subject to 19 CFR 12.73. The commenter pointed out that the EPA Declaration Form 3520–1, recognized by CBP, includes a Code W = ''Non-chassis mounted engine to be used in . . . a motorcycle . . . which will be covered by an EPA COC prior to the introduction into commerce.'' Unlike other codes on the form, there is no listed underlying regulation associated with the use of Code W.

CBP Response: CBP agrees that a clarification is appropriate as suggested by the commenter. The regulatory text in 19 CFR 12.73(a) will be amended to include separately-imported on-highway motorcycle engines.

Comment: The same commenter requested clarification of a passage in the Preamble in the NPRM which says ''although existing 19 CFR 12.73 does not expressly require the submission of the EPA Declaration Form 3520–1, it does require that the same information captured by that form be submitted to CBP.'' Specifically, the commenter asked whether the EPA exemption policy for certificate-holding manufacturers (OEMs) to import new motor vehicles and engines without filing Declaration Forms 3520–1 or 3520–21 still applied under 19 CFR 12.73. The commenter expressed concern that if this exemption did no longer apply, it would be inconsistent with both current EPA and CBP requirements, as well as guidance issued by EPA that summarizes the filing exemptions for OEMs.

CBP Response: The statement in the NPRM simply pointed out that the current regulations at 19 CFR 12.73 do not specifically refer to EPA Declaration Form 3520–1, but require all the data elements listed in that form. 19 CFR 12.73(i)(3) (A)–(K) currently provides a list of the information that must be included in an importer's declaration. This information mirrors the information that is required to be filled in the EPA Declaration Form 3520–1 itself. CBP is only updating the regulations to specifically reference EPA Declaration Form 3520–1 and is not changing the provision that exempts OEMs who import products for which they hold a valid EPA COC from filing the form.

Comment: A commenter stated that it supported CBP's plan to harmonize the filing requirements. However, it pointed out that EPA must update the existing EPA guidance document titled ''Procedures for Importing Vehicles and Engines into the U.S.'' which states the following on Page 3, related to importers currently subject to the requirements of EPA Declaration Form 3520–21: ''As with vehicles, OEMs importing new certified engines do not need to submit EPA Declaration Form 3520–21 to U.S. Customs.'' The commenter further noted that EPA must also update Declaration Form 3520–21 to reflect the change of the filing requirements.

CBP Response: CBP agrees that certain statements in certain EPA guidance documents contradict each other regarding when OEMs currently need to file EPA Declaration Form 3520–21. In consultation with CBP, EPA will ensure that all of EPA's documentation regarding the amended regulations accurately reflects that OEMs importing their own certified engines do not need to file EPA Declaration Form 3520–21.

Comment: The fourth commenter wrote that she had no objection to the proposed changes as long as the compliance with anti-pollution emission standards was not compromised for the sake of efficiency. The commenter further stated that accurate records for vehicle and engine imports must be maintained in order to ensure compliance with the CAA.

CBP Response: CBP believes that electronic filing of EPA Declaration Forms will support key modernization initiatives, expedite the entry and clearance process, enhance targeting and enforcement objectives, and connect CBP with PGAs and the trade community through a single-window access point.

Conclusion

After review of the comments, CBP has decided to adopt as final the proposed rule published in the **Federal Register** on August 17, 2016 with the changes described above.

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). This final rule would modify the requirements for the submission of EPA Declaration Form 3520–21. Currently, importers are required to fill out the form, but are only required to submit it to CBP upon request. This final rule would require importers to file EPA Declaration Form 3520–21 with CBP with the filing of entry information, and no later than the filing of entry summary, unless the importer is a manufacturer of nonroad or stationary engines, including engines incorporated into vehicles and equipment, and holds a valid EPA certificate of conformity for those engines and the engines are labeled to show compliance with applicable emission requirements. As this form has already been completed by the filer by the time the filing is required under this rule, the cost of actually submitting it to CBP is negligible. This rule would also explicitly add electronic filing as an accepted method of form submission. Importers will still be able to file the form by paper if they so choose. This change will affect all importers who are covered by EPA Declaration Form 3520–21, including small importers. Therefore, it is likely to have an impact on a substantial number of small entities. However, the only costs

incurred are the negligible costs of submitting the already completed form to CBP along with other required entry documents. These costs do not rise to the level of significance. Therefore, CBP certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final rule was previously reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control numbers OMB 2060–0104 (EPA Declaration Form 3520–1, ''Importation of Motor Vehicles and Motor Vehicle Engines Subject to Federal Air Pollution Standards''), OMB 2060–0320 (EPA Declaration Form 3520–21, ''Importation of Engines, Vehicles and Equipment Subject to Federal Air Pollution Standards''), and OMB 1405–0105 (Department of State form DS–11504, ''Request for Customs Clearance of Merchandise''). As importers are already required under existing regulations to complete the EPA Declaration Forms and either submit them to CBP or retain them in their records, and the burden estimates in the above-identified OMB approved information collection requests presume the forms are submitted to CBP, there are no new collections of information stated in this document. In this regard, it is noted that although existing 19 CFR 12.73 does not expressly require the submission of EPA Declaration Form 3520–1 by name, it does require that the same information captured by that form be submitted to CBP. Similarly, shipments sent from abroad to foreign diplomatic or consular missions in the U.S., or their personnel, currently must be cleared by respondents submitting to CBP a Department of State-approved form DS–1504; therefore, this document does not impose any new collections of information by requiring the DS–1504 to be presented to CBP for purposes of claiming an exemption from emission documentation requirements.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12, and the specific authority citation for sections 12.73 and 12.74, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

* * * * *

■ 2. The undesignated center heading preceding § 12.73 is revised to read as follows:

Entry of Motor Vehicles, Engines, and Equipment Containing Engines Under the Clean Air Act, as Amended

■ 3. In § 12.73:
■ a. The section heading is revised;
■ b. Paragraph (a) is revised;
■ c. Paragraph (b)(1) is amended by removing the word ''shall'' and adding in its place the word ''will''; removing the word ''Customs'' and adding in its place the term ''CBP'', and; removing the term ''ICI's'' and adding in its place the language, ''Independent Commercial Importers'';
■ d. Paragraph (b)(2) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'';
■ e. Paragraphs (c)(3) and (4) are removed;
■ f. Paragraphs (d), (e) introductory text, (e)(4), and (f) are revised;
■ g. Paragraph (g)(2) is amended by removing the reference to ''(i)(4)'' and adding in its place a reference to ''(i)(6)'';
■ h. Paragraph (h) introductory text is revised;
■ i. Paragraph (h)(1) is amended, in the first sentence, by removing the word ''Any'' and adding in its place the following language, ''A motor vehicle imported for repairs is any'';
■ j. Paragraph (h)(2) is amended, in the first sentence, by removing the word ''Any'' and adding in its place the following language, ''A test vehicle is any'';
■ k. Paragraph (h)(3) is amended, in the first sentence, by removing the word ''Any'' and adding in its place the following language, ''A prototype vehicle is any'', and in the second sentence, by removing the word ''shall'' and adding in its place the word ''will'', and by removing the parenthetical reference ''(1)'' and adding in its place the parenthetical reference ''(l)'';
■ l. Paragraph (h)(4) is amended, in the first sentence, by removing the word ''Any'' and adding in its place the following language, ''A display vehicle is any'';
■ m. Paragraphs (h)(5) through (7) are revised;
■ n. Paragraphs (i) through (k) are revised;
■ o. Paragraph (l) is amended by removing the word ''shall'' and adding in its place the word ''will'' and removing the word ''Customs'' and adding in its place the term ''CBP''; and
■ p. Paragraph (m) is revised.

The revisions read as follows:

§ 12.73 Importation of motor vehicles and motor vehicle engines.

(a) *Applicability of EPA requirements.* This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and found in 40 CFR parts 85, 86, 1036, 1037, and 1068. The EPA regulations should be consulted for more detailed information concerning EPA emission requirements. This section applies to imported motor vehicles; this section also applies to separately imported engines only if they will be installed in highway motorcycles or heavy-duty motor vehicles. All references in this section to ''motor vehicles'' include these highway motorcycles and heavy-duty engines. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations.

* * * * *

(d) *Importation of vehicles by an Independent Commercial Importer (ICI).* An ICI is generally an importer that does not have a contract with a foreign or domestic motor vehicle manufacturer for distributing products into the United States market (*see* 40 CFR 85.1502). ICIs act independently of motor vehicle manufacturers, but are required to bring motor vehicles into compliance with all applicable emissions requirements found in 40 CFR part 86 and any other applicable requirements of the Clean Air Act. Before the vehicle is deemed to be in compliance with applicable emission requirements and finally admitted into the United States, the ICI must keep the vehicle in storage for a 15-business day period. This period follows notice to EPA of completion of the compliance work to give EPA the opportunity to conduct confirmatory testing and inspect the vehicle and records. The 15-business day period is part of the 120-

day period in which an ICI must bring the vehicle into compliance with applicable emission requirements. A motor vehicle may also be conditionally admitted by an ICI if it meets the requirements in 40 CFR 85.1505 or 85.1509. Individuals and businesses not entitled to enter nonconforming motor vehicles may arrange for their importation through an ICI certificate holder. In these circumstances, the ICI will not act as an agent or broker for CBP transaction purposes unless it is otherwise licensed or authorized to do so.

(e) *Exemptions and exclusions from emission requirements based on age of vehicle.* The following motor vehicles may be imported by any person and do not have to be shown to be in compliance with emission requirements before they are entitled to admissibility:

* * * * *

(4) Highway motorcycles manufactured before January 1, 1978;

* * * * *

(f) *Exemption for exports.* A new motor vehicle intended solely for export to a country not having the same emission standards applicable in the United States is not required to be covered by an EPA certificate of conformity if both the vehicle and its container bear a label or tag indicating that it is intended solely for export. 40 CFR 85.1709.

* * * * *

(h) *Other exemptions and exclusions.* EPA regulations in 40 CFR parts 85, 86 and 1068 allow for exempting or excluding vehicles from certification requirements. The following scenarios illustrate several examples of exemptions or exclusions that apply only if prior approval has been obtained in writing from EPA:

* * * * *

(5) *Racing cars.* A racing car is any vehicle that meets one or more of the criteria found at 40 CFR 85.1703(a), and that will not be registered or licensed for use on or operated on public roads or highways in the United States. *See also* 40 CFR 85.1511(e).

(6) *National security importations.* A national security importation includes any motor vehicle imported for purposes of national security by a manufacturer. 40 CFR 85.1511(c)(1), 85.1702(a)(2) and 85.1708; and

(7) *Hardship exemption.* A hardship exemption includes any motor vehicle imported by anyone qualifying for a hardship exemption. 40 CFR 85.1511(c)(2).

(i) *Documentation requirements*—(1) *Exception for certain companies that manufacture and import motor vehicles.* The special documentation requirements of this paragraph do not apply to the importation of motor vehicles by the company that manufactures the motor vehicles if the motor vehicles are covered by a valid EPA Certificate of Conformity (COC) held by the manufacturer and the motor vehicles are labeled to show compliance with applicable emission requirements pursuant to paragraph (b)(1) of this section.

(2) *Release.* CBP will not release a motor vehicle from custody unless the importer has submitted all documents necessary to demonstrate compliance with all applicable laws and regulations.

(3) *Required EPA documentation.* Unless otherwise exempt, importers of motor vehicles must submit one of the following EPA declaration forms to CBP at the time of entry, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary:

(i) For heavy-duty motor vehicle engines, whether they are installed in a vehicle or separately imported as loose engines, submit EPA Declaration Form 3520–21, ''Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations;''

(ii) For all other motor vehicles, submit EPA Declaration Form 3520–1, ''Importation of Motor Vehicles and Motor Vehicle Engines Subject to Federal Air Pollution Regulations.''

(4) *Filing method.* The EPA declaration forms required to be submitted to CBP pursuant to paragraph (i)(3) of this section must be filed with CBP electronically in the Automated Commercial Environment (ACE) or via any other CBP-authorized electronic data interchange system, or as a paper filing, at the time of entry, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary.

(5) *Recordkeeping.* Documents supporting the information required in EPA Declaration Form 3520–1 must be retained by the importer for a period of at least five (5) years in accordance with § 163.4 of this chapter and must be provided to CBP upon request.

(6) *Documentation for diplomatic or foreign military personnel exemption.* In order for a diplomat or foreign military personnel to claim an exemption pursuant to paragraph (g)(2) of this section, CBP must receive a Department of State-approved form DS–1504 (''Request for Customs Clearance of Merchandise'') or its electronic equivalent.

(j) *Release under bond.* If an EPA declaration form filed in accordance with paragraph (i)(3) of this section states that the entry is being filed under one or more of the exemptions and exclusions identified in paragraph (h)(1), (2), (3), or (4) of this section, the entry will be accepted only if the importer, consignee, or surety, as appropriate, files a basic importation and entry bond containing the bond conditions set forth in § 113.62 of this chapter, or files electronically in ACE or via any other CBP-authorized electronic data interchange system. The importer or consignee must deliver to CBP, either at the port of entry or electronically, documentation of EPA approval before the exemption or exclusion indicated on the EPA declaration form expires, or before some later deadline specified by the Center director based on good cause. If the EPA approval is not delivered to the port director within the specified period, the importer or consignee must deliver or cause to be delivered to the port director those vehicles which were released under a bond required by this paragraph. In the event that the vehicle or engine is not redelivered within five (5) days following the date the exemption or exclusion indicated on the EPA declaration form expires, or any later deadline specified by the port director, whichever is later, liquidated damages will be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, in the amount that would have been assessed under a single entry bond.

(k) *Notices of inadmissibility or detention.* If a motor vehicle is determined to be inadmissible before or after release from CBP custody, the importer or consignee will be notified in writing of the inadmissibility determination and/or redelivery requirement. However, if a motor vehicle cannot be released from CBP custody merely because the importer has failed to attach to the entry the documentation required by paragraph (i) of this section, the vehicle will be held in detention by the port director for a period not to exceed 30-calendar days after filing of the entry at the risk and expense of the importer pending submission of the missing documentation. An additional 30-calendar day extension may be granted by the port director upon application for good cause shown. If the requisite EPA declaration form required pursuant to paragraph (i)(3) of this section has not been filed within this deadline, which must not exceed 60 days from the date of entry, CBP will issue a notice of inadmissibility.

* * * * *

(m) *Prohibited importations.* The importation of motor vehicles other than

in accordance with this section and the EPA regulations in 40 CFR parts 85, 86, 600, 1036, 1037, and 1068 is prohibited.

■ 4. In 12.74:

■ a. The section heading and paragraphs (a) through (d) are revised; and

■ b. Paragraph (e) is amended by removing the word ''shall'' and adding in its place the word ''must''.

The revisions read as follows:

§ 12.74 Importation of nonroad and stationary engines, vehicles, and equipment.

(a) *Applicability of EPA regulations.* The requirements governing the importation of nonroad and stationary engines subject to conformance with applicable emission standards of the U.S. Environmental Protection Agency (EPA) are contained in 40 CFR parts 1033 through 1068. These EPA regulations should be consulted for detailed information as to the admission requirements for subject nonroad and stationary engines. EPA emission regulations also apply to vehicles and equipment with installed engines and all references in this section to nonroad or stationary engines include the vehicles and equipment in which the engines are installed. Nothing in this section may be construed as limiting or changing in any way the applicability of the EPA regulations.

(b) *Documentation requirements*—(1) *Exception for certain companies that manufacture and import nonroad or stationary engines, including engines incorporated into vehicles and equipment.* The special documentation requirements of this paragraph (b) do not apply to the importation of nonroad or stationary engines, including engines incorporated into vehicles or equipment, by the company that manufactures the engines, provided that the engines are covered by a valid EPA Certificate of Conformity (COC) held by the importing manufacturer and bear the manufacturer's label showing such conformity and other EPA-required information.

(2) *Release.* CBP will not release engines, vehicles, or equipment from custody unless the importer has submitted all required documents to demonstrate that the engines, vehicles, or equipment meet all applicable requirements.

(3) *Required EPA documentation.* Importers of nonroad or stationary engines, including engines incorporated into vehicles and equipment, must submit EPA Declaration Form 3520–21, ''Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations,'' to CBP at the time of entry, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary.

(4) *Filing method.* EPA Declaration Form 3520–21 may be filed with CBP electronically in the Automated Commercial Environment (ACE) or via any other CBP-authorized electronic data interchange system, or as a paper filing, at the time of entry, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary.

(5) *Recordkeeping.* Documents supporting the information required in EPA Declaration Form 3520–21 must be retained by the importer for a period of at least five (5) years in accordance with § 163.4 of this chapter and must be provided to CBP upon request.

(c) *Release under bond*—(1) *Conditional admission.* If the EPA declaration form states that the entry for a nonconforming nonroad engine is being filed under one of the exemptions described in paragraph (c)(3) of this section, under which the engine may be conditionally admitted under bond, the entry will be accepted only if the importer, consignee, or surety, as appropriate, files a basic importation and entry bond containing the bond conditions set forth in § 113.62(c) of this chapter, or files electronically in ACE or via any other CBP-authorized electronic data interchange system.

(2) *Final admission.* Should final admission be sought and granted pursuant to EPA regulations for an engine conditionally admitted initially under one of the exemptions described in paragraph (c)(3) of this section, the importer or consignee must deliver to the port director the prescribed statement. The statement must be delivered within the period authorized by EPA for the specific exemption, or such additional period as the port director of CBP may allow for good cause shown. Otherwise, the importer or consignee must deliver or cause to be delivered to the port director the subject engine, either for export or other disposition under applicable CBP laws and regulations (*see* paragraph (e) of this section). If such engine is not redelivered within five (5) days following the allotted period, liquidated damages will be assessed in the full amount of the bond, if a single entry bond, or if a continuous bond, the amount that would have been assessed under a single entry bond (*see* 40 CFR 1068.335).

(3) *Exemptions.* EPA regulations in 40 CFR parts 60 and 1033 through 1068 allow for exempting or excluding imported engines from certification requirements (see especially 40 CFR part 1068, subpart D). The specific exemptions under which a nonconforming nonroad engine may be conditionally admitted, and for which a CBP bond is required, are as follows:

(i) Repairs or alterations (*see* 40 CFR 1068.325(a)).

(ii) Testing (*see* 40 CFR 1068.325(b)).

(iii) Display (*see* 40 CFR 1068.325(c)).

(iv) Export (*see* 40 CFR 1068.325(d)).

(v) Diplomatic or military (*see* 40 CFR 1068.325(e)).

(vi) Delegated assembly (*see* 40 CFR 1068.325(f)).

(vii) Partially complete engines, vehicles, or equipment (*see* 40 CFR 1068.325(g)).

(d) *Notice of inadmissibility or detention.* If an engine is found to be inadmissible either before or after release from CBP custody, the importer or consignee will be notified in writing of the inadmissibility determination and/or redelivery requirement. If the inadmissibility is due to the fact that the importer or consignee did not file the EPA Declaration Form 3520–21 at the time of entry, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary, the port director may hold the subject engine in detention at the importer's risk and expense for up to 30 days from the entry filing date. The port director may grant the importer's request for a 30-day extension for good cause. The port director will issue a notice of inadmissibility if documentation is still incomplete after this deadline, which must not exceed 60 days from the filing date for importation.

* * * * *

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

Approved: December 20, 2016.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2016–31050 Filed 12–23–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 12 and 127

[USCBP–2016–0056;CBP Dec. No. 16–28]

RIN 1515–AE13

Toxic Substance Control Act Chemical Substance Import Certification Process Revisions

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations regarding the requirement to file a Toxic Substances Control Act (TSCA) certification when importing into the customs territory of the United States chemicals in bulk form or as part of mixtures and articles containing a chemical or mixture. This document amends the regulations to establish an electronic option for importers to file the required U.S. Environmental Protection Agency (EPA) TSCA certifications, consistent with the Security and Accountability for Every Port Act of 2006. This document further amends the regulations to clarify and add certain definitions, and to eliminate the paper-based blanket certification process.

The document was prepared in consultation with EPA, the agency with primary responsibility for implementing TSCA.

DATES: Effective January 26, 2017.

FOR FURTHER INFORMATION CONTACT: For questions related to the filing of EPA forms with CBP, contact William Scopa, Partner Government Agencies Interagency Collaboration Division, Office of Trade, Customs and Border Protection, at *William.R.Scopa@cbp.dhs.gov.* For EPA policy questions, contact Harlan Weir, at *Weir.Harlan@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 13 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2612) governs the entry of those chemical substances and mixtures, and articles containing such chemical substances or mixtures into the customs territory of the United States and authorizes the Secretary of the Treasury, authority subsequently delegated to the U.S. Customs and Border Protection (CBP), to refuse entry of any chemical substance, mixture, or article that: (1) fails to comply with any rule in effect under TSCA; or (2) is offered for entry in violation of TSCA section 5 or 6 (15 U.S.C. 2604 or 2605) or Subchapter IV (15 U.S.C. 2681 *et seq.*), or in violation of a rule or order under those provisions or in violation of an order issued in a civil action brought under TSCA section 5 or 7 (15 U.S.C. 2604 or 2606) or Subchapter IV (15 U.S.C. 2681 *et seq.*). Section 13 also sets forth procedural requirements in connection with an entry refusal and authorizes CBP, after consultation with EPA, to issue rules for the administration of section 13.

Section 13 of TSCA is implemented in the CBP regulations at §§ 12.118–12.127 and 127.28 of title 19 of the Code of Federal Regulations (19 CFR 12.118–12.127, and 127.28). On August 29, 2016, U.S. Customs and Border Protection (CBP) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (81 FR 59157) proposing to amend the CBP regulations regarding the requirement to file a Toxic Substances Control Act (TSCA) certification when importing into the customs territory of the United States chemicals in bulk form or as part of mixtures and articles containing a chemical or mixture.

B. Proposed Amendments

The proposed amendments were intended to clarify the description, scope, and definitions of the requirements for the importation of chemical substances, mixtures and articles containing a chemical substance or mixture, as well as the requirements associated with TSCA-excluded chemicals.

This document revises the proposed change in § 12.119 regarding the scope of the regulation. To clarify the regulation based on the public comments, the term ''Chemicals not subject to TSCA'' in proposed § 12.119(b) is changed in the final rule to ''TSCA-excluded chemicals''. In addition, because the proposed revision of the scope in § 12.119(c) was confusing with respect to the application of the regulations to articles in §§ 12.120 through 12.127, we are adding the phrase, ''if so required by the Administrator by specific rule under TSCA'' to § 12.119(c), which mirrors the current language of the regulation prior to the proposed amendment.

The final rule replaces the existing definition of the term ''chemical substance in bulk form'' in § 12.120(b) with a definition of ''TSCA chemical substance in bulk form'', and adds new definitions for the terms ''TSCA chemical substance as part of a mixture'' in § 12.120(c) and ''TSCA-excluded chemicals'' in § 12.120(d). These definitions are revised and added to clarify that the certification obligations apply to both chemical substances and mixtures that are subject to TSCA, which require a positive certification, as well as those chemicals and mixtures that are not subject to TSCA, which require a negative certification (unless clearly identified as a TSCA-excluded chemical), and to ensure that terms used in the regulatory text are defined when necessary. ''Mixture'' is a statutory term in TSCA that does not apply to TSCA-excluded chemicals. TSCA-excluded chemicals require a negative certification whether imported as a single TSCA-excluded chemical mixed with other TSCA-excluded chemicals. This document also adds a definition of the term ''Administrator'' to mean the Administrator of the EPA, and ''covered commodity'' to include any merchandise that is an article, a TSCA chemical substance in bulk form, TSCA-excluded chemicals (as those terms are defined in § 12.120(a), (b), or (d)), or that is a mixture as defined in TSCA and describe a commodity that is subject to actions under § 12.122, *et seq.* and § 127.28.

In addition, in §§ 12.122(a) and (b), 12.123(b), 12.124(a), 12.125(b), and 127.28, this document revises references to ''chemical substances, mixtures, or articles'' to clarify that these regulations apply to TSCA chemical substances, mixtures, or articles as well as TSCA-excluded chemicals. In § 12.124, this final rule changes the name of the agency from ''Customs Service'' to ''CBP''.

B. Certifications

The final rule provides an electronic option for filing TSCA certifications, consistent with Executive Order (EO) 13659, *Streamlining the Export/Import Process for America's Businesses,* which seeks to reduce unnecessary procedural requirements relating to, among other things, importing into the United States, while continuing to protect our national security, public health and safety, the environment, and natural resources. *See* 79 FR 10657 (February 25, 2014). The final rule is consistent with the Security and Accountability for Every Port Act of 2006 (''SAFE Port Act,'' 19 U.S.C. 1411(d)) which mandates that all federal agencies that require documentation for clearing or licensing the importation of cargo participate in the International Trade Data System (ITDS) by using a CBP-authorized Electronic Data Interchange (EDI) system as a single portal for the collection and distribution

of standard electronic import and export data.

In order to submit an electronic TSCA certification, importers or their agents are required by the final rule to submit their entry filings to ACE or any other CBP electronic data interchange (EDI) system authorized to accept entries. This document also requires in § 12.121(a)(3) the submission of additional information relating to the certifying individual, including name, phone number, and email address for TSCA certifications submitted either in writing or electronically. The collection of contact information for the certifying individual will facilitate the resolution of issues related to particular shipments. This document also changes the reference to paragraph (a)(1) found in § 12.121(c) to be a reference to paragraph (a).

The final rule eliminates the blanket certification process. The discontinued paper-based blanket certification process had limited utility because each blanket certification was only valid at one port of entry for one year. In addition, the previous blanket certification process was more burdensome than the entry-specific certification process because it required filers to include a statement referring to the blanket certification and incorporate it by reference for each entry, as well as four data elements on the blanket certification itself, including product name, Harmonized Tariff Schedule of the United States (HTSUS) subheading number, and the name and address of the foreign supplier. Because the electronic TSCA certification process requires only a certification code, along with the name and contact information of the TSCA certifier, and because the paper-based blanket certification had limited application, we believe the elimination of the blanket certification process reduces the reporting burden for importers.

C. Notice of Exportation and Abandonment

In addition, the final rule amends §§ 12.125 and 12.126 to allow importers to provide electronic notice of exportation and abandonment as an alternative to the paper-based written notice process allowed under the existing regulations.

The automation of these processes modernizes the way that CBP and EPA interact with importers of chemicals, and ensures effective application of regulatory controls. CBP estimates approximately 2.5 million TSCA positive certifications and 230,000 TSCA negative certifications are received annually. The electronic collection of TSCA certifications for processing in ACE improves information access, data integration with CBP entry information, and the data quality of TSCA certifications. As a result, CBP expects improved communication among EPA, CBP, and importers.

D. Plain Language Revisions

The final rule makes minor changes to §§ 12.118–12.127 by removing the word ''shall'' and revising the sentence grammar to simplify the language. The use of ''shall'' is imprecise and outdated. Plain language guidance recommends replacing ''shall'' with the word ''must,'' ''will,'' or another word that more appropriately conveys the intended meaning. This is part of the U.S. Government efforts to update regulatory text per plain language guidance.

E. Conclusion of Test to Allow Import Certification

On February 10, 2016, CBP published a notice in the **Federal Register** (81 FR 7133) announcing that CBP was modifying the National Customs Automation Program (NCAP) test concerning electronic filings of data to ACE, known as the Partner Government Agency (PGA) Message Set test, to allow for the transmission of TSCA certification data. As of November 16, 2016, CBP has received 150,661 electronic TSCA certifications through ACE pursuant to the PGA Message Set Test. This volume of electronic submissions indicates that the PGA Message Set Test has been successful and reliable with regard to the electronic submission of TSCA certifications to ACE. Consequently, this document announces the conclusion of the PGA Message Set Test with regard to the submission of the TSCA certification. All other aspects of the PGA Message Set Test remain on-going until ended by announcement in a subsequent **Federal Register** notice.

Discussion of Comments

Fourteen commenters responded to the solicitation of comments to the proposed rule. A description of the comments received, together with CBP's analysis, is set forth below.

Comment: The trade generally argued against negative certification as applied to chemicals clearly labelled or identified as products that are excluded from TSCA regulation. The list of excluded products includes pesticides, food, food additives, drugs, cosmetics or devices, nuclear material, tobacco products, firearms and ammunition

Multiple commenters argued that the scope of the negative certification in the proposed rule is too broad. One commenter noted that the EPA's own regulations on TSCA, found at 40 CFR 707.20(b)(2)(ii), only require the submission of a negative certification where the imported chemical products are not otherwise clearly identified as a product not subject to TSCA. A different commenter stated that CBP should not require certification regarding chemicals that are excluded by the text of TSCA unless there was evidence of problems regarding the labels or other methods of regulating the TSCA-excluded chemicals.

Commenters further indicated that because the proposed rule would affect products already regulated by other agencies, it would create duplicative processes and be incompatible with Executive Order (E.O.) 13659, *Streamlining the Export/Import Process for America's Businesses.* Commenters requested that CBP work to harmonize the proposed rule with current and future EPA regulations, to include an exemption from the negative certification requirement where the imported products are already clearly labelled as a product that is expressly excluded by TSCA.

CBP Response: CBP and EPA agree that the negative certification requirement need not be applied to those chemicals that are otherwise clearly identified as a product excluded from TSCA, which are regulated by other agencies or statutes, including pesticides, food, food additives, drugs, cosmetics, devices, tobacco, tobacco product, nuclear material, firearms and ammunition, as described by § 3(2)(B)(ii)–(vi) of TSCA. The requirement to file a negative certification in § 12.121(a)(2) excludes TSCA-excluded chemicals that are clearly identified as such. This position is consistent with EPA's TSCA section 13 Import Policy, which addresses aspects of the CBP regulation implementing TSCA section 13. *See* 40 CFR 707.20(b)(2)(ii); 45 FR 82850 (December 16, 1980).

Comment: The proposed rule did not include a ''blanket certification'' that allowed an importer to qualify for TSCA compliance on reoccurring shipments of the same chemicals to the same port, with a one year duration. Commenters from multiple industries noted that the blanket certification process is useful for companies that import the same product to the same port repeatedly throughout a one-year period. Commenters requested CBP to clarify its rationale for proposing to discontinue the blanket certification, and further argued that a blanket certification process, in some

form, would not only benefit the trade, but would be aligned with the goals of E.O. 13659, *i.e.,* by reducing costs and promoting flexibility. One commenter argued that the ACE system cannot be deemed to be more efficient without some form of blanket certification. Commenters urged CBP either to maintain the existing paper-based blanket certification process, or to develop an electronic equivalent.

CBP Response: The reason for removing the blanket permit system is the difficulty of integrating that paper-based certification process, which required CBP to maintain files and track yearly renewals for verification and compliance, with an otherwise fully automated system. In addition, with the new requirement to submit information on the certifier, renewals would need to be made more frequently in order to keep certifier information updated. Electronic submission of TSCA certifications through ACE, allows for electronic releases without CBP manual processing or reviews.

CBP is aware that the transition from the paper-based system with blanket certifications to an electronic system without blanket certifications may present short-term challenges for filers and importers. However, efforts to preserve the blanket certification process in combination with electronic filing though ACE would actually restrict the system as a whole from achieving maximum efficiency as it would require all filers to undergo extra steps in the PGA message set to input information regarding whether the importer had a blanket certification on file, and for which ports.

Comment: The trade commented that the term ''non-TSCA chemical'' in the proposed regulation is confusing and should be replaced with the trade term ''chemical substances excluded from TSCA,'' because all chemicals are subject to TSCA unless excluded and the term ''non-TSCA'' is used by the trade to refer to chemicals that are subject to TSCA but not yet on the TSCA inventory.

The trade also commented that the phrase ''articles containing a chemical substance'' is ambiguous, because it can be interpreted to mean an object or vessel that is used to hold a chemical substance as well as an object that is made up of a chemical substance. Finally, the trade commented that a typo appears in the definition of a ''covered commodity'' at § 12.120(e) of the proposed rule because it claims ''the definitions specified in paragraphs (a), (b), and (d). . .'' should instead be ''(a), (b), and (c). . .''

CBP Response: To address industry's concerns about the use of the proposed term ''non-TSCA chemical,'' this term is being changed to ''TSCA-excluded chemicals.'' The definition of the term ''TSCA-excluded chemicals'' will remain as it was under ''non-TSCA chemical,'' which is consistent with the appropriate provisions under TSCA.

The phrase ''articles containing a chemical substance'' is consistent with the scope as provided under section 13 of TSCA. The term ''article'' is defined in EPA regulations, as well as in this rule, and has been applied in a variety of TSCA programs and activities for many years. The phrase ''chemical substances or mixtures as parts of articles'' is used in the appropriate provisions of the § 12.121 reporting requirements of this rule, and this phrase has been used in a variety of TSCA programs and activities, including the TSCA section 13 import program. *See,* 42 FR 64572 (December 23, 1977) (noting that a chemical substance is considered to be imported 'as part of an article' if the substance is not intended to be removed from that article and has no end use or commercial purpose separate from the article of which it is a part.). *See also,* Introduction to the Chemical Import Requirements of the Toxic Substances Control Act, USEPA (1999) (stating that chemical substances and mixtures are considered to be imported as part of an article only if the substances or mixtures are not intended to be removed/released from the article and they have no end use or commercial purpose separate from the article of which they are a part) and TSCA Chemical Data Reporting Fact Sheet: Imported Articles, USEPA (January 2016).

Section 12.120(e) of the proposed rule does not contain a typographical error. Paragraph (c) is not needed, because a ''covered commodity'' includes ''mixtures,'' including a chemical substance that is part of the mixture. The term ''covered commodity'' is used to cover all things covered by the rule, including chemicals not subject to TSCA, which would require either a negative certification or proper identification. It is important that the term ''covered commodity'' cover things not subject to TSCA, given that, for example, CBP can detain shipments that do not have a required negative certification. *See* 19 CFR 12.122(b)(3).

Comment: The proposed rule required an importer to indicate, for each entry subject to either a positive or negative certification requirement, the name, phone number and email address of the person who provided the certification, in writing or electronically through the ACE system.

Multiple commenters indicated that if such a requirement becomes part of the final rule, it should only be required at the header level rather than at each line entry. Commenters argued that this would be important for two reasons: to avoid imposing a repetitive manual task of re-inputting the same information for hundreds of lines; and to help importers meet their requirements to keep submissions under the 8 MB file size limitation.

One commenter stated that the provision of contact information for the certifier should be optional, expressing doubt as to the usefulness of such requirement given that the customs broker has historically served as the point of contact for any CBP or PGA inquiry. A separate commenter questioned the underlying intent for this requirement, requesting clarification as to whether it was intended to provide contact information in the event of a spill or emergency (in which case the commenter argued that the Material Safety Data Sheet already provides this information), or whether there would be legal ramifications imposed on the person providing the certification.

CBP Response: CBP and EPA need the identifying information so that they can contact the certifying individual when there is a question about the imported article, and for enforcement purposes. The certifying individual contact information is required to know who is certifying and whom to contact if needed. CBP and EPA acknowledge that this requirement may create additional clerical work for filers. However, ACE will allow the requested information to be entered once at the header level using the PG00 record within the PGA Message Set, and then populated under each entry line where specified. In addition, the new process will result in faster cargo clearance. CBP and EPA encourage filers who have importers with routine imports with the same certifying individual information to explore options with third-party software vendors to take advantage of existing technology.

Comment: Commenters requested information regarding how CBP and EPA will treat confidential business information (CBI) collected under the process outlined in the proposed rule, including: where the data will be stored, how the data will be protected, how long the data will be retained, and who will have access to the data.

CBP Response: Access to nonpublic data contained in the ACE system will be limited to CBP officers and relevant personnel at CBP headquarters, as well

as limited personnel at partner government agencies. In addition, access to ACE data including Confidential Business Information (CBI) is limited to personnel with the appropriate roles and permissions and is managed by various audit controls on a continual basis.

Comment: Commenters expressed concern regarding what was alleged to be broadening of the scope of EPA authority under 19 CFR 12.120 to 12.127, by amending § 12.119 to cover ''articles containing a chemical substance or mixture.'' In contrast, the language of § 12.119 prior to amendment limits the scope of application to ''articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.'' Commenters asked CBP to clarify what would be required under the revised rule, including the types of articles that would be subject to the different requirements.

CBP Response: Given the concerns expressed by the commenters, and CBP's desire to provide unambiguous authority to submit TSCA certification elements for imports electronically through the ITDS system, CBP is revising the language proposed for § 12.119 in order to maintain the scope provided for in the existing § 12.119, as applied to articles. CBP will, however, make stylistic changes to 19 CFR 12.119 in order to provide clarity as to which chemicals the certification requirement will not apply (*i.e.,* TSCA-excluded chemicals). The final rule continues to provide that the regulation applies to ''articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.'' CBP will continue to consider whether other changes to the scope of the rule are needed, and may revisit the issue in a future rulemaking.

Comment: One commenter argued that the final regulation implementing the Formaldehyde Emission Standards for Composite Wood Products Act of 2010, which lifts the article exemption for regulated composite wood products, would be impacted by the proposed rule by creating an identification burden on CBP and a compliance burden on the trade for determining regulated items and requirements. The trade stated that clear guidance and training should be available in order to avoid confusion.

CBP Response: Under the final rule, there should be no impact on the EPA's efforts to implement regulations under the Formaldehyde Emission Standards for Composite Wood Products Act of 2010. In order to ensure that the trade has time to adjust and understand the requirements, the prepublication version of the Formaldehyde Emission Standards for Composite Wood Products final rule provides that the compliance date regarding the import certification requirements of that rule will be delayed two years from publication of that rule. During this period, the EPA may conduct outreach with regulated parties and industry associations in order to familiarize the supply chain with the importer provisions. However, it is the importer's responsibility to determine whether the shipment is in compliance with a particular regulation is properly identified accordingly.

Comment: One commenter commented in reference to various policy issues regarding how the current Foreign Trade Zone (FTZ) system of filing and reporting will be adapted to the proposed rule. In short, the commenter does not think that TSCA certification requirements should be applied at the time of admission into the FTZ, but rather when the goods leave the FTZ and enter the stream of commerce. The commenter also noted that a ''Dual Option'' model whereby importers could file PGA data in weekly entry summaries for all FTZ related imports, but would provide PGA data on non-FTZ imports at the time of cargo release. In addition, the commenter seeks confirmation that the current manual Notice of Arrival mechanism will be preserved in ACE.

CBP Response: CBP notes that the importer is only required to make a good faith estimate when making entry of the merchandise, including the TSCA certifications thereof, when it files the weekly FTZ entry estimate pursuant to § 146.63(c)(1). CBP is aware that under this process, there may be occasions where a TSCA negative certification is issued by the importer in the weekly estimate, and yet the weekly summary reflects that TSCA chemical substances were in fact imported. CBP and EPA will address importers that demonstrate systematic or egregious discrepancies between weekly estimates and weekly summaries on a case-by-case basis and through available enforcement and compliance practices.

Current regulations provide for filing of the Notice of Arrival (NOA) with entry documentation. The proposed electronic implementation maintains that possibility. CBP is working to build functionality for the submission of PGA message set elements as merchandise is admitted to the FTZ through the e–214 process. At that time, there may be a consideration of whether the NOA is more appropriately filed at time of admission into a Foreign Trade Zone.

Comment: Commenters noted that the proposed rule fails to identify the certification requirements and other compliance measures required for imports that enter through either the informal entry process, or Section 321. Commenters indicated that given the increased value threshold to $800, there will likely be an increase in the number of imports that attempt to enter under Section 321, and thus, CBP needs to provide guidance to the trade as to how it will address TSCA certification, either positive or negative, for imports that enter under Section 321. Commenters argued that both the statutory language and the regulations implementing the TSCA clearly indicate that the law applies to all chemical products entering the United States, not just those in excess of $800 in value.

CBP Response: The recent amendments to Section 321 did not change the PGA data requirements, only the value of the shipments that qualify for entry free of duty and taxes. Thus, if TSCA import certification compliance was previously required for imports valued $200 or less, it will also be required when imports are valued $800 or less under the amended Section 321. CBP is considering options to address the broader question of how importers can best provide the appropriate PGA data, including TSCA certification, for imports that qualify under Section 321.

Conclusion

Accordingly, after review of the comments and further consideration, CBP has decided to adopt as final the proposed rule published in the **Federal Register** (81 FR 59157) on August 29, 2016, with the changes described above.

III. Estimated Costs and Benefits of This Rule

A. Costs

The costs for the regulated community to implement TSCA certification via this final rule would be minimal. CBP and EPA estimate that providing the name, phone number, and email address of the import certifier would result in a net increase in information collection burden of three minutes for each of the estimated 2.5 million TSCA positive certifications and 230,000 TSCA negative certifications (at a cost of about $3 per certification and assuming no filer takes advantage of the possibility of filing this address information at the header level, as noted above), yielding an annual maximum increased cost to filers of $8.41 million.

B. Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation. An Economic Analysis for this action, which is contained in a document entitled ''Economic Analysis for Custom and Border Protection (CBP) Final Rule on TSCA Import Certifications in ACE/ITDS,'' is available in the docket for this rulemaking and is summarized in the previous section of this document.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires federal agencies to assess the effects of regulations on small entities, including businesses, nonprofit organizations, and governments, and—in some instances—to examine alternatives to the regulations that may reduce adverse economic effects on significantly impacted small entities. Section 604 of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires an agency to perform a regulatory flexibility analysis for a rule unless the agency certifies under section 605(b) that the regulatory action would not have a significant (economic) impact on a substantial number of small entities. The RFA does not specifically define ''a significant economic impact on a substantial number'' of small entities.

A small entity analysis (SEA) was conducted and summarized herein. The SEA consists of: two quantitative analyses of impacts of the final rule on small entities for TSCA positive certifications, a qualitative discussion of impacts for TSCA negative certifications, and an integrative analysis of the combined universe of TSCA positive and TSCA negative certifications (all entities affected by the rule). These analyses provide information on the magnitude and extent of cost impacts for the purpose of supporting a CBP certification that the final rule would not result in significant (economic) impact on a substantial number of small entities. For additional details, see the Economic Analysis for this action, which is contained in a document entitled ''Economic Analysis for Customs and Border Protection (CBP) Final Rule on TSCA Import Certifications in ACE/ITDS,'' and is available in the docket for this rulemaking.

For TSCA positive certifications, the first quantitative analysis is a screening analysis of cost impacts to the smallest entities associated with TSCA positive certifications; and the second, a more detailed distributional analysis of impacts associated with TSCA positive certifications. These analyses use cost impact percentages to measure potential impacts on small parent entities affected by the final rule. The cost impact percentage is defined as annualized compliance costs resulting from the TSCA positive certification portion of the final rule as a percentage of annual revenues or sales, a commonly available and objective measure of a company's business volume. As is the expected case for this rule, when increases in regulatory costs are minimal, they represent a small fraction of a typical entity's revenue, and therefore the impacts of the regulation are minimal.

The first quantitative analysis for TSCA positive certifications is a screening analysis that provides a concise estimate of small entity impacts under the final rule by examining whether an ''average small parent entity'' incurs significant economic impact. The results of this analysis are presented in Table 1. The second quantitative analysis is a detailed distributional analysis that provides an estimate of small entity impacts under the assumption that affected entities have the same size characteristics as the overall industry sector. The results of this analysis are presented in Table 2.

TABLE 1—TSCA POSITIVE CERTIFICATION SUMMARY OF SCREENING ANALYSIS RESULTS

NAICS	NAICS Code description	Parent entities with 0 to 4 employees			All small parent entities		
		Average revenue	1% Impact	3% Impact	Average revenue	1% Impact	3% Impact
325 [a]	Chemical Manufacturing	$1,457,186	No	No	$80,841,890	No	No.
324 [b]	Petroleum and Coal Products Manufacturing	$2,120,398	No	No	$556,652,918	No	No.

[a] For NAICS 325, the analysis of parent entities with 0 to 4 employees include 3,261 businesses while the analysis of all parent entities includes 9,772 businesses.

[b] For NAICS 324, the analysis of parent entities with 0 to 4 employees include 391 businesses while the analysis of all parent entities includes 1,189 businesses.

TABLE 2—TSCA POSITIVE CERTIFICATION SUMMARY OF DETAILED DISTRIBUTIONAL ANALYSIS

NAICS	NAICS Code description	Parent entities	Small parent entities	Number and percent of small parent entities incurring impact of			Minimum impact [a] (%)	Mean impact [b] (%)	Maximum impact [c] (%)
				<1%	1–3%	>3%			
325	Chemical Manufacturing	11,175	11,175	11,175 *(100%)*	0 *(0%)*	0 *(0%)*	<0.001	0.015	0.032
324	Petroleum and Coal Products Manufacturing.	3,657	3,657	3,657 *(100%)*	0 *(0%)*	0 *(0%)*	<0.001	0.009	0.022

[a] Of the 11,175 small entities in NAICS 325, the minimum impact experienced by any entity was <0.001%. Of the 3.657 small entities in NAICS 324, the minimum impact experienced by any entity was <0.001%.

[b] Of the 11,175 small entities in NAICS 325, the mean impact experienced by any entity was 0.015%. Of the 3.657 small entities in NAICS 324, the mean impact experienced by any entity was 0.009%.

[c] Of the 11,175 small entities in NAICS 325, the maximum impact experienced by any entity was 0.032%. Of the 3.657 small entities in NAICS 324, the maximum impact experienced by any entity was 0.022%.

The small entity screening analysis for TSCA positive certifications demonstrates that no small entities are expected to incur impacts of one percent or greater. The detailed distributional analysis for TSCA positive certifications shows that while a large number of small entities in certain sectors may be affected by the final rule, all of these small entities are expected to incur impacts of considerably less than one percent.

For TSCA negative certifications, because the unit incremental steady state burden associated with positive and negative certification are virtually the same (2.93 versus 2.98 minutes, respectively), the small entity impacts associated with negative certifications are similar to the small entity impacts associated with positive certifications, and are considerably less than one percent.

Integrating the above information for all firms submitting TSCA positive certifications and/or TSCA negative certifications requires consideration of the degree to which the firms submitting each type of certification overlap. Since this detailed information is not readily available, an assessment is made via review of lower-bound and upper-bound impact scenarios. At the lower bound with an assumption of no overlap, firms submitting TSCA positive and TSCA negative certifications are completely isolated and separate. Each firm incurs about three minutes additional burden per certification with associated impacts of less than one percent, yielding overall impacts of less than one percent for all firms. In the upper-bound scenario, with an assumption that all firms overlap, firms submit both TSCA positive and negative certifications at the same transaction rates per firm for each type of certification. All firms incur twice the burden due to managing twice as many certifications (*i.e.,* in comparison to three minutes per certification, the ''double duty'' requires six minutes for one positive certification plus one negative certification). Nonetheless, the associated overall impacts are still less than one percent for all firms.

Per conventional practices including EPA guidance, even if a substantial number of entities are affected by a final rule, as long as the impact to these entities is very low, the rule can be determined to not result in a significant impact on a substantial number of small entities. Based on the evidence of the analyses summarized above, CBP certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

As this rule does not establish a new collection of information, as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the provisions of the Paperwork Reduction Act are inapplicable.

E. Unfunded Mandates Reform Act (UMRA)

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Signing Authority

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the authority of the Secretary of the Treasury (or that of his or her delegate) to approve regulations pertaining to certain customs revenue functions.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements.

19 CFR Part 127

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons set forth above, parts 12 and 127 of the Code of Federal Regulations (19 CFR parts 12 and 127) are amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general and specific authority citations for part 12 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.118 through 12.127 also issued under 15 U.S.C. 2601 *et seq.*

* * * * *

■ 2. Revise § 12.118 to read as follows:

§ 12.118 Toxic Substances Control Act.

The Toxic Substances Control Act (''TSCA'') (15 U.S.C. 2601 *et seq.*) governs the importation into the customs territory of the United States of a chemical substance in bulk form or as part of a mixture, and articles containing a chemical substance or mixture. Such importations are also governed by these regulations which are issued under the authority of section 13(b) of TSCA (15 U.S.C. 2612(b)).

■ 3. Revise § 12.119 to read as follows:

§ 12.119 Scope.

Sections 12.120 through 12.127 apply to the importation into the customs territory of the United States of:

(a) Chemical substances in bulk form and as part of a mixture under TSCA;

(b) TSCA-excluded chemicals; and

(c) Articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.

■ 4. In § 12.120, revise paragraph (b) and add paragraphs (c) through (f) to read as follows:

§ 12.120 Definitions.

* * * * *

(b) *TSCA chemical substance in bulk form.* ''TSCA chemical substance in bulk form'' means a chemical substance as set forth in section 3(2) of TSCA, (15 U.S.C. 2602(2)) (other than as part of an article) in containers used for purposes of transportation or containment, provided that the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container.

(c) *TSCA chemical substance as part of a mixture.* ''TSCA chemical substance as part of a mixture'' means a chemical substance as set forth in section 3(2) of TSCA, (15 U.S.C. 2602(2)) that is part of a combination of two or more chemical substances as set forth in section 3(10) of TSCA.

(d) *TSCA-excluded chemicals.* ''TSCA-excluded chemicals'' means any chemicals that are excluded from the definition of TSCA chemical substance by section 3(2)(B) (ii)–(vi) of TSCA, (15 U.S.C. 2602(2) (B) (ii)–(vi)) (other than as part of a mixture), regardless of form.

(e) *Covered commodity.* ''Covered commodity'' means merchandise that meets the terms of one of the definitions specified in paragraph (a), (b), or (d) of this section or that is a mixture as defined in TSCA.

(f) *Administrator.* ''Administrator'' means the Administrator of the Environmental Protection Agency (EPA).

■ 5. Revise § 12.121 to read as follows:

§ 12.121 Reporting requirements.

(a) *Certification required.* (1) The importer or the authorized agent of such an importer of a TSCA chemical

substance in bulk form or as part of a mixture, must certify in writing or electronically that the chemical shipment complies with all applicable rules and orders under TSCA by filing with CBP the following statement:

I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

(2) The importer or the authorized agent of such an importer of any TSCA-excluded chemical not clearly identified as such must certify in writing or electronically that the chemical shipment is not subject to TSCA by filing with CBP the following statement:

I certify that all chemicals in this shipment are not subject to TSCA.

(3) *Filing of certification.* (i) The appropriate certification required under paragraph (a) of this section must be filed with the director of the port of entry in writing or electronically to the Automated Commercial Environment (ACE) system or any other CBP-authorized EDI system prior to release of the shipment. For each entry subject to certification under paragraph (a), the name, phone number, and email address of the certifier (the importer or the importer's authorized agent) shall be included.

(ii) Written certifications must appear as a typed or stamped statement:

(A) On an appropriate entry document or commercial invoice or on an attachment to that entry document or invoice; or

(B) In the event of release under a special permit for an immediate delivery as provided for in § 142.21 of this chapter or in the case of an entry as provided for in § 142.3 of this chapter, on the commercial invoice or on an attachment to that invoice.

(b) *TSCA chemical substances or mixtures as parts of articles.* An importer of a TSCA chemical substance or mixture as part of an article must comply with the certification requirements set forth in paragraph (a) of this section only if required to do so by a rule or order issued under TSCA.

(c) *Facsimile signatures.* The certification statements required under paragraph (a) of this section may be signed by means of an authorized facsimile signature.

§ 12.122 [Amended]

■ 6. Amend § 12.122 by removing the word ''shall'' each place it appears and adding in its place the word ''will'' and in paragraphs (a) introductory text and (b) introductory text by removing the words ''chemical substances, mixtures, or articles'' and adding in their place the words ''covered commodity''.

§ 12.123 [Amended]

■ 7. Amend § 12.123 by removing the word ''shall'' each place it appears and adding in its place the word ''will'' and in paragraph (b), third sentence, by removing the words ''chemical substance, mixture, or article'' and adding in their place the words ''a covered commodity''.

§ 12.124 [Amended]

■ 8. Amend § 12.124 as follows:

■ a. In paragraph (a) by removing the words ''chemical substances, mixtures, or articles'' and adding in their place the words ''a covered commodity''.

■ b. In paragraph (a) by removing the word ''shall'' and adding in its place the word ''must''.

■ c. In paragraph (b) introductory text by removing the words ''Customs Service'' and adding in its place the word ''CBP''.

■ 9. The introductory text of § 12.125 is revised and in paragraph (b) the words ''chemical substances, mixtures, or articles'' are removed and the words ''covered commodity'' are added in their place.

The revision reads as follows:

§ 12.125 Notice of exportation.

Whenever the Administrator directs the port director to refuse entry under § 12.123 and the importer exports the non-complying shipment within the 30 day period of notice of refusal of entry or within 90 days of demand for redelivery, the importer must submit notice of the exportation either in writing to the port director or electronically to ACE or any other CBP-authorized EDI system. The importer must include the following information in the notice of exportation:

* * * * *

■ 10. Revise § 12.126 to read as follows:

§ 12.126 Notice of abandonment.

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer must present a notice of intent to abandon in writing to the port director or electronically to ACE or any other CBP-authorized EDI system. Notification under this section is a waiver of any right to export the merchandise. The importer will remain liable for any expense incurred in the storage and/or disposal of abandoned merchandise.

■ 11. Revise § 12.127 to read as follows:

§ 12.127 Decision to store or dispose.

A shipment detained under § 12.122 will be considered to be unclaimed or abandoned and will be turned over to the Administrator for storage or disposition as provided for in § 127.28(i) of this chapter if the importer has not brought the shipment into compliance with TSCA and has not exported the shipment within the time limitations or extensions specified according to § 12.124. The importer will remain liable for any expense in the storage and/or disposal of abandoned merchandise.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

■ 12. The general and specific authority citations for part 127 continue to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

* * * * *

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

* * * * *

■ 13. Amend § 127.28 by revising paragraph (i) to read as follows:

§ 127.28 Special merchandise.

* * * * *

(i) *Good subject to TSCA Requirements.* A good subject to TSCA requirements, *i.e.,* a covered commodity as defined in section 12.120 of this chapter, will be inspected by a representative of the Environmental Protection Agency to ascertain whether it complies with the Toxic Substances Control Act and the regulations and orders issued thereunder. If found not to comply with these requirements that good must be exported or otherwise disposed of immediately in accordance with the provisions of §§ 12.125 through 12.127 of this chapter.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

Approved: December 20, 2016.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2016–31055 Filed 12–23–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 529

[Docket No. FDA–2016–N–0002]

Oral Dosage Form New Animal Drugs; Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of 43 supplemental new animal drug applications (NADAs) and 52 supplemental abbreviated new animal drug applications (ANADAs) for revised labeling reflecting a change in marketing status from over-the-counter (OTC) to prescription (Rx) for antimicrobial drugs of importance to human medicine administered to food-producing animals in medicated drinking water. These applications were submitted in voluntary compliance with the goals of the FDA Center for Veterinary Medicine's (CVM's) Judicious Use Initiative.

DATES: This rule is effective December 31, 2016.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5689, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect approval of 43 supplemental NADAs and 52 supplemental ANADAs for revised labeling reflecting a change in marketing status from OTC to Rx for antimicrobial drugs of importance to human medicine administered to food-producing animals in medicated drinking water. These applications were identified as being affected by guidance for industry (GFI) #213, ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209,'' December 2013 (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM299624.pdf*). Their change to Rx marketing status is consistent with the FDA CVM's initiative for the Judicious Use of Antimicrobials. The affected applications follow:

File No.	Animal drug product	Sponsor
006–084	SULMET (sulfamethazine) Drinking Water Solution	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria (Huvepharma EOOD).
006–677	S.Q. (sulfaquinoxaline) 20% Solution	Huvepharma EOOD.
006–707	SULQUIN 6–50 (Sulfaquinoxaline)	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007 (Zoetis Inc.).
006–891	SUL–Q–NO_X (sulfaquinoxaline) Solution	Huvepharma EOOD.
007–087	Sulfaquinoxaline Solubilized (Powder)	Huvepharma EOOD.
008–622	TERRAMYCIN (oxytetracycline) Soluble Powder	Zoetis Inc.
011–315	NEOMIX 325 (neomycin) Soluble Powder	Zoetis Inc.
015–160	Sodium Sulfachloropyrazine Solution	Zoetis Inc.
031–205	AGRIBON (sulfadimethoxine) 12.5% Drinking Water Solution	Zoetis Inc.
031–553	ESB 3 (sulfachloropyrazine) Soluble Powder/Solution	Zoetis Inc.
032–946	MAGNA TERRAMYCIN (oxytetracycline and carbomycin) Soluble Powder.	Zoetis Inc.
033–373	VETSULID SP (sulfachloropyridazine) Soluble Powder	Huvepharma EOOD.
035–157	GALLIMYCIN (erythromycin) Soluble Powder	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland (Cross Vetpharm Group Ltd.).
038–200	MEDAMYCIN (oxytetracycline) Soluble Powder	Phibro Animal Health Corp., GlenPointe Centre East, 3d floor, 300 Frank W. Burr Blvd., suite 21, Teaneck, NJ 07666 (Phibro Animal Health Corp.).
038–661	SPECTOGARD (spectinomycin) Water Soluble Powder	Cross Vetpharm Group Ltd.
046–109	L–S 50 (lincomycin and spectinomycin) Water Soluble Powder	Zoetis Inc.
046–285	AGRIBON (sulfadimethoxine) Soluble Powder	Zoetis Inc.
055–012	CHLORONEX SULMET (chlortetracycline bisulfate and sulfamethazine) Soluble Powder.	Huvepharma EOOD.
055–020	AUREOMYCIN (chlortetracycline) Soluble Powder	Zoetis Inc.
055–060	Penicillin G Potassium, USP	Zoetis Inc.
065–071	AUREOMYCIN (chlortetracycline) Soluble Powder	Huvepharma EOOD.
065–123	Tetracycline Soluble Powder	Zoetis Inc.
065–140	TET–SOL 324 (tetracycline) Soluble Powder	Huvepharma EOOD.
065–178	FERMYCIN (chlortetracycline) Soluble	Phibro Animal Health Corp.
065–256	CHLORO–SOLUBLE–O (chlortetracycline) Soluble Powder	Pharmgate LLC, 1015 Ashes Dr., suite 102, Wilmington, NC 28405 (Pharmgate LLC).
065–269	POLYOTIC (tetracycline) Soluble Powder	Huvepharma EOOD.
065–410	TETRA–SAL (tetracycline) Soluble Powder	Zoetis Inc.
065–440	CHLORONEX (chlortetracycline) Soluble Powder	Huvepharma EOOD.
065–441	POLYOTIC (tetracycline) Soluble Powder Concentrate	Zoetis Inc.
065–480	Chlortetracycline Soluble Powder	Pharmgate LLC.
065–486	Chlortetracycline Bisulfate Soluble Powder	Strategic Veterinary Pharmaceuticals, Inc., 100 NW. Airport Rd., St. Joseph, MO 64503 (Strategic Vet. Pharm., Inc.).
065–496	Tetracycline Soluble Powder	Phibro Animal Health Corp.
091–191	GENTOCIN (gentamicin) Oral Solution	Intervet, Inc., 2 Giralda Farms, Madison, NJ 07940 (Intervet, Inc.).
100–094	POULTRY SULFA (sulfamerazine, sulfamethazine, and sulfaquinoxaline) Soluble Powder.	Huvepharma EOOD.
106–964	APRALAN (apramycin) Soluble Powder	Elanco US Inc.
111–636	LINCOMIX (lincomycin) Soluble Powder	Zoetis Inc.

File No.	Animal drug product	Sponsor
122–272	SULMET (sulfamethazine) Soluble Powder	Huvepharma EOOD.
130–435	OXY–TET (oxytetracycline) Soluble Powder	Huvepharma EOOD.
133–836	GARACIN (gentamicin) Soluble Powder	Intervet, Inc.
140–578	SOLU–TET 324 (tetracycline) Soluble Powder	Zoetis Inc.
200–026	PENNOX 343 (oxytetracycline)	Pharmgate LLC.
200–030	Sulfadimethoxine 12.5% Oral Solution	Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503 (Agri Laboratories, Ltd.).
200–031	Sulfadimethoxine Antibacterial Soluble Powder	Agri Laboratories, Ltd.
200–046	Neomycin Soluble Powder	Zoetis Inc.
200–049	Tetracycline Hydrochloride Soluble Powder-324	Agri Laboratories, Ltd.
200–050	NEOMED (neomycin) Soluble Powder	Cross Vetpharm Group Ltd.
200–066	AGRIMYCIN–343 (oxytetracycline) Soluble Powder	Agri Laboratories, Ltd.
200–103	PENAQUA SOL–G (penicillin G potassium) Soluble Powder	Cross Vetpharm Group Ltd.
200–106	R–PEN (penicillin G potassium) Soluble Powder	Huvepharma EOOD.
200–113	BIOSOL® (neomycin) Liquid	Zoetis Inc.
200–118	Neomycin Oral Solution	Huvepharma EOOD.
200–122	SOLU–PEN (penicillin G potassium) Soluble Powder	Zoetis Inc.
200–130	NEO–SOL 50 (neomycin) Soluble Powder	Zoetis Inc.
200–136	Tetracycline Hydrochloride Soluble Powder-324	Quo Vademus, LLC, 277 Faison McGowan Rd., Kenansville, NC 28349 (Quo Vademus, LLC).
200–144	Oxytetracycline HCl Soluble Powder	Cross Vetpharm Group Ltd.
200–146	TETROXY 25 (oxytetracycline)	Cross Vetpharm Group Ltd.
200–153	NEO 200 (neomycin) Oral Solution	Huvepharma EOOD.
200–165	SDM (sulfadimethoxine) 12.5% Oral Solution	Strategic Vet. Pharm., Inc.
200–185	GEN–GARD (Gentamicin sulfate) Soluble Powder	Agri Laboratories, Ltd.
200–189	Lincomycin Soluble	Huvepharma EOOD.
200–190	GENTORAL (gentamicin sulfate) Oral Solution	Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861 (Med-Pharmex, Inc.).
200–192	Sulfadimethoxine 12.5% Oral Solution	Huvepharma EOOD.
200–197	Streptomycin Oral Solution w/STREP SOL (RLNAD 065–252)	Huvepharma EOOD.
200–233	LINCO (lincomycin) Soluble Powder	Zoetis Inc.
200–234	TETRASOL (tetracycline) Soluble Powder	Med-Pharmex, Inc.
200–235	NEOSOL (neomycin) Soluble Powder	Med-Pharmex, Inc.
200–236	Chlortetracycline HCL Soluble Powder	Quo Vademus, LLC.
200–238	SULFASOL (sulfadimethoxine) Soluble Powder	Med-Pharmex, Inc.
200–241	LINCOSOL (lincomycin) Soluble Powder	Med-Pharmex, Inc.
200–247	TETROXY 343 (oxytetracycline) Soluble Powder	Cross Vetpharm Group Ltd.
200–251	SULFORAL (Sulfadimethoxine) Soluble Powder	Med-Pharmex, Inc.
200–258	Sulfadimethoxine Soluble Powder	Phibro Animal Health Corp.
200–289	NEOSOL–ORAL (neomycin) Soluble Powder	Med-Pharmex, Inc.
200–295	PENNCHLOR 64 (chlortetracycline) Soluble Powder	Pharmgate LLC.
200–303	Lincomycin Hydrochloride Soluble Powder	Quo Vademus, LLC.
200–345	Lincomycin-Spectinomycin Soluble Powder	Phibro Animal Health Corp.
200–347	Penicillin G Potassium USP	Quo Vademus, LLC.
200–372	HAN–PEN (penicillin G potassium) Soluble Powder	G.C. Hanford Manufacturing Co., P.O. Box 1017, Syracuse, NY 13201 (G.C. Hanford Mfg. Co.).
200–374	TETRAMED 324 HCA (tetracycline) Soluble Powder	Cross Vetpharm Group Ltd.
200–376	SULFAMED–G (sulfadimethoxine) Soluble Powder	Cross Vetpharm Group Ltd.
200–377	LINXMED–SP (lincomycin and spectinomycin) Soluble Powder	Cross Vetpharm Group Ltd.
200–378	Neomycin Sulfate 325 Soluble Powder	Sparhawk Laboratories, Inc., 12340 Santa Fe Trail Dr., Lenexa, KS 66215 (Sparhawk Laboratories, Inc.).
200–379	Neomycin Liquid	Sparhawk Laboratories, Inc.
200–380	SPECLINX–50 (lincomycin and spectinomycin) Soluble Powder	Cross Vetpharm Group Ltd.
200–407	Lincomycin-Spectinomycin Water Soluble Powder	Agri Laboratories, Ltd.
200–434	SMZ–MED 454 (sulfamethazine) Soluble Powder	Cross Vetpharm Group Ltd.
200–441	AUREOMYCIN (chlortetracycline) Soluble Powder	Huvepharma EOOD.
200–443	Sulfadimethoxine Soluble Powder	First Priority, Inc., 1590 Todd Farm Dr., Elgin, IL 60123.
200–460	TETROXY AQUATIC (oxytetracycline) Soluble Powder	Cross Vetpharm Group Ltd.
200–494	GENTAMED (gentamicin) Soluble Powder	Cross Vetpharm Group Ltd.

The animal drug regulations are also being amended to reflect several non-substantive changes in format. These technical amendments are being made to improve the consistency and readability of the regulations.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect approval of similar supplemental NADAs and ANADAs changing the marketing status of antimicrobial drugs administered to food-producing animals in medicated feed.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Parts 520 and 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 529 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.110 [Amended]

■ 2. In § 520.110, in paragraph (d)(3), remove ''Prepare fresh medicated water daily.'' and as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

§ 520.441 [Amended]

■ 3. In § 520.441, in paragraphs (d)(1)(i)(A)(*2*), (d)(2)(i)(A)(*2*), (d)(4)(i)(A)(*2*), (d)(4)(i)(B)(*2*), (d)(4)(ii)(A)(*2*), (d)(4)(ii)(B)(*2*), (d)(4)(iii)(C), (d)(4)(iv)(C), (d)(5)(i)(A)(*2*), (d)(5)(ii)(A)(*2*), (d)(5)(iii)(C), and (d)(5)(iv)(C), as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

§ 520.445 [Amended]

■ 4. In § 520.445, in paragraph (d)(3), as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

■ 5. In § 520.823, revise paragraphs (d)(1)(i), (d)(1)(iii), (d)(2)(i), (d)(2)(iii), (d)(3)(i), and (d)(3)(iii) to read as follows:

§ 520.823 Erythromycin.

* * * * *

(d) * * *

(1) * * *

(i) *Amount.* Administer 0.500 gram per gallon for 5 days.

* * * * *

(iii) *Limitations.* Do not use in replacement pullets over 16 weeks of age. Do not use in chickens producing eggs for human consumption. Withdraw 1 day before slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(i) *Amount.* Administer 0.500 gram per gallon for 7 days.

* * * * *

(iii) *Limitations.* Do not use in replacement pullets over 16 weeks of age. Do not use in chickens producing eggs for human consumption. Withdraw 1 day before slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) * * *

(i) *Amount.* Administer 0.500 gram per gallon for 7 days.

* * * * *

(iii) *Limitations.* Do not use in turkeys producing eggs for human consumption. Withdraw 1 day before slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 6. In § 520.1044a, revise paragraph (d)(3) to read as follows:

§ 520.1044a Gentamicin sulfate oral solution.

* * * * *

(d) * * *

(3) *Limitations.* Do not slaughter treated swine for food for at least 3 days following treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 7. In § 520.1044c, remove paragraph (d)(4) and revise paragraph (d)(3) to read as follows:

§ 520.1044c Gentamicin sulfate powder.

* * * * *

(d) * * *

(3) *Limitations.* Withdrawal period: 10 days. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.1263c [Amended]

■ 8. In § 520.1263c, in paragraph (b)(1), remove ''No. 016592'' and in its place add ''Nos. 016592 and 054771''; in paragraph (d)(1)(iii), remove ''051259'' and in its place add ''054925'', and as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''; and in paragraphs (d)(2)(iii) and (d)(3)(iii), add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

■ 9. In § 520.1265, add paragraph (d)(3) to read as follows:

§ 520.1265 Lincomycin and spectinomycin powder.

* * * * *

(d) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 10. In § 520.1484, revise paragraphs (e)(1)(iii) and (e)(2)(iii) to read as follows:

§ 520.1484 Neomycin.

* * * * *

(e) * * **

(1) * * *

(iii) *Limitations.* Discontinue treatment prior to slaughter as follows: Cattle, 1 day; sheep, 2 days; swine and goats, 3 days. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 11. In § 520.1660a, revise the section heading and paragraphs (e)(1) and (e)(3) to read as follows:

§ 520.1660a Oxytetracycline and carbomycin.

* * * * *

(e) * * *

(1) *Amount.* Administer 1.0 gram of oxytetracycline and 1.0 gram carbomycin per gallon for not more than 5 days.

* * * * *

(3) *Limitations.* Not for use in chickens producing eggs for human consumption. Withdraw 24 hours before slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 12. In § 520.1660d, revise paragraphs (d)(1)(i)(A)(*1*), (d)(1)(i)(A)(*3*), (d)(1)(i)(B)(*1*), (d)(1)(i)(B)(*3*), (d)(1)(ii)(A)(*1*), (d)(1)(ii)(A)(*3*), (d)(1)(ii)(B)(*1*), (d)(1)(ii)(B)(*3*), (d)(1)(ii)(C)(*1*), (d)(1)(ii)(C)(*3*), (d)(1)(iii)(A), (d)(1)(iii)(C), (d)(1)(iv)(A), (d)(1)(iv)(C), (d)(1)(v)(A), (d)(1)(v)(C), (d)(2)(i), and (d)(2)(iii) to read as follows:

§ 520.1660d Oxytetracycline powder.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(A) * * *

(*1*) *Amount.* Administer 200 to 400 milligrams/gallon for 7 to 14 days. Not to be used for more than 14 consecutive days.

* * * * *

(*3*) Do not use in birds producing eggs for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(B) * * *

(*1*) *Amount.* Administer 400 to 800 milligrams/gallon for 7 to 14 days. Not to be used for more than 14 consecutive days.

* * * * *

(*3*) Do not use in birds producing eggs for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) * * *

(A) * * *

(*1*) *Amount.* Administer 200 to 400 milligrams/gallon for 7 to 14 days. Not to be used for more than 14 consecutive days.

* * * * *

(*3*) Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter those products sponsored by Nos. 054771 and 061623 in § 510.600(c) of this chapter. Withdraw 4 days prior to slaughter

those products sponsored by No. 054628. Zero-day withdrawal for those products sponsored by Nos. 057561 and 069254. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(B) * * *

(*1*) *Amount.* Administer 400 milligrams/gallon for 7 to 14 days. Not to be used for more than 14 consecutive days.

* * * * *

(*3*) Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter those products sponsored by Nos. 054771 and 061623 in § 510.600(c) of this chapter. Withdraw 4 days prior to slaughter those products sponsored by No. 054628. Zero-day withdrawal for those products sponsored by Nos. 057561 and 069254. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(C) * * *

(*1*) *Amount.* Administer 25 milligrams per pound of body weight daily for 7 to 14 days. Not to be used for more than 14 consecutive days.

* * * * *

(*3*) Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter those products sponsored by Nos. 054771 and 061623 in § 510.600(c) of this chapter. Withdraw 4 days prior to slaughter those products sponsored by No. 054628. Zero-day withdrawal for those products sponsored by Nos. 057561 and 069254. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(iii) * * *

(A) *Amount.* Administer 10 milligrams per pound of body weight daily for up to 14 days. Do not use for more than 14 consecutive days.

* * * * *

(C) Withdraw zero days prior to slaughter those products sponsored by Nos. 054771, 057561, 061623, and 069254 in § 510.600(c) of this chapter. Withdraw 4 days prior to slaughter those products sponsored by No. 054628. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(iv) * * *

(A) *Amount.* Administer 10 milligrams per pound of body weight daily for up to 14 days. Do not use for more than 14 consecutive days.

* * * * *

(C) Withdraw 5 days prior to slaughter. A milk discard period has not been established for this product in lactating dairy cattle. Do not use in female dairy cattle 20 months of age or older. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(v) * * *

(A) *Amount.* Administer 10 milligrams per pound of body weight daily for up to 14 days. Not to be used for more than 14 consecutive days.

* * * * *

(C) Withdraw 5 days prior to slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(i) *Amount.* 200 milligrams per colony, administered via either a 1:1 sugar syrup (equal parts of sugar and water weight to weight) or dusting with a powdered sugar mixture. The drug is administered in 3 applications of sugar syrup or 3 dustings at 4- to 5-day intervals.

* * * * *

(iii) The drug should be fed early in the spring or fall and consumed by the bees before main honey flow begins to avoid contamination of production honey. Remove at least 6 weeks prior to main honey flow. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 13. In § 520.1696b, redesignate paragraph (c) as paragraph (d) and add new paragraph (c), and revise redesignated paragraph (d)(3) to read as follows:

§ 520.1696b Penicillin G powder.

* * * * *

(c) *Related tolerances.* See § 556.510 of this chapter.

* * * * *

(d) * * *

(3) *Limitations.* Discontinue treatment at least 1 day prior to slaughter. Not for use in turkeys producing eggs for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.2123b [Amended]

■ 14. In § 520.2123b, remove paragraph (d)(1)(i); redesignate paragraphs (d)(1)(ii) and (iii) as paragraphs (d)(1)(i) and (ii); and in paragraph (d)(2), as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

§ 520.2184 [Amended]

■ 15. In § 520.2184, in paragraph (d)(3), remove the first sentence, and as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

§ 520.2200 [Amended]

■ 16. In § 520.2200, in paragraphs (d)(1)(iii) and (d)(2)(iii), as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

§ 520.2218 [Amended]

■ 17. In § 520.2218, in paragraphs (d)(1)(ii) and (d)(2)(ii), remove the first sentence, and as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

■ 18. In § 520.2220a, revise the section heading and paragraphs (d)(1)(iii), (d)(2)(iii), and (d)(3)(iii) to read as follows:

§ 520.2220a Sulfadimethoxine oral solution and soluble powder.

* * * * *

(d) * * *

(1) * * *

(iii) *Limitations.* Withdraw 5 days before slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(iii) *Limitations.* Withdraw 5 days before slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) * * *

(iii) *Limitations.* Withdraw 7 days before slaughter. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extralabel use of this product in lactating dairy cattle.

§ 520.2261a [Amended]

■ 19. In § 520.2261a, in paragraph (d)(3), as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

§ 520.2261b [Amended]

■ 20. In § 520.2261b, in paragraphs (d)(1)(iii), (d)(2)(iii), (d)(3)(iii), and (d)(4)(iii), as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

§ 520.2325a [Amended]

■ 21. In § 520.2325a, in paragraph (d), remove the first sentence, and as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

§ 520.2345d [Amended]

■ 22. In § 520.2345d, in paragraphs (d)(1)(iii), (d)(2)(iii), (d)(3)(iii), and (d)(4)(iii), as the last sentence add ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 23. The authority citation for part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 24. In § 529.1660, add paragraph (d)(3) to read as follows:

§ 529.1660 Oxytetracycline.

* * * * *

(d) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 20, 2016.

Tracey H. Forfa,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 2016–31084 Filed 12–23–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

[Docket No. FDA–2016–N–0002]

New Animal Drugs for Use in Animal Feed; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of 71 supplemental new animal drug applications (NADAs) and 35 supplemental abbreviated new animal drug applications (ANADAs) for revised labeling reflecting a change in marketing status from over-the-counter (OTC) use to use by veterinary feed directive (VFD) for antimicrobial drugs of importance to human medicine administered to food-producing animals in medicated feed. Where applicable, FDA is also withdrawing approval of those parts of the NADAs that pertain to use of these antimicrobial drugs for growth promotion indications. These actions are being taken at the sponsors' requests because these particular medicated feeds will no longer be manufactured or marketed. These applications were submitted in voluntary compliance with the goals of FDA Center for Veterinary Medicine's (CVM's) Judicious Use Initiative. In addition, the animal drug regulations are being amended to reflect the voluntary withdrawal of approval of certain entire NADAs and ANADAs that were affected by this initiative. The animal drug regulations are also being amended to reflect several non-substantive changes in format. These technical amendments are being made to improve the consistency and readability of the regulations.

DATES: This rule is effective December 30, 2016.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5689, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Supplemental Approval of Revised Labeling and Withdrawal of Approval of Portions of NADAs Pertaining to Production Indications

FDA is amending the animal drug regulations to reflect approval of 71 supplemental NADAs and 35 supplemental ANADAs for revised labeling reflecting a change in marketing status from OTC use to use by VFD for antimicrobial drugs of importance to human medicine administered to food-producing animals in medicated feed. Where applicable, FDA is also withdrawing approval of those parts of the NADAs that pertain to use of these antimicrobial drugs for growth promotion indications. These actions are being taken at the sponsors' requests because these particular medicated feeds will no longer be manufactured or marketed.

These applications were identified as being affected by guidance for industry (GFI) #213, ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209'', December 2013 (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM299624.pdf*). Their change to VFD marketing status is consistent with FDA CVM's initiative for the Judicious Use of Antimicrobials.

The animal drug regulations for medicated feeds are also being amended to reflect several non-substantive changes in format. These technical amendments are being made to improve the consistency and readability of the regulations.

The affected applications for Type A medicated articles for which supplemental applications with revised labeling were approved follow:

File No.	Animal drug product	Sponsor
006–391	S.Q. 40% (sulfaquinoxaline) Type A Medicated Article	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria (Huvepharma EOOD).
008–804	TM–50 or TM–100 (oxytetracycline) Type A Medicated Article	Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666 (Phibro Animal Health Corp.).
010–092	GALLIMYCIN–100P (erythromycin) Type A Medicated Article	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland (Cross Vetpharm Group Ltd.).
010–918	HYGROMIX 8 (hygromycin B) Type A Medicated Article	Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140 (Elanco US Inc.).
012–491	TYLAN (tylosin) Type A Medicated Article	Elanco US Inc.
033–950	Sulfamerazine In Fish Grade	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007 (Zoetis Inc.).
035–688	AUREOMIX S 40/40 (chlortetracycline and sulfamethazine) Granular Type A Medicated Article.	Zoetis Inc.
035–805	AUREO S 700 (chlortetracycline and sulfamethazine) Granular Type A Medicated Article.	Zoetis Inc.
038–439	TERRAMYCIN 200 (oxytetracycline) for Fish Type A Medicated Article.	Phibro Animal Health Corp.
040–209	ROFENAID 40 (sulfadimethoxine and ormetoprim) Type A Medicated Article.	Zoetis Inc.

File No.	Animal drug product	Sponsor
041–275	TYLAN 40 Sulfa-G (tylosin and sulfamethazine) Type A Medicated Article.	Elanco US Inc.
041–647	AUREOMIX S 700–A (chlortetracycline and sulfamethazine) Type A Medicated Article.	Zoetis Inc.
041–648	AUREOMIX S 700–D (chlortetracycline and sulfamethazine) Type A Medicated Article.	Zoetis Inc.
041–649	AUREOMIX S 700–G (chlortetracycline and sulfamethazine) Type A Medicated Article.	Zoetis Inc.
041–650	AUREOMIX S 700–E (chlortetracycline and sulfamethazine) Type A Medicated Article.	Zoetis Inc.
041–651	AUREOMIX S 700–F (chlortetracycline and sulfamethazine) Type A Medicated Article.	Zoetis Inc.
041–652	AUREOMIX S 700–C–2 (chlortetracycline and sulfamethazine) Type A Medicated Article.	Zoetis Inc.
041–653	AUREOMIX S 700–B (chlortetracycline and sulfamethazine) Type A Medicated Article.	Zoetis Inc.
041–654	AUREOMIX S 700–H (chlortetracycline and sulfamethazine) Type A Medicated Article.	Zoetis Inc.
046–415	Tylosin Type A Medicated Article	Zoetis Inc.
046–699	CHLORMAX (chlortetracycline) Type A Medicated Article	Zoetis Inc.
048–480	CHLORATET (chlortetracycline) Type A Medicated Article	Pharmgate LLC, 1015 Ashes Dr., Suite 102, Wilmington, NC 28405 (Pharmgate LLC).
048–761	AUREOMYCIN (chlortetracycline) Type A Medicated Article	Zoetis Inc.
049–287	CHLORACHEL (chlortetracycline)Type A Medicated Article	Zoetis Inc.
091–749	TYLAN 40 Plus Sulfa-G (tylosin and sulfamethazine) Type A Medicated Article.	Zoetis Inc.
092–286	CLTC–50 MR (chlortetracycline) Type A Medicated Article	Phibro Animal Health Corp.
092–287	CLTC 100 MR (chlortetracycline) Type A Medicated Article	Phibro Animal Health Corp.
094–975	NEO-TERRAMYCIN 100/100 (oxytetracycline and neomycin) Type A Medicated Article.	Phibro Animal Health Corp.
095–143	TERRAMYCIN 10, 30, 50, 100, or 200 (oxytetracycline) Type A Medicated Article.	Phibro Animal Health Corp.
097–505	LINCOMIX 20 (lincomycin) Type A Medicated Article	Zoetis Inc.
098–431	TYLAN 10 (tylosin) Premix Type A Medicated Article	Phibro Animal Health Corp.
100–901	PFICHLOR 100S (chlortetracycline) Milk Replacer Type A Medicated Article.	Zoetis Inc.
125–933	ROMET–30 (ormetoprim and sulfadimethoxine) Type A Medicated Article.	Pharmaq AS.
126–050	APRALAN 75 (apramycin) Type A Medicated Article	Elanco US Inc.
138–934	PENNCHLOR S 40/40 (chlortetracycline and sulfamethazine) Type A medicated article.	Pharmgate LLC.
138–935	PENNCHLOR 100 MR (chlortetracycline) Type A Medicated Article.	Pharmgate LLC.
138–938	PENNOX 50, 100, or 200 Hi-Flo, or 100–MR (oxytetracycline) Type A Medicated Article.	Pharmgate LLC.
138–939	NEO-OXY 100/100 MR (oxytetracycline and neomycin) Type A Medicated Article.	Pharmgate LLC.
140–976	NEOMIX 325 Milk Replacer (neomycin) Type A Medicated Article.	Zoetis Inc.
200–314	PENNCHLOR S (chlortetracycline and sulfamethazine) Type A Medicated Article.	Pharmgate LLC.
200–484	TYLOVET 100 (tylosin) Type A Medicated Article	Huvepharma.
200–510	DERACIN 100 (chlortetracycline) Type A Medicated Article	Pharmgate LLC.

The affected applications for manufacturing combination drug medicated feeds follow:

File No.	Animal drug product	Sponsor
036–361	CTC Sodium Sulfate (chlortetracycline and sodium sulfate)/AMPROL PLUS (amprolium and ethopabate).	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007 (Zoetis Inc.).
045–444	CHLORMAX (chlortetracycline)/DECCOX (decoquinate)	Zoetis Inc.
046–209	CTC (chlortetracycline)/COYDEN (clopidol)	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria (Huvepharma EOOD).
092–507	AUREOMYCIN (chlortetracycline)/ROBENZ (robenidine)	Zoetis Inc.
099–006	TERRAMYCIN (oxytetracycline)/COBAN (monensin)	Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666 (Phibro Animal Health Corp.).
101–666	TERRAMYCIN (oxytetracycline)/ROBENZ (robenidine)	Phibro Animal Health Corp.

File No.	Animal drug product	Sponsor
104–646	TYLAN (tylosin)/RUMENSIN (monensin)	Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140 (Elanco US Inc.).
110–047	TYLAN (tylosin)/BANMINTH (pyrantel)	Phibro Animal Health Corp.
116–044	LINCOMIX (lincomycin)/BANMINTH (pyrantel)	Phibro Animal Health Corp.
121–553	AUREOMYCIN (chlortetracycline)/COBAN (monensin)	Zoetis Inc.
138–870	TYLAN (tylosin)/RUMENSIN (monensin)/MGA (melengestrol)	Zoetis Inc.
138–941	LINCOMIX (lincomycin)/BANMINTH (pyrantel)	Zoetis Inc.
138–992	TYLAN (tylosin)/BOVATEC (lasalocid)/MGA (melengestrol)	Zoetis Inc.
138–995	TYLAN (tylosin)/MGA (melengestrol)	Zoetis Inc.
139–192	TYLAN (tylosin)/MGA (melengestrol)	Zoetis Inc.
140–448	TERRAMYCIN (oxytetracycline)/BIO–COX (salinomycin)	Phibro Animal Health Corp.
140–859	AUREOMYCIN (chlortetracycline)/BIO–COX (salinomycin)	Zoetis Inc.
140–954	LINCOMIX (lincomycin)/SAFE–GUARD (fenbendazole)	Intervet, Inc.
141–011	CTC (chlortetracycline)/DENAGARD (tiamulin)	Elanco US Inc.
141–054	LINCOMIX (lincomycin)/IVOMEC (ivermectin)	Merial, Inc., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640.
141–059	CHLORMAX (chlortetracycline)/BMD (bacitracin)	Zoetis Inc.
141–147	CHLORMAX (chlortetracycline)/DECCOX (decoquinate)	Zoetis Inc.
141–149	TYLAN (tylosin)/RUMENSIN (monensin)/DECCOX (decoquinate).	Zoetis Inc.
141–172	TYLAN (tylosin)/PAYLEAN (ractopamine)	Elanco US Inc.
141–185	AUREOMYCIN (chlortetracycline)/DECCOX (decoquinate)	Zoetis Inc.
141–201	AUREOMYCIN (chlortetracycline)/CATTLYST (laidlomycin)	Zoetis Inc.
141–211	TERRAMYCIN (oxytetracycline)/(carbadox)	Phibro Animal Health Corp.
141–224	TYLAN (tylosin)/RUMENSIN (monensin)/OPTAFLEXX (ractopamine).	Elanco US Inc.
141–233	TYLAN (tylosin)/RUMENSIN (monensin)/OPTAFLEXX (ractopamine)/MGA (melengestrol).	Elanco US Inc.
141–250	AUREOMYCIN (chlortetracycline)/BOVATEC (lasalocid)	Zoetis Inc.
141–276	TYLAN (tylosin)/RUMENSIN (monensin)/ZILMAX (zilpaterol)	Intervet, Inc., 2 Giralda Farms, Madison, NJ 07940 (Intervet, Inc.).
141–280	TYLAN (tylosin)/RUMENSIN (monensin)/ZILMAX (zilpaterol)/MGA (melengestrol).	Intervet, Inc.
200–095	AUREOMYCIN (chlortetracycline)/SACOX (salinomycin)	Huvepharma EOOD.
200–096	TERRAMYCIN (oxytetracycline)/SACOX (salinomycin)	Huvepharma EOOD.
200–242	AUREOMYCIN (chlortetracycline)/BMD (bacitracin)	Zoetis Inc.
200–261	CHLORMAX (chlortetracycline)/BIO–COX (salinomycin)	Zoetis Inc.
200–262	CHLORMAX (chlortetracycline)/SACOX (salinomycin)	Zoetis Inc.
200–263	CHLORMAX (chlortetracycline)/COBAN (monensin)	Zoetis Inc.
200–354	PENNCHLOR (chlortetracycline)/COBAN (monensin)	Pharmgate LLC, 1015 Ashes Dr., Suite 102, Wilmington, NC 28405 (Pharmgate LLC).
200–356	PENNCHLOR (chlortetracycline)/DENAGARD (tiamulin)	Pharmgate LLC.
200–357	PENNCHLOR (chlortetracycline)/BIO–COX (salinomycin)	Pharmgate LLC.
200–358	PENNCHLOR (chlortetracycline)/BMD (bacitracin)	Pharmgate LLC.
200–359	PENNCHLOR (chlortetracycline)/DECCOX (decoquinate)	Pharmgate LLC.
200–375	TYLAN (tylosin)/RUMENSIN (monensin)/HEIFERMAX (melengestrol).	Elanco US Inc.
200–424	TYLAN (tylosin)/RUMENSIN (monensin)/OPTAFLEXX (ractopamine)/HEIFERMAX (melengestrol).	Elanco US Inc.
200–427	TYLAN (tylosin)/HEIFERMAX 500 (melengestrol) Liquid	Elanco US Inc.
200–430	TYLAN (tylosin)/BOVATEC (lasalocid)/HEIFERMAX 500 (melengestrol) Liquid.	Elanco US Inc.
200–480	TYLAN (tylosin)/RUMENSIN (monensin)/ZILMAX (zilpaterol)/HEIFERMAX 500 (melengestrol).	Elanco US Inc.
200–530	TYLOVET (tylosin)/PAYLEAN (ractopamine)	Huvepharma EOOD.
200–531	TYLOVET (tylosin)/RUMENSIN (monensin)	Huvepharma EOOD.
200–532	TYLOVET (tylosin)/MGA (melengestrol)	Huvepharma EOOD.
200–533	TYLOVET (tylosin)/RUMENSIN (monensin)/DECCOX (decoquinate).	Huvepharma EOOD.
200–534	TYLOVET (tylosin)/RUMENSIN (monensin)/MGA (melengestrol).	Huvepharma EOOD.
200–535	TYLOVET (tylosin)/BOVATEC (lasalocid)/MGA (melengestrol).	Huvepharma EOOD.
200–544	TYLOVET (tylosin)/RUMENSIN (monensin)/ZILMAX (zilpaterol)/MGA (melengestrol).	Huvepharma EOOD.
200–547	TYLOVET (tylosin)/RUMENSIN (monensin)/ZILMAX (zilpaterol).	Huvepharma EOOD.
200–558	TYLAN (tylosin)/ENGAIN (ractopamine)	Zoetis Inc.
200–561	TYLAN (tylosin)/RUMENSIN (monensin)/ACTOGAIN (ractopamine).	Zoetis Inc.
200–562	TYLAN (tylosin)/RUMENSIN (monensin)/ACTOGAIN (ractopamine).	Zoetis Inc.
200–566	TYLOVET (tylosin)/RUMENSIN (monensin)	Huvepharma EOOD.
200–567	TYLOVET (tylosin)/RUMENSIN (monensin)	Huvepharma EOOD.

File No.	Animal drug product	Sponsor
200–583	TYLOVET (tylosin)/RUMENSIN (monensin)/ACTOGAIN (ractopamine)/MGA (melengestrol).	Zoetis Inc.
200–584	TYLOVET (tylosin)/ENGAIN (ractopamine)	Zoetis Inc.
200–585	TYLOVET (tylosin)/RUMENSIN (monensin)/ACTOGAIN (ractopamine).	Zoetis Inc.

The animal drug regulations are also being amended to reflect several non-substantive changes in format. These technical amendments are being made to improve the consistency and readability of the regulations.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect approval of similar supplemental NADAs and ANADAs changing the marketing status of antimicrobial drugs administered to food-producing animals in medicated water.

II. Changes of Sponsorship

Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140 has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 141–110, providing for the manufacture of combination drug medicated turkey feeds containing STAFAC (virginiamycin) and COBAN (monensin) to Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect this change of sponsorship.

III. Withdrawals of Approval

In addition, approval of the following applications for medicated feeds containing antimicrobial drugs of importance to human medicine administered to food-producing animals is being withdrawn at the sponsors' requests because the products are no longer manufactured or marketed:

File No.	Product name	Sponsor
034–085	LINCOMIX (lincomycin hydrochloride monohydrate) Type A Medicated Article.	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007 (Zoetis Inc.).
035–287	OM–5 Premix (oleandomycin) Type A Medicated Article	Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666 (Phibro Animal Health Corp.).
046–668	Penicillin G Procaine 50% Type A Medicated Article	Phibro Animal Health Corp.
091–668	CHLORMAX–SP 500 (chlortetracycline, sulfamethazine, penicillin G procaine) Type A Medicated Article.	Zoetis Inc.
108–116	LINCOMIX (lincomycin)/NICARB (nicarbazin)	Phibro Animal Health Corp.
133–334	Virginiamycin Type A Medicated Article	Zoetis Inc.
139–473	STAFAC (virginiamycin)/STENEROL (halofuginone hydrobromide).	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria (Huvepharma EOOD).
140–340	LINCOMIX (lincomycin)/STENOROL (halofuginone hydrobromide).	Huvepharma EOOD.
140–443	HYGROMIX 1.6 (hygromycin B) Type A Medicated Article	Zoetis Inc.
140–947	LINCOMIX (lincomycin)/MAXIBAN (narasin and nicarbazin)	Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140 (Elanco US Inc.).
141–090	STAFAC (virginiamycin)/CLINICOX (diclazuril)	Huvepharma EOOD.
200–171	LINCOMIX (lincomycin)/NICARMIX (nicarbazin)	Planalquimica Industrial Ltda., Rua das Magnolias nr. 2405, Jardim das Bandeiras, CEP 13053–120, Campinas, Sao Paulo, Brazil.
200–569	TYLAN (tylosin)/SACOX (salinomycin)	Huvepharma EOOD.
200–570	TYLOVET 100 (tylosin)/BIO–COX (salinomycin)	Huvepharma EOOD.
200–580	TYLOVET 100 (tylosin)/SACOX (salinomycin)	Huvepharma EOOD.

Elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADAs 034–085, 035–287, 046–668, 091–668, 108–116, 133–334, 139–473, 140–340, 140–443, 140–947, and 141–090, and ANADAs 200–171, 200–569, 200–570, and 200–580, and all supplements and amendments thereto, is withdrawn, effective January 6, 2017. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these voluntary withdrawals of approval.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 1. The authority citation for part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

§ 556.480 [Removed]

■ 2. Remove § 556.480.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

■ 4. In § 558.4, in paragraph (d), in the Category I table, in the column headings for ''Assay limits [1] percent type A'' and ''Assay limits percent [1] type B/C [2]'', remove ''type'' and in its place add ''Type'', and remove the row entries for ''Erythromycin (thiocyanate salt)'' and ''Oleandomycin''; and in the Category II table, alphabetically add an entry for ''Erythromycin'' to read as follows:

§ 558.4 Requirement of a medicated feed mill license.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits percent [1] Type A	Type B maximum (100×)	Assay limits percent [1] Type B/C [2]
*	*	*	*
Erythromycin	85–115	4.625 g/lb (1.02%)	75–125
*	*	*	*

* * * * *

■ 5. In § 558.58, remove and reserve paragraphs (e)(2), (7), and (8); remove paragraphs (e)(10) and (11); and add paragraph (f) to read as follows:

§ 558.58 Amprolium and ethopabate.

* * * * *

(f) Amprolium and ethopabate may also be used in combination with:

(1) [Reserved]

(2) [Reserved]

(3) Chlortetracycline as in § 558.128.

(4) Lincomycin as in § 558.325.

(5) Virginiamycin as in § 558.635.

■ 6. Revise § 558.59 to read as follows:

§ 558.59 Apramycin.

(a) *Specifications.* Type A articles containing 75 grams apramycin (as apramycin sulfate) per pound.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.52 of this chapter.

(d) *Conditions of use in swine*—

Apramycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(1) 150		For control of porcine colibacillosis (weanling pig scours) caused by susceptible strains of *Escherichia coli.*	Feed as the sole ration for 14 consecutive days. Withdraw 28 days before slaughter.	058198
(2) [Reserved].				

■ 7. In § 558.76, redesignate paragraphs (e)(2)(iii) through (xvi) as paragraphs (e)(2)(iv) through (xvii); and add new paragraph (e)(2)(iii) to read as follows:

§ 558.76 Bacitracin methylenedisalicylate.

* * * * *

(e) * * *

(2) * * *

(iii) Chlortetracycline as in § 558.128.

* * * * *

■ 8. Revise § 558.128 to read as follows:

§ 558.128 Chlortetracycline.

(a) *Specifications.* Type A medicated articles containing either chlortetracycline calcium complex equivalent to chlortetracycline hydrochloride, or for products intended for use in milk replacer, chlortetracycline hydrochloride.

(b) *Approvals.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (e) of this section.

(1) *Nos. 054771:* 50, 65, or 100 grams per pound (g/lb) Type A medicated article.

(2) *No. 066104:* 10, 20, 30, 50, 70, or 100 g/lb of Type A medicated article.

(3) *No. 069254:* 50, 90, or 100 g/lb of Type A medicated article.

(c) *Related tolerances.* See § 556.150 of this chapter.

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for chlortetracycline medicated feeds must not exceed 6 months from the date of issuance. VFDs for chlortetracycline shall not be refilled.

(3) In milk replacers or starter feed; include on labeling the warning: ''A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.''

(4) Manufacture for use in free-choice feeds as in paragraph (e)(4)(iii) of this section must conform to § 510.455 of this chapter.

(5) When manufactured for use as in paragraph (e)(5)(iii) of this section, include on labeling the warning: ''Psittacosis, avian chlamydiosis, or ornithosis is a reportable communicable disease, transmissible between wild and domestic birds, other animals, and man. Contact appropriate public health and regulatory officials.''

(e) Conditions of use—(1) Chickens. It is used as follows:

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 100 to 200 g/ton		Chickens: For control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Feed continuously for 7 to 14 days. Do not feed to chickens producing eggs for human consumption.	054771 066104 069254

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(ii) 100 to 200 g/ton	Clopidol, 113.5	Broiler and replacement chickens: As an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. mivati,* and *E. brunetti;* and for control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.	Feed continuously as the sole ration from the time chicks are placed in floor pens for 7 to 14 days. Do not feed to chickens over 16 weeks of age. Do not feed to chickens producing eggs for human consumption. Chlortetracycline as provided by No. 054771; clopidol as provided by No. 016592 in § 510.600(c) of this chapter.	016592
(iii) 100 to 200 g/ton	Decoquinate, 27.2 ..	Chickens: For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. mivati, E. acervulina, E. maxima,* and *E. brunetti;* and for control of infectious synovitis caused by *M, synoviae* susceptible to chlortetracycline.	Feed continuously for 7 to 14 days. Bentonite should not be used in decoquinate feeds. Do not feed to chickens producing eggs for human consumption. Chlortetracycline and decoquinate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(iv) 100 g/ton	Robenidine, 30	Broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix;* as an aid in the control of chronic respiratory disease (CRD) caused by *Mycoplasma gallisepticum* susceptible to chlortetracycline; and as an aid in the control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.	Feed continuously as sole ration. Do not use this product in feeds conta. Chlortetracycline and robenidine as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(v) 200 to 400 g/ton	.....	Chickens: For the control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *Escherichia coli* susceptible to chlortetracycline.	Feed continuously for 7 to 14 days. Do not feed to chickens producing eggs for human consumption.	054771 066104 069254
(vi) 200 g/ton	Amprolium, 227 and ethopabate, 3.6.	For chickens where immunity to coccidiosis is not desired: For prevention of coccidiosis; and for treatment of chronic respiratory disease (CRD) caused by *M. gallisepticum* susceptible to chlortetracycline.	Use in low calcium feed containing 0.8% dietary calcium and 1.5% sodium sulfate; feed continuously as sole ration for 7 to 14 days; do not feed to chickens producing eggs for human consumption. Chlortetracycline as provided by No. 054771; amprolium and ethopabate as provided by No. 016592 in § 510.600(c) of this chapter.	054771
(vii) 200 g/ton	Decoquinate, 27.2 ..	Broilers: As an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. mivati, E. maxima,* and *E. brunetti;* and for the treatment of chronic respiratory disease (air sac infection) and the prevention of synovitis.	Feed continuously as the sole ration for no more than 8 weeks. Use in low calcium feed containing 0.8% dietary calcium. Bentonite should not be used in decoquinate feeds. Do not feed to chickens producing eggs for human consumption. Chlortetracycline and decoquinate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(viii) 200 g/ton	Robenidine 30	Broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix;* as an aid in the control of chronic respiratory disease (CRD) caused by *M. gallisepticum* susceptible to chlortetracycline; and as an aid in the control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.	Feed continuously as sole ration. Do not use this product in feeds containing bentonite. Do not feed to chickens producing eggs for human consumption. Withdraw 5 days prior to slaughter. Chlortetracycline and robenidine as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(ix) 500 g/ton	.....	Chickens: For the reduction of mortality due to *E. coli* infections susceptible to chlortetracycline.	1. Feed for 5 days. To sponsor No. 054771 under NADA 048–761 and No. 069254 under ANADA 200–510: zero withdrawal time.	054771 069254
			2. Feed for 5 days; withdraw 24 hours prior to slaughter. Do not feed to chickens producing eggs for human consumption.	054771 066104 069254

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(x) 500 g/ton	Monensin, 90 to 110.	Chickens: As an aid in the reduction of mortality due to *E. coli* infections susceptible to chlortetracycline; and as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati*.	Feed for 5 days as the sole ration. Do not feed to laying chickens. Not to be fed continuously for more than 5 days. Do not feed to chickens over 16 weeks of age. Withdraw 24 hours before slaughter. See § 558.355(d) of this chapter. Chlortetracycline as provided by No. 054771; monensin as provided by No. 058198 in § 510.600(c) of this chapter.	054771 069254
(xi) 500 g/ton	Robenidine, 30	Broiler and fryer chickens: As an aid in the prevention of coccidiosis caused by *Eimeria mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix;* as an aid in the reduction of mortality due to *E. coli* susceptible to chlortetracycline.	Feed continuously as sole ration for up to 5 days. Do not use this product in feeds containing bentonite. Do not feed to chickens producing eggs for human consumption. Withdraw 5 days prior to slaughter. Chlortetracycline and robenidine as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(xii) 500 g/ton	Salinomycin, 40 to 60.	Broiler chickens: As an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati;* and as an aid in the reduction of mortality due to *E. coli* susceptible to chlortetracycline.	For use in low calcium feeds containing 0.8% calcium. Not approved for use with pellet binders. Not to be fed continuously for more than 5 days. Do not feed to laying chickens producing eggs for human consumption. Withdraw 24 hours before slaughter. May be fatal if accidentally fed to adult turkeys or horses. Chlortetracycline as provided by Nos. 054771 or 069254; salinomycin as provided by Nos. 054771 or 016592 in § 510.600(c) of this chapter.	016592 054771 069254

(2) *Turkeys.* It is used as follows:

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 200 g/ton	.....	Turkeys: For control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.	Feed continuously for 7 to 14 days. Do not feed to turkeys producing eggs for human consumption.	054771 066104 069254
(ii) 400 g/ton	.....	1. Turkeys: For control of hexamitiasis caused by *Hexamita meleagridis* susceptible to chlortetracycline.	Feed continuously for 7 to 14 days. Do not feed to turkeys producing eggs for human consumption.	054771 066104 069254
.....	.....	2. Turkey poults not over 4 weeks of age: For reduction of mortality due to paratyphoid caused by *Salmonella typhimurium* susceptible to chlortetracycline.	.....	054771 066104 069254
(iii) 25 mg/lb of body weight.	.....	Turkeys: For control of complicating bacterial organisms associated with bluecomb (transmissible enteritis; coronaviral enteritis) susceptible to chlortetracycline.	Feed continuously for 7 to 14 days. Do not feed to turkeys producing eggs for human consumption.	054771 066104 069254

(3) *Swine.* It is used as follows:

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 50 to 100 g/ton ..	.....	Swine: For reducing the incidence of cervical lymphadenitis (jowl abscesses) caused by Group E *Streptococci* susceptible to chlortetracycline.	.....	054771 066104 069254

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(ii) 400 g/ton	.....	Breeding swine: For the control of leptospirosis (reducing the incidence of abortion and shedding of leptospirae) caused by *Leptospira pomona* susceptible to chlortetracycline.	Feed continuously for not more than 14 days.	054771 066104 069254
(iii) 10 mg/lb of body weight.	.....	Swine: For treatment of bacterial enteritis caused by *Escherichia coli* and *S. choleraesuis* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to chlortetracycline; for the control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis* susceptible to chlortetracycline.	Feed approximately 400 g/ton, varying with body weight and feed consumption to provide 10 mg/lb per day. Feed for not more than 14 days. Withdraw 5 d prior to slaughter for sponsor No. 069254 in § 510.600(c) of this chapter.	054771 066104 069254
(iv) 10 mg/lb of body weight.	Bacitracin methylenedisalicylate, 10 to 30.	Swine: For treatment of bacterial enteritis caused by *E. coli* and *S. choleraesuis* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline; for the control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis* susceptible to chlortetracycline; and for increased rate of weight gain and improved feed efficiency.	Feed approximately 400 g/ton, varying with body weight and feed consumption to provide 10 mg/lb per day. Feed for not more than 14 days.	054771
(v) 10 mg/lb of body weight.	Bacitracin methylenedisalicylate, 10 to 30.	Swine: For treatment of bacterial enteritis caused by *E. coli* and *S. choleraesuis* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline; and for increased rate of weight gain and improved feed efficiency.	Feed chlortetracycline at approximately 400 g/ton of feed, varying with body weight and food consumption, to provide 10 mg/lb of body weight. Feed for not more than 14 days. Withdraw 5 d prior to slaughter for sponsor No. 069254. Bacitracin methylenedisalicylate provided by No. 054771; chlortetracycline provided by Nos. 054771 and 069254 in § 510.600(c) of this chapter.	069254
(vi) 500 to 4,000 to provide 10 mg/lb of body weight daily.	Tiamulin hydrogen fumarate, 35.	For control of swine dysentery associated with *Brachyspira* (formerly *Serpulina* or *Treponema*) *hyodysenteriae* susceptible to tiamulin and for treatment of swine bacterial enteritis caused by *E. coli* and *Salmonella choleraesuis* sensitive to chlortetracycline and treatment of bacterial pneumonia caused by *P. multocida* sensitive to chlortetracycline.	Feed continuously as the sole ration for 14 days. Withdraw medicated feed 2 days before slaughter. Tiamulin as provided by Nos. 058198 or 069254in § 510.600(c) of this chapter.	058198 069254

(4) *Cattle.* It is used as follows:

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 0.5 mg/lb of body weight daily.	.....	Beef cattle (over 700 lb): For control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline.	Withdraw 48 hours prior to slaughter. To sponsor Nos. 054771 and 069254: Zero withdrawal time.	054771 066104 069254

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(ii) 25 to 1,100 to provide 0.5 mg/lb of body weight daily.	Lasalocid, 30 to 600.	Pasture cattle (slaughter, stocker, feeder cattle, beef replacement heifers) over 700 pounds: For control of active infection of anaplasmosis caused by *A. marginale* susceptible to chlortetracycline; and for increased rate of weight gain.	Feed continuously on a hand-fed basis 0.5 mg chlortetracycline per lb. body weight per day and not less than 60 mg or more than 300 mg lasalocid per head daily in at least 1 pound of feed. Daily lasalocid intakes in excess of 200 mg/head/day in pasture cattle have not been shown to be more effective than 200 mg lasalocid/head/day. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(iii) 0.5 to 2.0 mg/lb of body weight daily.	.....	Beef cattle and nonlactating dairy cattle: As an aid in the control of active infection of anaplsmosis caused by *A. marginale* susceptible to chlortetracycline.	In free-choice cattle feeds such as feed blocks or salt-mineral mixes manufactured from approved Type A articles. See paragraph (d)(4) of this section.	054771
(iv) 10 mg/lb of body weight daily.	.....	1. Calves, beef and nonlactating dairy cattle: For treatment of bacterial enteritis caused by *Escherichia coli* and bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to chlortetracycline.	Feed approximately 400 g/ton, varying with body weight and feed consumption to provide 10 mg/lb per day. Treat for not more than 5 days. In feed including milk replacers withdraw 10 days prior to slaughter. To sponsor No. 069254: zero withdrawal time. See paragraph (d)(3) of this section.	054771 066104 069254
		2. Calves (up to 250 lb): For the treatment of bacterial enteritis caused by *E. coli* susceptible to chlortetracycline.	See paragraph (d)(3) of this section	054771 066104 069254
(v) 10 mg/lb of body weight daily.	Laidlomycin, 5	Cattle fed in confinement for slaughter: For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline; and for increased rate of weight and improved feed efficiency.	Feed continuously at a rate of 30 to 75 mg laidlomycin propionate potassium per head per day for not more than 5 days. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.305(d) of this chapter. Laidlomycin as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(vi) 10 mg/lb of body weight daily.	Laidlomycin, 5 to 10	Cattle fed in confinement for slaughter: For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline; and for improved feed efficiency.	Feed continuously at a rate of 30 to 75 mg laidlomycin propionate potassium per head per day for not more than 5 days. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.305(d) of this chapter. Laidlomycin as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(vii) 500 to 2,000 to provide 10 mg/lb of body weight daily.	Lasalocid, 10 to 30	Cattle fed in confinement for slaughter: For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline; and for improved feed efficiency.	Feed continuously in complete feed for not more than 5 days to provide 10 mg chlortetracycline per lb. body weight per day and not less than 100 mg or more than 360 mg lasalocid per head per day. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(viii) 500 to 1,200 to provide 10 mg/lb of body weight daily.	Lasalocid, 25 to 30	Cattle fed in confinement for slaughter: For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline; and for increased rate of weight gain and improved feed efficiency.	Feed continuously in complete feed for not more than 5 days to provide 10 mg chlortetracycline per lb. body weight per day and not less than 250 mg or more than 360 mg lasalocid per head per day. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(ix) 500 to 4,000 to provide 10 mg/lb of body weight daily.	Lasalocid, 30 to 600.	Pasture cattle (slaughter, stocker, feeder cattle, dairy and beef replacement heifers): For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline; and for increased rate of weight gain and improved feed efficiency.	Feed continuously on a hand-fed basis for not more than 5 days to provide 10 mg chlortetracycline per lb. body weight per day and not less than 60 mg or more than 300 mg lasalocid per head per day. Daily lasalocid intakes in excess of 200 mg/head/day in pasture cattle have not been shown to be more effective than 200 mg lasalocid/head/day. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(x) 500 to 4,000 g/ton.	.....	Calves, beef and nonlactating dairy cattle: For the treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline.	Feed continuously for not more than 5 days to provide 10 mg/lb body weight per day. To sponsor No. 054771 under NADA 046–699: 24-hour withdrawal period. To sponsor No. 054771 under NADA 048–761 and No. 069254 under ANADA 200–510: Zero withdrawal period.	054771 069254
(xi) 500 to 4,000	Decoquinate, 12.9 to 90.8.	Calves, beef and non-lactating dairy cattle: For the treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline; and for the prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*.	Feed at a rate of 1g chlortetracycline per 100 lb body weight/day and 22.7 mg decoquinate per 100 lb of body weight/day for not more than 5 days. When it is fully consumed, resume feeding 22.7 mg decoquinate per 100 lb of body weight/day for a total of 28 days to prevent coccidiosis. Withdraw 24 hours prior to slaughter. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. Do not feed to animals producing milk for food. Decoquinate as provided by No. 054771 in § 510.600(c) of this chapter.	054771 069254
(xii) 4,000 to 20,000 g/ton.	.....	Calves, beef and nonlactating dairy cattle: For the treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline.	As a top dress, varying with body weight and feed consumption, to provide 10 mg/lb per day. Treat for not more than 5 days. See paragraph (d)(3) of this section.	054771

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(xiii) 4,000 to 20,000 g/ton.	Decoquinate, 90.8 to 535.7.	Calves, beef and non-lactating dairy cattle: For the treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline; and for the prevention of coccidiosis caused by *E. bovis* and *E. zuernii*.	Administer as a top dress supplement or mix into the daily ration to provide 22.7 mg decoquinate per 100 lb of body weight per day and 1 g chlortetracycline per 100 lb body weight/day for not more than 5 days. When it is fully consumed, resume feeding 22.7 mg decoquinate per 100 lb of body weight/day for a total of 28 days to prevent coccidiosis. Withdraw 24 hours prior to slaughter. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. Do not feed to animals producing milk for food. Decoquinate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(xiv) 70 mg/head/day.	.....	Growing cattle (over 400 lb): For reduction of incidence of liver abscesses.	See paragraph (d)(3) of this section	054771 066104 069254
(xv) 350 mg/head/day.	.....	1. Beef cattle: For control of bacterial pneumonia associated with shipping fever complex caused by *Pasteurella* spp. susceptible to chlortetracycline.	Withdraw 48 h prior to slaughter. To sponsor No. 054771 under NADA 046–699: 48-hour withdrawal time. To sponsor No. 054771 under NADA 048–761 and No. 069254 under ANADA 200–510: zero withdrawal period.	054771 066104 069254
		2. Beef cattle (under 700 lb): For control of active infection of anaplasmosis caused by *A. marginale* susceptible to chlortetracycline.	Withdraw 48 h prior to slaughter. To sponsor No. 054771 under NADA 046–699: 48-hour withdrawal time. To sponsor No. 054771 under NADA 048–761 and No. 069254 under ANADA 200–510: zero withdrawal time.	054771 066104 069254
(xvi) 350 mg/head/day.	Laidlomycin, 5	Cattle fed in confinement for slaughter: For control of bacterial pneumonia associated with shipping fever complex caused by *Pasteurella* spp. susceptible to chlortetracycline; and for increased rate of weight and improved feed efficiency.	Feed continuously at a rate of 30 to 75 mg laidlomycin propionate potassium per head per day. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.305(d) of this chapter. Laidlomycin as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(xvii) 350 mg/head/day.	Laidlomycin, 5 to 10	Cattle fed in confinement for slaughter: For control of bacterial pneumonia associated with shipping fever complex caused by *Pasteurella* spp. susceptible to chlortetracycline; and for improved feed efficiency.	Feed continuously at a rate of 30 to 75 mg laidlomycin propionate potassium per head per day. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.305(d) of this chapter. Laidlomycin as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(xviii) 25 to 42.2 g/ton to provide 350 mg/head/day.	Lasalocid, 25 to 30	Cattle under 700 pounds fed in confinement for slaughter: For control of active infection of anaplasmosis caused by *A. marginale* susceptible to chlortetracycline; and for increased rate of weight gain and improved feed efficiency.	Feed continuously in complete feed at a rate of 350 mg chlortetracycline and not less than 250 mg nor more than 360 mg lasalocid per head daily. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(xix) 25 to 42.2 g/ton to provide 350 mg/head/day.	Lasalocid, 25 to 30	Cattle fed in confinement for slaughter: For control of bacterial pneumonia associated with shipping fever complex caused by *P. multocida* organisms susceptible to chlortetracycline; and for increased rate of weight gain and improved feed efficiency.	Feed continuously in complete feed at a rate of 350 mg chlortetracycline and not less than 250 mg nor more than 360 mg lasalocid per head daily. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(xx) 25 to 100 g/ton to provide 350 mg/head/day.	Lasalocid, 10 to 30	Cattle under 700 pounds fed in confinement for slaughter: For control of active infection of anaplasmosis caused by *A. marginale* susceptible to chlortetracycline; and for improved feed efficiency.	Feed continuously in complete feed at a rate of 350 mg chlortetracycline and not less than 100 mg nor more than 360 mg lasalocid per head daily. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(xxi) 25 to 100 g/ton to provide 350 mg/head/day.	Lasalocid, 10 to 30	Cattle fed in confinement for slaughter: For control of bacterial pneumonia associated with shipping fever complex caused by *P. multocida* organisms susceptible to chlortetracycline; and for improved feed efficiency.	Feed continuously in complete feed at a rate of 350 mg chlortetracycline and not less than 100 mg nor more than 360 mg lasalocid per head daily. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(xxii) 25 to 700 to provide 350 mg/head/day.	Lasalocid, 30 to 600.	Pasture cattle (slaughter, stocker, feeder cattle, dairy and beef replacement heifers): For control of bacterial pneumonia associated with shipping fever complex caused by *P. multocida* organisms susceptible to chlortetracycline; and for increased rate of weight gain.	Feed continuously on a hand-fed basis at a rate of 350 mg chlortetracycline and not less than 60 mg nor more than 300 mg lasalocid per head per day in at least 1 pound of feed. Daily lasalocid intakes in excess of 200 mg/head/day in pasture cattle have not been shown to be more effective than 200 mg lasalocid/head/day. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(xxiii) 25 to 700 to provide 350 mg/head/day.	Lasalocid, 30 to 600.	Pasture cattle (slaughter, stocker, feeder cattle, beef replacement heifers) under 700 pounds: For control of active infection of anaplasmosis caused by *A. marginale* susceptible to chlortetracycline; and for increased rate of weight gain.	Feed continuously on a hand-fed basis at a rate of 350 mg chlortetracycline and not less than 60 mg nor more than 300 mg lasalocid per head per day in at least 1 pound of feed. Daily lasalocid intakes in excess of 200 mg/head/day in pasture cattle have not been shown to be more effective than 200 mg lasalocid/head/day. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(xxiv) 25 to 2,800 to provide 350 mg/head/day.	Lasalocid, 30 to 181.8.	Beef cattle weighing up to 800 pounds: For control of bacterial pneumonia associated with shipping fever complex caused by *Pasteurella* spp. susceptible to chlortetracycline; and for the control of coccidiosis caused by *E. bovis* and *E. zuernii*.	Hand feed continuously at a rate of 350 mg chlortetracycline and 1 mg lasalocid per 2.2 lb. body weight daily to cattle with a maximum of 360 mg of lasalocid per head per day. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(xxv) 500 to 4,000 to provide 350 mg/head/day.	Lasalocid, 30 to 181.8.	Cattle weighing up to 800 pounds: For the treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline; and for the control of coccidiosis caused by *E. bovis* and *E. zuernii*.	Hand feed continuously at a rate of 350 mg chlortetracycline and 1 mg lasalocid per 2.2 lb. body weight daily to cattle with a maximum of 360 mg of lasalocid per head per day. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771

(5) *Minor species.* It is used as follows:

Chlortetracycline amount	Indications for use	Limitations	Sponsor
(i) 80 mg/head/day	Breeding sheep; reducing the incidence of (vibrionic) abortion caused by *Campylobacter fetus* infection susceptible to chlortetracycline.	.....	054771 066104 069254
(ii) 200 to 400 g/ton	Ducks: For the control and treatment of fowl cholera caused by *Pasteurella multocida* susceptible to chlortetracycline.	Feed in complete ration to provide from 8 to 28 mg/lb of body weight per day, depending upon age and severity of disease, for not more than 21 days. Do not feed to ducks producing eggs for human consumption.	054771
(iii) 10 mg/g of finished feed daily.	Psittacine birds (cockatoos, macaws, and parrots) suspected or known to be infected with psittacosis caused by *Chlamydia psittaci* sensitive to chlortetracycline.	Feed continuously for 45 days. Each bird should consume daily an amount of medicated feed equal to one fifth of its body weight. See paragraph (d)(5) of this section.	054771

(6) It is used as a free-choice, loose mineral Type C feed as follows:

(i) *Specifications.*

Ingredient	Percent	International feed No.
Dicalcium Phosphate	46.20	6–26–335
Sodium Chloride (Salt)	15.00	6–04–152
Magnesium Oxide	10.67	6–02–756
Cottonseed Meal	10.00	5–01–625
Trace Mineral/Vitamin Premix [1]	3.80	
Calcium Carbonate	3.50	6–01–069
Dried Cane Molasses	3.00	4–04–695
Potassium Chloride	2.00	6–03–755
Mineral Oil	2.00	8–03–123
Iron Oxide	0.50	6–02–431
Chlortetracycline Type A medicated article (90 gram/lb)	3.33	

[1] Content of vitamin and trace mineral premixes may be varied. However, they should be comparable to those used for other free-choice feeds. Formulation modifications require FDA approval prior to marketing. Selenium must comply with 21 CFR 573.920. Ethylenediamine dihydroiodide (EDDI) should comply with FDA Compliance Policy Guides Sec. 651.100 (CPG 7125.18).

(ii) *Amount.* 6,000 grams per ton.

(iii) Indications for use. Beef and nonlactating dairy cattle: As an aid in the control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline.

(iv) *Limitations.* Feed continuously on a free-choice basis at a rate of 0.5 to 2.0 mg chlortetracycline per pound of body weight per day.

(v) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

■ 9. In § 558.140, redesignate paragraph (d) as paragraph (e) and add new paragraph (d) to read as follows:

§ 558.140 Chlortetracycline and sulfamethazine.

* * * * *

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for chlortetracycline and sulfamethazine medicated feeds must not exceed 6 months from the date of issuance. VFDs for chlortetracycline and sulfamethazine shall not be refilled.

* * * * *

§ 558.145 [Removed]

■ 10. Remove § 558.145.

■ 11. In § 558.175, in paragraph (b), remove ''*Approvals*'' and in its place add ''*Sponsor*''; add paragraph (c); remove and reserve paragraphs (d)(5) and (6); and add paragraph (e) to read as follows:

§ 558.175 Clopidol.

* * * * *

(c) *Related tolerances.* See § 556.160 of this chapter.

* * * * *

(e) Clopidol may also be used in combination with:

(1) [Reserved]

(2) [Reserved]

(3) Chlortetracycline as in § 558.128.

(4) Lincomycin as in § 558.325.

■ 12. In § 558.195, remove and reserve paragraphs (e)(1)(iv) through (vi), (e)(2)(ii), (e)(2)(iv), and (e)(2)(vii); and add paragraph (e)(4) to read as follows:

§ 558.195 Decoquinate.

* * * * *

(e) * * *

(4) Decoquinate may also be used in combination with:

(i) [Reserved]

(ii) [Reserved]

(iii) Chlortetracycline as in § 558.128.

(iv) Lincomycin as in § 558.325.

■ 13. In § 558.198, remove and reserve paragraphs (d)(1)(iv) and (v); and add paragraph (d)(3) to read as follows:

§ 558.198 Diclazuril.

* * * * *

(d) * * *

(3) Diclazuril may also be used in combination with virginiamycin as in § 558.635.

■ 14. In § 558.248, revise paragraph (a); redesignate paragraph (d) as paragraph (e); add new paragraph (d); and revise redesignated paragraph (e) to read as follows:

§ 558.248 Erythromycin.

(a) *Specifications.* Type A medicated articles containing 92.5 grams per pound erythromycin (as the thiocyanate salt).

* * * * *

(d) *Special considerations.*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for erythromycin medicated feeds must not exceed 6 months from the date of issuance. VFDs for erythromycin shall not be refilled.

(e) *Conditions of use*—(1) *Chickens*—

Erythromycin in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 92.5		Chickens: As an aid in the prevention of chronic respiratory disease during periods of stress.	Feed for 2 days before stress and 3 to 6 days after stress. Withdraw 24 hours before slaughter.	061623
(ii) 92.5		Chickens: As an aid in the prevention of infectious coryza.	Feed for 7 to 14 days. Withdraw 24 hours before slaughter.	061623
(iii) 185		Chickens: As an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease (CRD).	Feed for 5 to 8 days. Withdraw 48 hours before slaughter. Do not use in birds producing eggs for food.	061623

(2) *Turkeys*—

Erythromycin thiocyanate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 92.5		Turkeys: As an aid in the prevention of chronic respiratory disease during periods of stress.	Feed for 2 days before stress and 3 to 6 days after stress.	061623
(ii) 185		Turkeys: As an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease (CRD).	Feed for 5 to 8 days. Do not use in birds producing eggs for food.	061623

■ 15. In § 558.258, remove and reserve paragraphs (e)(2)(ii) through (v); and add paragraph (e)(6) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(e) * * *

(6) Fenbendazole may also be used in combination with:

(i) [Reserved]

(ii) Lincomycin as in § 558.325.

■ 16. In § 558.265, remove and reserve paragraphs (d)(1)(iii), (d)(1)(iv), and (d)(1)(vii); and add paragraph (d)(4) to read as follows:

§ 558.265 Halofuginone.

* * * * *

(d) * * *

(4) Halofuginone may also be used in combination with:

(i) [Reserved]

(ii) Lincomycin as in § 558.325.

(iii) Virginiamycin as in § 558.635.

■ 17. Revise § 558.274 to read as follows:

§ 558.274 Hygromycin B.

(a) *Specifications.* Type A medicated articles containing 2.4 or 8 grams hygromycin B per pound (g/lb).

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter for as follows:

(c) *Related tolerances.* See § 556.330 of this chapter.

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for hygromycin B medicated feeds must not exceed 6 months from the date of issuance. VFDs for hygromycin B shall not be refilled.

(e) *Conditions of use.* It is used in feed as follows:

(1) *Chickens*—

Hygromycin B grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 8 to 12		Chickens: For control of infections of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*).	Use in complete feed. Withdraw 3 days before slaughter.	058198
(ii) [Reserved]				

(2) Swine—

Hygromycin B grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 12		Swine: For control of infections of large roundworms (*A. suis*), nodular worms (*O. dentatum*), and whipworms (*Trichuris suis*).	In market hogs, use in complete feed for 8 weeks during the growing period. Withdraw 15 days before slaughter.	058198
(ii) [Reserved]				

■ 18. In § 558.300, remove and reserve paragraphs (e)(4) through (7); and add paragraph (f) to read as follows:

§ 558.300 Ivermectin.

* * * * *

(f) Ivermectin may also be used in combination with:

(1) [Reserved]

(2) Lincomycin as in § 558.325.

■ 19. In § 558.305, remove paragraphs (e)(2), (e)(3), (e)(5), and (e)(6); redesignate paragraph (e)(4) as new paragraph (e)(2); and add paragraph (f) to read as follows:

§ 558.305 Laidlomycin.

* * * * *

(f) Laidlomycin may also be used in combination with chlortetracycline as in § 558.128.

■ 20. In § 558.311, in paragraph (e)(1)(i), in the row entry for ''Bambermycins 1 to 2'', in the ''Lasalocid sodium in grams per ton'' column, add ''(ii) 68 (0.0075 pct) to 113 (0.0125 pct).''; in paragraphs (e)(1)(vi) and (vii), remove the row entries for ''Oxytetracycline 7.5''; in paragraph (e)(1)(xv), remove the row entry for ''Virginiamycin 10 to 20''; remove and reserve paragraphs (e)(1)(iii), (e)(1)(v), and (e)(1)(xx) through (e)(1)(xxviii); redesignate paragraph (e)(5)(i) as paragraph (e)(5)(ii); and add new paragraphs (e)(5)(i) and (e)(5)(iii) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(e) * * *

(5) * * *

(i) Chlortetracycline as in § 558.128.

* * * * *

(iii) Virginiamycin as in § 558.635.

■ 21. Revise § 558.325 to read as follows:

§ 558.325 Lincomycin.

(a) *Specifications.* Type A medicated articles containing 20 or 50 grams of lincomycin (as lincomycin hydrochloride) per pound.

(b) *Sponsors.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.360 of this chapter.

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for chlortetracycline and sulfamethazine medicated feeds must not exceed 6 months from the date of issuance. VFDs for chlortetracycline and sulfamethazine shall not be refilled.

(3) Labeling of Type A medicated articles and Type B and Type C medicated feeds containing lincomycin shall bear the following:

(i) ''CAUTION: Do not allow rabbits, hamsters, guinea pigs, horses, or ruminants access to feeds containing lincomycin. Ingestion by these species may result in severe gastrointestinal effects.''

(4) Labeling of medicated feeds containing lincomycin intended for use in swine shall bear the following:

(i) ''CAUTION: Occasionally, swine fed lincomycin may within the first 2 days after the onset of treatment develop diarrhea and/or swelling of the anus. On rare occasions, some pigs may show reddening of the skin and irritable behavior. These conditions have been self-correcting within 5 to 8 days without discontinuing the lincomycin treatment.''

(ii) ''CAUTION: The effects of lincomycin on swine reproductive performance, pregnancy, and lactation have not been determined.''

(e) Conditions of use—(1) Chickens—

Lincomycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(i) 2		Broilers: For the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to lincomycin.	Feed as the sole ration. Not for use in layers, breeders, or turkeys.	054771
(ii) [Reserved]				

(2) *Swine*—

Lincomycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(i) 40		For control of swine dysentery and the control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis*.	Feed as sole ration. For use in swine on premises with a history of swine dysentery but where symptoms have not yet occurred, or following use of lincomycin at 100 grams (g)/ton for the treatment of swine dysentery and the control of porcine proliferative enteropathies (ileitis).	054771
(ii) 40	Fenbendazole, 10 to 80.	For control of swine dysentery in animals on premises with a history of swine dysentery, but where symptoms have not yet occurred; and for the removal of: Adult stage lungworms (*Metastrongylus apri* and *M. pudendotectus*); adult and larvae (L3, 4 stages—liver, lung, intestinal forms) large roundworms (*Ascaris suum*); adult stage nodular worms (*Oesophagostomum dentatum, O. quadrispinulatum*); adult stage small stomach worms (*Hyostrongylus rubidus*); adult and larvae (L2, 3, 4 stages—intestinal mucosal forms) whipworms (*Trichuris suis*); adult and larvae kidney worms (*Stephanurus dentatus*).	Feed as sole ration to provide a total dose of 9 mg fenbendazole/kg of body weight within 3 to 12 days. Do not feed to swine that weigh more than 250 pounds. Lincomycin as provided by No. 054771; fenbendazole as provided by No. 000061 in § 510.600(c) of this chapter.	000061

Lincomycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(iii) 40	Ivermectin, 1.8	Weaned, growing and finishing swine: For control of swine dysentery on premises with a history of swine dysentery, but where symptoms have not yet occurred; and for treatment and control of gastrointestinal roundworms (*Ascaris suum,* adults and fourth-stage larvae; *Ascarops strongylina,* adults; *Hyostrongylus rubidus,* adults and fourth-stage larvae; *Oesophagostomum* spp., adults and fourth-stage larvae); kidney worms (*Stephanurus dentatus,* adults and fourth-stage larvae); lungworms (*Metastrongylus* spp., adults); lice (*Haematopinus suis*); and mange mites (*Sarcoptes scabiei* var. *suis*).	Feed as the only feed for 7 consecutive days to provide 0.1 mg ivermectin/kg of body weight per day. A separate feed containing 40 g/ton lincomycin may be continued to complete the lincomycin treatment. Not to be fed to swine that weigh more than 250 lbs. Withdraw 5 days before slaughter. Lincomycin as provided by No. 054771; ivermectin as provided by No. 050604 in § 510.600(c) of this chapter.	050604
(iv) 40	Pyrantel, 96	For control of swine dysentery on premises with a history of swine dysentery, but where symptoms have not yet occurred; as an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; and as an aid in the prevention of establishment of nodular worm (*Oesophagostomum* spp.) infections.	Feed as the sole ration. Not to be fed to swine that weigh more than 250 pounds. Withdraw 6 days prior to slaughter. Lincomycin as provided by No. 054771; pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(v) 40	Pyrantel, 96	For the treatment and/or control of swine dysentery; for removal and control of large roundworm (*Ascaris suum*) infections.	Feed for 3 days as the sole ration. Not to be fed to swine that weigh more than 250 pounds. Withdraw 24 hours prior to slaughter. Lincomycin as provided by No. 054771; pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(vi) 40 or 100	Pyrantel, 96	For the treatment and/or control of swine dysentery; as an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; and as an aid in the prevention of establishment of nodular worm (*Oesophagostomum* spp.) infections.	For treatment of swine dysentery, feed 100 grams of lincomycin and 96 grams of pyrantel tartrate per ton of complete feed for 3 weeks or until clinical signs of the disease disappear, following with 40 grams of lincomycin and 96 grams of pyrantel tartrate per ton of complete feed as the sole ration. Not to be fed to swine that weigh more than 250 pounds. Withdraw 6 days prior to slaughter. Lincomycin as provided by No. 054771; pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(vii) 100		For treatment of swine dysentery and the control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis*.	Feed as the sole ration for 3 weeks or until clinical signs of the disease disappear.	054771
(viii) 100	Fenbendazole, 10 to 80.	For the treatment of swine dysentery; and for the removal of: Adult stage lungworms (*Metastrongylus apri* and *M. pudendotectus*); adult and larvae (L3, 4 stages—liver, lung, intestinal forms) large roundworms (*Ascaris suum*); adult stage nodular worms (*Oesophagostomum dentatum, O. quadrispinulatum*); adult stage small stomach worms (*Hyostrongylus rubidus*); adult and larvae (L2, 3, 4 stages—intestinal mucosal forms) whipworms (*Trichuris suis*); adult and larvae kidney worms (*Stephanurus dentatus*).	Feed as sole ration to provide a total dose of 9 mg fenbendazole/kg of body weight within 3 to 12 days. Do not feed to swine that weigh more than 250 pounds. Do not use within 6 days of slaughter. Lincomycin as provided by No. 054771; fenbendazole as provided by No. 000061 in § 510.600(c) of this chapter.	000061

Lincomycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(ix) 100	Ivermectin, 1.8	Weaned, growing and finishing swine: For the treatment of swine dysentery; and for treatment and control of gastrointestinal roundworms (*Ascaris suum,* adults and fourth-stage larvae; *Ascarops strongylina,* adults; *Hyostrongylus rubidus,* adults and fourth-stage larvae; *Oesophagostomum* spp., adults and fourth-stage larvae); kidneyworms (*Stephanurus dentatus,* adults and fourth-stage larvae); lungworms (*Metastrongylus* spp., adults); lice (*Haematopinus suis*); and mange mites (*Sarcoptes scabiei* var. *suis*).	Feed as the only feed for 7 consecutive days to provide 0.1 mg ivermectin/kg of body weight per day. A separate feed containing 100 g/ton lincomycin may be continued to complete the lincomycin treatment. Not to be fed to swine that weigh more than 250 lbs. Withdraw 6 days before slaughter. Lincomycin as provided by No. 054771; ivermectin as provided by No. 050604 in § 510.600(c) of this chapter.	050604
(x) 100	Pyrantel, 96	For the treatment of swine dysentery; as an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; and as an aid in the prevention of establishment of nodular worm (*Oesophagostomum* spp.) infections.	Feed as the sole ration for 3 weeks or until clinical signs of the disease disappear. Not to be fed to swine that weigh more than 250 pounds. Withdraw 6 days prior to slaughter. Lincomycin as provided by No. 054771; pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(xi) 100	Pyrantel, 96	For the treatment and/or control of swine dysentery; for removal and control of large roundworm (*Ascaris suum*) infections.	Feed for 3 days as the sole ration. Not to be fed to swine that weigh more than 250 pounds. Withdraw 24 hours prior to slaughter. Lincomycin as provided by No. 054771; pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(xii) 100	Pyrantel, 800	For the treatment and/or control of swine dysentery; for removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum* spp.) infections.	Feed as a single therapeutic treatment. Not to be fed to swine that weigh more than 250 pounds. Withdraw 24 hours prior to slaughter. Lincomycin as provided by No. 054771; pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(xiii) 200		For reduction in the severity of swine mycoplasmal pneumonia caused by *Mycoplasma hyopneumoniae*.	Feed as sole ration for 21 days	054771
(xiv) 200	Fenbendazole, 10 to 80.	For reduction in the severity of swine mycoplasmal pneumonia caused by *Mycoplasma hyopneumoniae;* and for the removal of: Adult stage lungworms (*Metastrongylus apri* and *M. pudendotectus*); adult and larvae (L3, 4 stages—liver, lung, intestinal forms) large roundworms (*Ascaris suum*); adult stage nodular worms (*Oesophagostomum dentatum, O. quadrispinulatum*); adult stage small stomach worms (*Hyostrongylus rubidus*); adult and larvae (L2, 3, 4 stages—intestinal mucosal forms) whipworms (*Trichuris suis*); adult and larvae kidney worms (*Stephanurus dentatus*).	Feed as sole ration to provide a total dose of 9 mg fenbendazole/kg of body weight within 3 to 12 days. Do not feed to swine that weigh more than 250 pounds. Do not use within 6 days of slaughter. Lincomycin as provided by No. 054771; fenbendazole as provided by No. 000061 in § 510.600(c) of this chapter.	000061

Lincomycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(xv) 200	Ivermectin, 1.8	For reduction in the severity of swine mycoplasmal pneumonia caused by *Mycoplasma hyopneumoniae;* and for treatment and control of gastro-intestinal roundworms (*Ascaris suum,* adults and fourth-stage larvae; *Ascarops strongylina,* adults; *Hyostrongylus rubidus,* adults and fourth-stage larvae; *Oesophagostomum* spp., adults and fourth-stage larvae); kidneyworms (*Stephanurus dentatus,* adults and fourth-stage larvae); lungworms (*Metastrongylus* spp., adults); lice (*Haematopinus suis*); and mange mites (*Sarcoptes scabiei* var. *suis*).	Feed as the only feed for 7 consecutive days to provide 0.1 mg ivermectin/kg of body weight per day. A separate feed containing 200 g/ton lincomycin may be continued for an additional 14 days to complete the lincomycin treatment. Not to be fed to swine that weigh more than 250 lbs. Withdraw 6 days before slaughter. Lincomycin as provided by No. 054771; ivermectin as provided by No. 050604 in § 510.600(c) of this chapter.	050604
(xvi) 200	Pyrantel, 96	For reduction in the severity of swine mycoplasmal pneumonia caused by *Mycoplasma hyopneumoniae;* and as an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; aid in the prevention of establishment of nodular worm (*Oesophagostomum* spp.) infections.	Feed as the sole ration for 21 days. Not for use in swine that weigh more than 250 pounds. Withdraw 6 days before slaughter. Lincomycin as provided by No. 054771; pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	054771

■ 22. In § 558.342, remove and reserve paragraphs (e)(1)(iii), (e)(1)(iv), (e)(1)(viii), (e)(1)(ix), and (e)(1)(xi); and revise paragraph (e)(2) to read as follows:

§ 558.342 Melengestrol.

* * * * *

(e) * * *

(2) Melengestrol may also be used in combination with:

(i) Ractopamine as in § 558.500.

(ii) Tylosin as in § 558.625.

(iii) Zilpaterol as in § 558.665.

■ 23. In § 558.355, revise paragraphs (a) and (b); remove and reserve paragraphs (f)(1)(viii), (f)(1)(ix), (f)(1)(xiii), (f)(1)(xiv), (f)(1)(xxi), (f)(1)(xxii), (f)(1)(xxxi), (f)(2)(iv), (f)(3)(ii), and (f)(3)(xii); and revise paragraph (f)(8) to read as follows:

§ 558.355 Monensin.

(a) *Specifications.* Type A medicated articles containing 45, 60, 90.7, or 110 grams monensin, USP, per pound.

(b) *Approvals.* See sponsor numbers in § 510.600(c) of this chapter for conditions of use as in paragraph (f) of this section:

(1) No. 058198 for use as in paragraph (f) of this section.

(2) No. 054771 for use as in paragraphs (f)(1)(xxiv) and (xxv) of this section.

(3) No. 058198 for use as in paragraphs (f)(1)(i), (iii), (iv), and (v) of this section.

* * * * *

(f) * * *

(8) Monensin may also be used in combination with:

(i) Chlortetracycline as in § 558.128.

(ii) Decoquinate as in § 558.195.

(iii) Lincomycin as in § 558.325.

(iv) Melengestrol acetate as in § 558.342.

(v) Oxytetracycline as in § 558.128.

(vi) Ractopamine alone or in combination as in § 558.500.

(vii) Tilmicosin as in § 558.618.

(viii) Tylosin as in § 558.625.

(ix) Virginiamycin as in § 558.635.

(x) Zilpaterol alone or in combination as in § 558.665.

■ 24. In § 558.364, redesignate paragraph (d) as paragraph (e) and revise paragraphs (a) through (d) to read as follows:

§ 558.364 Neomycin sulfate.

(a) *Specifications.* Type A medicated article containing 325 grams neomycin sulfate per pound.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.430 of this chapter.

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for neomycin medicated feeds must not exceed 6 months from the date of issuance. VFDs for neomycin shall not be refilled.

* * * * *

■ 25. In § 558.366, in the table in paragraph (d), remove the row entries under ''Nicarbazin in grams per ton'' ''27 to 45'' for ''Narasin 27 to 45 and Lincomycin 2 to 4''; and under ''Nicarbazin in grams per ton'' ''113.5 (0.0125 pct)'' for ''Lincomycin 2 (0.00044 pct)''; and add paragraph (e) to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(e) * * *

(6) Nicarbazin may also be used in combination with:

(i) [Reserved]

(ii) Lincomycin as in § 558.325.

§ 558.435 [Removed]

■ 26. Remove § 556.435.

■ 27. Revise § 558.450 to read as follows:

§ 558.450 Oxytetracycline.

(a) *Specifications.* Each pound of Type A medicated article contains:

(1) Oxytetracycline (from oxytetracycline quaternary salt) equivalent to 50 or 100 grams oxytetracycline hydrochloride; or oxytetracycline (from oxytetracycline dihydrate base) equivalent to 10, 30, 50, 100, or 200 grams oxytetracycline hydrochloride.

(2) Oxytetracycline (from oxytetracycline dihydrate base) equivalent to 50, 100, or 200 grams oxytetracycline hydrochloride; or 100 grams oxytetracycline hydrochloride.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter as follows:

(1) No. 066104: Type A medicated articles as in paragraph (a)(1) of this section.

(2) No. 069254: Type A medicated articles as in paragraph (a)(2) of this section.

(c) *Related tolerances.* See § 556.500 of this chapter.

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for oxytetracycline medicated feeds must not exceed 6 months from the date of issuance. VFDs for oxytetracycline shall not be refilled.

(3) In accordance with § 558.5, labeling shall bear the statement: ''For use in dry animal feed only. Not for use in liquid feed supplements.''

(e) *Conditions of use*—(1) *Chickens*—

Oxytetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 100 to 200 g/ton	.....	Chickens: For control of infectious synovitis caused by *Mycoplasma synoviae* and control of fowl cholera caused by *Pasteurella multocida* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days. Do not feed to chickens producing eggs for human consumption. Do not use in feed containing less than 0.55% dietary calcium. Use in such low calcium feeds may result in violative residues. Zero-day withdrawal period.	066104 069254
(ii) 200 g/ton	Monensin, 90 to 110.	Broiler chickens: As an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima;* and for the control of complicated chronic respiratory disease (CRD or air sac infection) caused by *Mycoplasma gallisepticum* and *Escherichia coli.*	Feed continuously as the sole ration. Do not feed to laying chickens. Do not feed to chickens over 16 weeks of age. Do not use in feed containing less than 0.55% dietary calcium. Use in such low calcium feeds may result in violative residues. Withdraw 72 hours before slaughter. See § 558.355(d) of this chapter Oxytetracycline as provided by No. 066104; monensin as provided by No. 058198 in § 510.600(c) of this chapter.	066104
(iii) 400 g/ton	.....	Chickens: For control of chronic respiratory disease (CRD) and air sac infection caused by *Mycoplasma gallisepticum* and *Escherichia coli* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days. Do not feed to chickens producing eggs for human consumption. Do not use in feed containing less than 0.55% dietary calcium. Use in such low calcium feeds may result in violative residues. Zero-day withdrawal period.	066104 069254
(iv) 400 g/ton	Robenidine, 30	Broiler chickens: As an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima;* and for the control of chronic respiratory disease (CRD) and air sac infection caused by *Mycoplasma gallisepticum* and *Escherichia coli* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days. Do not feed to chickens producing eggs for human consumption. Do not use in feed containing less than 0.55% dietary calcium. Use in such low calcium feeds may result in violative residues. Withdraw 5 days before slaughter. Oxytetracycline as provided by No. 066104; robenidine as provided by No. 054771 in § 510.600(c) of this chapter.	066104
(v) 500 g/ton	.....	Chickens: For reduction of mortality due to air sacculitis (air sac infection) caused by *E. coli* susceptible to oxytetracycline.	Feed continuously for 5 days. Do not feed to chickens producing eggs for human consumption. Do not use in feed containing less than 0.55% dietary calcium. Use in such low calcium feeds may result in violative residues. Withdraw 24 hours before slaughter.	066104 069254
(vi) 500 g/ton	Monensin, 90 to 100.	Broiler chickens: As an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima;* and as an aid in the reduction of mortality due to air-sacculitis (air sac infection) caused by *Escherichia coli* sensitive to oxytetracycline.	Feed for 5 days as the sole ration. Treat at first clinical signs of the disease. Do not feed to laying chickens. Do not feed to chickens over 16 weeks of age. Do not use in feed containing less than 0.55% dietary calcium. Use in such low calcium feeds may result in violative residues. Withdraw 72 hours before slaughter. See § 558.355(d) of this chapter. Oxytetracycline as provided by No. 066104; monensin as provided by No. 058198 in § 510.600(c) of this chapter.	066104

Oxytetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(vii) 500 g/ton	Salinomycin, 40 to 60.	Chickens: For the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima;* and as an aid in the reduction of mortality due to air-sacculitis (air sac infection) caused by *E. coli* sensitive to oxytetracycline.	Feed for 5 days as the sole ration. Treat at first clinical signs of the disease. Do not feed to laying chickens. Do not use in feed containing less than 0.55% dietary calcium. Use in such low calcium feeds may result in violative residues. Withdraw 24 hours before slaughter. Oxytetracycline as provided by No. 066104; salinomycin as provided by No. 016592 in § 510.600(c) of this chapter.	066104 016592

(2) *Turkeys*—

Oxytetracycline amount	Indications for use	Limitations	Sponsor
(i) 100 g/ton	Turkeys: For control of hexamitiasis caused by *Hexamita meleagridis* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days. Do not feed to turkeys producing eggs for human consumption. Zero-day withdrawal period.	066104 069254
(ii) 200 g/ton	Turkeys: For control of infectious synovitis caused by *M. synoviae* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days. Do not feed to turkeys producing eggs for human consumption. For No. 066104, withdraw 5 days before slaughter. For No. 069254, zero-day withdrawal period.	066104 069254
(iii) 25 mg/lb of body weight daily.	Turkeys: For control of complicating bacterial organisms associated with bluecomb (transmissible enteritis; coronaviral enteritis) susceptible to oxytetracycline.	Feed continuously for 7 to 14 days. Do not feed to turkeys producing eggs for human consumption. For No. 066104, withdraw 5 days before slaughter. For No. 069254, zero-day withdrawal period.	066104 069254

(3) *Swine*—

Oxytetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 10 mg/lb of body weight daily.	.....	1. Swine: For treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella choleraesuis* susceptible to oxytetracycline and treatment of bacterial pneumonia caused by *Pasteurella multocida* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days	066104 069254
		2. Breeding swine: For control and treatment of leptospirosis (reducing the incidence of abortion and shedding of leptospirae) caused by *Leptospira pomona* susceptible to oxytetracycline.	Feed continuously for 14 days	066104 069254
(ii) 10 mg/lb of body weight daily.	Carbadox, 10 to 25	Swine: For treatment of bacterial enteritis caused by *E. coli* and *Salmonella choleraesuis* susceptible to oxytetracycline and treatment of bacterial pneumonia caused by *Pasteurella multocida* susceptible to oxytetracycline; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as the sole ration for 7 to 14 days. Not for use in pregnant swine or swine intended for breeding purposes. Do not mix in feeds containing bentonite. Do not feed to swine within 42 days of slaughter. Oxytetracycline and carbadox as provided by No. 066104 in § 510.600(c) of this chapter.	066104

(4) *Cattle*—

Oxytetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 10 mg/lb of body weight daily.	.....	1. Calves and beef and nonlactating dairy cattle: For treatment of bacterial enteritis caused by *Escherichia coli* and bacterial pneumonia (shipping fever complex) caused by *Pasteurella multocida* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days. For No. 069254, withdraw 5 days before slaughter. For No. 066104, zero-day withdrawal period.	066104 069254
		2. Calves: For treatment of bacterial enteritis caused by *E. coli* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days in milk replacer or starter feed. This product is not approved for use in female dairy cattle 20 months of age or older, including dry dairy cows. Use in these cattle may cause drug residues in milk and/or in calves born to these cows. For No. 069254, withdraw 5 days before slaughter. For No. 066104, zero-day withdrawal period.	066104 069254
(ii) 75 mg/head/day	.....	Growing cattle (over 400 lb): For reduction of incidence of liver abscesses.	Feed continuously	066104 069254
(iii) 0.5 to 2.0 g/head/day.	.....	Cattle: For prevention and treatment of the early stages of shipping fever complex.	Feed 3 to 5 days before and after arrival in feedlots.	066104 069254

(5) *Minor species*—

Oxytetracycline amount	Indications for use	Limitations	Sponsor
(i) 10 mg/lb of body weight daily.	Sheep: For treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline.	Feed continuously for 7 to 14 days; withdraw 5 days before slaughter.	066104 069254
(ii) 200 mg/colony	Honey bees: For control of American foulbrood caused by *Paenibacillus larvae* and European foulbrood caused by *Streptococcus pluton* susceptible to oxytetracycline.	Remove at least 6 weeks prior to main honey flow.	066104 069254
(iii) 250 mg/kilogram of fish/day (11.35 g/100 lb of fish/day).	Pacific salmon: For marking of skeletal tissue	For salmon not over 30 g body weight; administer as sole ration for 4 consecutive days; fish not to be liberated for at least 7 days following the last administration of medicated feed.	066104
(iv) 2.5 to 3.75 g/100 lb of fish/day.	1. Salmonids: For control of ulcer disease caused by *Haemophilus piscium,* furunculosis caused by *Aeromonas salmonicida,* bacterial hemorrhagic septicemia caused by *A. liquefaciens,* and pseudomonas disease.	Administer in mixed ration for 10 days; do not liberate fish or slaughter fish for food for 21 days following the last administration of medicated feed.	066104
	2. Catfish: For control of bacterial hemorrhagic septicemia caused by *A. liquefaciens* and pseudomonas disease.	Administer in mixed ration for 10 days; do not liberate fish or slaughter fish for food for 21 days following the last administration of medicated feed; do not administer when water temperature is below 16.7 °C (62 °F).	066104
(v) 3.75 g/100 lb of fish/day.	1. Freshwater-reared salmonids: For control of mortality due to coldwater disease associated with *Flavobacterium psychrophilum.*	Administer in mixed ration for 10 days; do not liberate fish or slaughter fish for food for 21 days following the last administration of medicated feed.	066104
	2. Freshwater-reared *Oncorhynchus mykiss:* For control of mortality due to columnaris disease associated with *Flavobacterium columnare.*	Administer in mixed ration for 10 days; do not liberate fish or slaughter fish for food for 21 days following the last administration of medicated feed.	066104
(vi) 1 g/lb of medicated feed.	Lobsters: For control of gaffkemia caused by *Aerococcus viridans.*	Administer as sole ration for 5 consecutive days; withdraw medicated feed 30 days before harvesting lobsters.	066104

■ 28. In § 558.455, revise paragraph (d); remove and reserve paragraphs (e)(1)(i), (e)(2)(i), (e)(3)(i), (e)(4)(i), (e)(4)(ii), and (e)(4)(iv); and in paragraph (e)(4)(v), remove ''increased rate of weight gain; improved feed efficiency, and'' to read as follows:

§ 558.455 Oxytetracycline and neomycin.

* * * * *

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for oxytetracycline and neomycin

medicated feeds must not exceed 6 months from the date of issuance. VFDs for oxytetracycline and neomycin shall not be refilled.

(3) Cattle feeds shall bear the following warning statement: ''Use of more than one product containing neomycin or failure to follow withdrawal times may result in illegal drug residues.''

* * * * *

§ 558.460 [Removed]

■ 29. Remove § 558.460.

■ 30. In § 558.485, remove paragraphs (e)(1)(v) through (xii); and add paragraph (e)(3) to read as follows:

§ 558.485 Pyrantel.

* * * * *

(e) * * *

(3) Pyrantel may also be used in combination with:

(i) Lincomycin as in § 558.325.

(ii) Tylosin as in § 558.325.

■ 31. In § 558.500, remove and reserve paragraphs (e)(1)(ii), (iii), and (iv), (e)(2)(iv), (e)(2)(ix) and (x); remove paragraph (e)(2)(xiii); and add paragraph (e)(4) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(e) * * *

(4) Ractopamine may also be used in combination with tylosin in as in § 558.625.

■ 32. In § 558.515, in the table in paragraph (d), remove the row entries for ''Chlortetracycline 100 to 200'', ''Chlortetracycline 200 to 400'', ''Chlortetracycline 500'', ''Lincomycin 2'', and ''Oxytetracycline 400'' in the ''Combination in grams/ton'' column; and add paragraph (e) to read as follows:

§ 558.515 Robenidine.

* * * * *

(e) Robenidine may also be used in combination with:

(1) Chlortetracycline as in § 558.128.

(2) Lincomycin as in § 558.325.

(3) Oxytetracycline as in § 558.450.

■ 33. In § 558.550, remove and reserve paragraphs (d)(1)(x), (d)(1)(xi), (d)(1)(xiii), and (d)(1)(xvi); and revise paragraph (d)(4) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(d) * * *

(5) Salinomycin may also be used in combination with:

(i) [Reserved]

(ii) [Reserved]

(iii) Chlortetracycline as in § 558.128.

(iv) Lincomycin as in § 558.325.

(v) Oxytetracycline as in § 558.450.

(vi) Virginiamycin as in § 558.635.

■ 34. In § 558.555, remove paragraphs (d)(3) through (5); (e)(3) and (e)(4); remove and reserve paragraph (e)(2); and add paragraph (f) to read as follows:

§ 558.555 Semduramycin.

* * * * *

(f) Semduramycin may also be used in combination with virginiamycin as in § 558.635.

■ 35. In § 558.575, revise the section heading; redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e); revise paragraph (a); and add new paragraphs (b) and (d) to read as follows:

§ 558.575 Sulfadimethoxine and ormetoprim.

(a) *Specifications.* Type A medicated articles containing either:

(1) 25 percent sulfadimethoxine and 15 percent ormetoprim; or

(2) 25 percent sulfadimethoxine and 5 percent ormetoprim.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (d) of this section:

(1) No. 054771 for use of the product described in paragraph (a)(1) as in paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(7) of this section.

(2) No. 015331 for use of the product described in paragraph (a)(2) as in paragraphs (e)(5) and (e)(6) of this section.

* * * * *

(d) *Special considerations.*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for sulfadimethoxine and ormetoprim medicated feeds must not exceed 6 months from the date of issuance. VFDs for sulfadimethoxine and ormetoprim shall not be refilled.

* * * * *

■ 36. Revise § 558.582 to read as follows:

§ 558.582 Sulfamerazine.

(a) *Specifications.* Type A medicated articles containing 99 percent sulfamerazine.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.660 of this chapter.

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for sulfamerazine medicated feeds must not exceed 6 months from the date of issuance. VFDs for sulfamerazine shall not be refilled.

(e) *Conditions of use.* It is used in fish feed for as follows:

Sulfamerazine grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(1) To deliver 10 grams of sulfamerazine per 100 pounds of fish per day. (2) [Reserved].	.....	Rainbow trout, brook trout, and brown trout: For control of furunculosis.	Formulate to deliver 10 grams of sulfamerazine per 100 pounds of fish per day. Treat for not more than 14 days. Do not treat within 3 weeks of marketing or stocking in stream open to fishing.	054771

■ 37. Revise § 558.586 to read as follows:

§ 558.586 Sulfaquinoxaline.

(a) *Specifications.* Type A medicated articles containing 40 percent sulfaquinoxaline.

(b) *Sponsor.* See No. 016592 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.685 of this chapter.

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for sulfaquinoxaline medicated feeds must not exceed 6 months from the date of issuance. VFDs for sulfaquinoxaline shall not be refilled.

(e) *Conditions of use*—(1) *Chickens*—

Sulfaquinoxaline in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 0.015 percent	.....	As an aid in preventing outbreaks of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima,* and *E. brunetti* under average conditions of exposure.	Feed continuously from the time birds are placed on litter and continue past the age when coccidiosis is ordinarily a hazard. If death losses exceed 0.5 percent in a 2-day period, obtain a laboratory diagnosis. If coccidiosis is the cause, use the sulfaquinoxaline levels recommended for control of outbreaks, returning to the original dosage schedule after the outbreak has subsided. Losses may result from intercurrent disease, other conditions affecting drug intake, or variant strains of coccidia species which can contribute to the virulence of coccidiosis under field conditions. Do not treat chickens within 10 days of slaughter. Do not medicate chickens producing eggs for human consumption.	016592
(ii) 0.0175 percent ..	.....	As an aid in preventing outbreaks of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima,* and *E. brunetti* where excessive exposure to coccidia is increased due to overcrowding or other management factors.	Feed continuously from the time birds are placed on litter and continue past the age when coccidiosis is ordinarily a hazard. If death losses exceed 0.5 percent in a 2-day period, obtain a laboratory diagnosis. If coccidiosis is the cause, use the sulfaquinoxaline levels recommended for control of outbreaks, returning to the original dosage schedule after the outbreak has subsided. Losses may result from intercurrent disease, other conditions affecting drug intake, or variant strains of coccidia species which can contribute to the virulence of coccidiosis under field conditions. Do not treat chickens within 10 days of slaughter. Do not medicate chickens producing eggs for human consumption.	016592
(iii) 0.1 to 0.05 percent.	.....	As an aid in controlling outbreaks of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima,* and *E. brunetti*.	Feed at 0.1 percent level for first 48 to 72 hours. Skip 3 days; 0.05 percent for 2 days, skip 3 days; 0.05 percent for 2 days. If bloody droppings recur, give 0.05 percent for another 2 days. Do not treat chickens within 10 days of slaughter. Do not medicate chickens producing eggs for human consumption.	016592
(iv) 0.05 or 0.1 percent.	.....	As an aid in the control of acute fowl cholera caused by *Pasteurella multocida* susceptible to sulfaquinoxaline and fowl typhoid caused by *Salmonella gallinarum* susceptible to sulfaquinoxaline.	Feed 0.1 percent for 48 to 72 hours. Mortality should be brought under control. After medication, move birds to clean ground or to a clean house. If disease recurs, use 0.05 percent in feed again for 2 days. Do not treat chickens or turkeys within 10 days of slaughter for food. Do not medicate chickens or turkeys producing eggs for human consumption.	016592

(2) *Turkeys*—

Sulfaquinoxaline in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 0.0175 percent ...	.....	As an aid in preventing outbreaks of coccidiosis caused by *Eimeria meleagrimitis* and *E. adenoeides*.	Feed continuously during time birds are closely confined. May be continued for a week to 10 days after flock is transferred to range to reduce danger of an outbreak following moving of the flock. Do not treat turkeys within 10 days of slaughter. Do not medicate turkeys producing eggs for human consumption.	016592
(ii) 0.05 percent	.....	As an aid in controlling outbreaks of coccidiosis caused by *Eimeria meleagrimitis* and *E. adenoeides*.	Feed for 2 days. Follow with 3 days on regular feed and 2 more days on 0.05 percent sulfaquinoxaline feed. Again follow with 3 days on regular feed and 2 more days on 0.05 percent sulfaquinoxaline feed. Continue this schedule if necessary until all signs of the outbreaks have subsided. Do not treat turkeys within 10 days of slaughter. Do not medicate turkeys producing eggs for human consumption.	016592
(iii) 0.05 or 0.1 percent.	.....	As an aid in the control of acute fowl cholera caused by *Pasteurella multocida* susceptible to sulfaquinoxaline and fowl typhoid caused by *Salmonella gallinarum* susceptible to sulfaquinoxaline.	Feed 0.1 percent for 48 to 72 hours. Mortality should be brought under control. After medication, move birds to clean ground or to a clean house. If disease recurs, use 0.05 percent in feed again for 2 days. Do not treat chickens or turkeys within 10 days of slaughter for food. Do not medicate chickens or turkeys producing eggs for human consumption.	016592

(3) *Rabbits*—

Sulfaquinoxaline in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 0.025 percent	.....	As an aid in preventing coccidiosis caused by *Eimeria stiedae*.	Treatment to be started after weaning. Feed continuously for 30 days or feed medicated feed for 2 days out of every week until marketing. Do not treat within 10 days of slaughter.	016592
(ii) 0.1 percent	.....	As an aid in controlling outbreaks of coccidiosis caused by *Eimeria stiedae*.	Feed for 2 weeks. Do not treat within 10 days of slaughter.	016592

■ 38. In § 558.612, remove paragraphs (e)(1)(i) and (e)(1)(iii); redesignate paragraphs (e)(1)(ii) and (e)(1)(iv) as new paragraphs (e)(1)(i) and (ii); and add paragraph (e)(2) to read as follows:

§ 558.612 Tiamulin.

* * * * *

(e) * * *

(2) Tiamulin may also be used in combination with chlortetracycline as in § 558.128.

■ 39. Amend § 558.625 as follows:

■ a. Remove paragraph (d);

■ b. Redesignate paragraphs (c), (e), and (f) as paragraphs (d), (c) and (e); and

■ c. Revise paragraph (b) and redesignated paragraphs (d) and (e).

The revisions read as follows:

§ 558.625 Tylosin.

* * * * *

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) No. 016592: Type medicated article containing 100 grams per pound.

(2) No. 054771: Type medicated article containing 40 grams per pound.

(3) No. 058198: Type medicated article containing 10, 40, or 100 grams per pound.

(4) No. 066104: Type medicated article containing 20 or 40 grams per pound.

(c) *Related tolerances.* See § 556.360 of this chapter.

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for oxytetracycline medicated feeds must not exceed 6 months from the date of issuance. VFDs for oxytetracycline shall not be refilled.

(3) Type C medicated feeds for cattle may be manufactured from tylosin liquid Type B medicated feeds which have a pH between 4.5 and 6.0 and which bear appropriate mixing directions as follows:

(i) For liquid feeds stored in recirculating tank systems: Recirculate immediately prior to use for not less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily as described even when not used.

(ii) For liquid feeds stored in mechanical, air, or other agitation-type tank systems: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of

the tank that is visible at the top. Agitate daily as described even when not used.

(e) *Conditions of use*—(1) *Swine*—

Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(i) 40 or 100		For control of swine dysentery associated with *Brachyspira hyodysenteriae*.	Feed as the sole ration 100 g of tylosin per ton of complete feed for at least 3 weeks. Follow with 40 grams per ton of complete feed until market weight.	016592 054771 058198 066104
(ii) 40 or 100	Pyrantel, 96	For control of swine dysentery associated with *Brachyspira hyodysenteriae;* and as an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; aid in the prevention of establishment of nodular worm (*Oesophagostomum* spp.) infections.	Feed as the sole ration 100 g of tylosin per ton of complete feed for at least 3 weeks. Follow with 40 grams per ton of complete feed until market weight. Tylosin phosphate and pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(iii) 40 or 100		For control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.	Feed as the sole ration 100 g of tylosin per ton of complete feed for at least 3 weeks. Follow with 40 grams per ton of complete feed until market weight.	016592 054771 058198 066104
(iv) 40 or 100	Pyrantel, 96	For control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis;* and as an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; aid in the prevention of establishment of nodular worm (*Oesophagostomum* spp.) infections.	Feed as the sole ration 100 g of tylosin per ton of complete feed for at least 3 weeks. Follow with 40 grams per ton of complete feed until market weight. Tylosin phosphate and pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(v) 40 or 100	Ractopamine, 4.5 to 9.0.	Finishing swine: For the control of swine dysentery associated with *Brachyspira hyodysenteriae;* for control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis;* and for increased rate of weight gain, improved feed efficiency, and increased carcass leanness in finishing swine weighing not less than 150 lbs, fed a complete ration containing at least 16% crude protein for the last 45 to 90 lbs of gain prior to slaughter.	Feed continuously as the sole ration to finishing swine weighing not less than 150 lbs for the last 45 to 90 lbs (group average) of weight gain prior to slaughter. Include 100 g/ton of tylosin for at least 3 weeks, followed by 40 g/ton until market weight. Tylosin phosphate as provided by Nos. 058198 and 016592; ractopamine as provided by Nos. 058198 and 054771 in § 510.600(c) of this chapter.	016592 054771 058198
(vi) 40 to 100		For the treatment and control of swine dysentery associated with *Brachyspira hyodysenteriae* immediately after medicating with tylosin in drinking water.	Administer as tylosin phosphate in feed continuously as the sole ration for 2 to 6 weeks, immediately after treatment with tylosin tartrate in drinking water for 3 to 10 days as in § 520.2640(d)(3) of this chapter.	016592 054771 058198 066104
(vii) 40 to 100	Pyrantel, 96	For the treatment and control of swine dysentery associated with *Brachyspira hyodysenteriae* immediately after medicating with tylosin in drinking water; and as an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; aid in the prevention of establishment of nodular worm (*Oesophagostomum* spp.) infections.	Administer as tylosin phosphate in feed continuously as the sole ration for 2 to 6 weeks, immediately after treatment with tylosin tartrate in drinking water for 3 to 10 days as in § 520.2640(d)(3) of this chapter. Tylosin phosphate and pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(viii) 40 to 100		For the control of porcine proliferative enteropathies (PPE, ileitis) associated with *Lawsonia intracellularis* immediately after medicating with tylosin in drinking water.	Administer as tylosin phosphate in feed continuously as the sole ration for 2 to 6 weeks, immediately after treatment with tylosin tartrate in drinking water for 3 to 10 days as in § 520.2640(d)(3) of this chapter.	016592 054771 058198 066104

Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(ix) 40 to 100	Pyrantel, 96	For the control of porcine proliferative enteropathies (PPE, ileitis) associated with *Lawsonia intracellularis* immediately after medicating with tylosin in drinking water; and as an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; aid in the prevention of establishment of nodular worm (*Oesophagostomum* spp.) infections.	Administer as tylosin phosphate in feed continuously as the sole ration for 2 to 6 weeks, immediately after treatment with tylosin tartrate in drinking water for 3 to 10 days as in § 520.2640(d)(3) of this chapter. Tylosin phosphate and pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(x) 40 to 100	Ractopamine, 4.5 to 9.0.	Finishing swine: For the treatment and control of swine dysentery associated with *Brachyspira hyodysenteriae,* for control of porcine proliferative enteropathies (PPE, ileitis) associated with *Lawsonia intracellularis;* and for increased rate of weight gain, improved feed efficiency, and increased carcass leanness in finishing swine weighing not less than 150 lbs, fed a complete ration containing at least 16% crude protein for the last 45 to 90 lbs of gain prior to slaughter.	Feed continuously as the sole ration to finishing swine weighing not less than 150 lbs for the last 45 to 90 lbs (group average) of weight gain prior to slaughter. Include 40 to 100 grams of tylosin phosphate per ton of complete feed for 2 to 6 weeks, immediately after treatment with tylosin tartrate in drinking water for 3 to 10 days as in § 520.2640(d)(3) of this chapter. Tylosin phosphate as provided by Nos. 058198 and 016592; ractopamine as provided by Nos. 058198 and 054771 in § 510.600(c) of this chapter.	016592 054771 058198
(xi) 100		For reduction in severity of effects of atrophic rhinitis.	Feed continuously as the sole ration	016592 054771 058198 066104
(xii) 100	Pyrantel, 96	For reduction in severity of effects of atrophic rhinitis; aid as an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; aid in the prevention of establishment of nodular worm (*Oesophagostomum* spp.) infections.	Feed continuously as the sole ration. Tylosin phosphate and pyrantel as provided by No. 066104 in § 510.600(c) of this chapter. Tylosin phosphate and pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(xiii) 100	Ractopamine, 4.5 to 9.0.	For the control of porcine proliferative enteropathies (PPE, ileitis) associated with *Lawsonia intracellularis;* and for increased rate of weight gain, improved feed efficiency, and increased carcass leanness in finishing swine weighing not less than 150 lbs, fed a complete ration containing at least 16% crude protein for the last 45 to 90 lbs of gain prior to slaughter.	Feed continuously as the sole ration to finishing swine weighing not less than 150 lbs for the last 45 to 90 lbs (group average) of weight gain prior to slaughter. Include 100 g/ton of tylosin for 3 weeks. Tylosin phosphate as provided by Nos. 058198 and 016592; ractopamine as provided by Nos. 058198 and 054771 in § 510.600(c) of this chapter.	016592 054771 058198

(2) Cattle—

Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(i) 8 to 10		Beef cattle: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium (Actinomyces) pyogenes*.	Feed continuously as the sole ration to provide 60 to 90 mg/head/day tylosin.	016592, 054771, 058198, 066104

Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(ii) 90 to 360	Lasalocid, 100 to 1440 plus melengestrol, 0.25 to 2.0.	Heifers fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes*; and for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat).	Feed continuously as sole ration. Feed to heifers at the rate of 0.5 to 2.0 pound(s) per head per day (specify one level) to provide 0.25 to 0.5 mg melengestrol acetate per head per day (specify one level), 100 to 360 mg lasalocid per head per day (specify one level), and 90 mg tylosin per head per day. This Type C product may be top dressed onto or mixed into a complete feed prior to feeding. Tylosin as provided by Nos. 058198 and 016592; lasalocid as provided by No. 054771; melengestrol as provided by Nos. 054771 and 058198 in § 510.600(c) of this chapter.	054771 016592
(iii) 90 to 360	Melengestrol, 0.25 to 2.0.	Heifers fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes*; and for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat).	Feed continuously as sole ration. Each pound contains 0.125 to 1.0 mg melengestrol acetate and 45 to 180 mg of tylosin. Feed to heifers at a rate of 0.5 to 2.0 pounds per head per day to provide 0.25 to 0.5 mg melengestrol acetate and 60 to 90 mg tylosin per head per day. Prior to feeding, this Type C product must be top-dressed onto a complete feed or mixed into the amount of complete feed consumed by an animal per day. Tylosin provided by No. 058198; melengestrol provided by No. 054771 in § 510.600(c) of this chapter.	054771
(iv) 8 to 10	Monensin, 5 to 40 ..	Cattle fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium* (*Actinomyces*) *pyogenes*; and for improved feed efficiency.	Feed continuously as sole ration to provide 50 to 480 monensin mg/head/day and 60 to 90 mg/head/day tylosin. A withdrawal time has not been established for pre-ruminating calves. Do not use in calves to be processed for veal. Tylosin provided by Nos. 016592 or 058198; monensin as provided by No. 058198 in § 510.600(c) of this chapter.	016592 058198
(v) 8 to 10	Monensin, 10 to 40	Cattle fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium* (*Actinomyces*) *pyogenes*; and for prevention of coccidiosis caused by *Eimeria bovis* and *E zuernii*.	Feed continuously as sole ration to provide 0.14 to 0.42 mg monensin/lb body weight per day, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day and 60 to 90 mg/head/day tylosin. A withdrawal time has not been established for pre-ruminating calves. Do not use in calves to be processed for veal. Tylosin provided by Nos. 016592 or 058198; monensin as provided by No. 058198 in § 510.600(c) of this chapter.	016592 058198
(vi) 8 to 10	Monensin, 5 to 30 plus decoquinate, 13.6 to 22.7.	Cattle fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes*; for the prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*; and for improved feed efficiency.	Feed continuously as the sole ration to provide 22.7 mg of decoquinate per 100 lb body weight per day, 50 to 360 mg of monensin/head/day, and 60 to 90 mg of tylosin/head/day. Feed at least 28 days during period of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to animals producing milk for food. Do not feed to lactating dairy cattle. A withdrawal time has not been established for pre-ruminating calves. Do not use in calves to be processed for veal. Tylosin as provided by Nos. 016592 and 058198; monensin as provided by No. 058198; decoquinate as provided by No. 058198 in § 510.600(c) of this chapter.	016592 054771

Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(vii) 8 to 10	Monensin, 10 to 40 plus melengestrol, 0.25 to 2.0.	Heifers fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium* (*Actinomyces*) *pyogenes*; for prevention and control of coccidiosis caused by *Eimeria bovis* and *E zuernii*; and for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat).	Feed continuously as sole ration to heifers at a rate of 0.5 to 2.0 pounds per head per day to provide 0.25 to 0.5 mg/head/day melengestrol acetate and 0.14 to 0.42 mg monensin/lb body weight per day, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day and 60 to 90 mg/head/day tylosin. The melengestrol acetate portion of this Type C medicated feed must be mixed into the complete feed containing 10 to 40 g/ton monensin and 8 to 10 g/ton tylosin at feeding into the amount of complete feed consumed by an animal per day. A withdrawal time has not been established for pre-ruminating calves. Do not use in calves to be processed for veal. Tylosin provided by Nos. 016592 or 058198; monensin as provided by No. 058198; melengestrol provided by Nos. 054771 or 058198 in § 510.600(c) of this chapter.	016592 054771 058198
(viii) 8 to 10	Monensin, 10 to 40 plus ractopamine, 8.2 to 24.6.	Cattle fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes*; for prevention and control of coccidiosis caused by *Eimeria bovis* and *E zuernii*; and for increased rate of weight gain and improved feed efficiency in cattle fed in confinement for slaughter for the last 28 to 42 days on feed.	Feed continuously as sole ration to provide 70 to 430 mg/head/day ractopamine and 0.14 to 0.42 mg monensin/lb body weight per day, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day and 60 to 90 mg/head/day tylosin for the last 28 to 42 days on feed. A withdrawal time has not been established for pre-ruminating calves. Do not use in calves to be processed for veal. Tylosin provided by Nos. 016592 or 058198; monensin as provided by No. 058198; ractopamine provided by Nos. 054771 or 058198 in § 510.600(c) of this chapter.	054771 058198
(ix) 8 to 10	Monensin, 10 to 40 plus ractopamine, not to exceed 800.	Cattle fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes*; for prevention and control of coccidiosis caused by *Eimeria bovis* and *E zuernii*; and for increased rate of weight gain and improved feed efficiency in cattle fed in confinement for slaughter for the last 28 to 42 days on feed.	Feed a minimum of 1.0 lb/head/day ractopamine Type C top dress feed continuously to cattle fed in confinement for slaughter, to provide 70 to 400 mg/head/day ractopamine for the last 28 to 42 days on feed. Feed on top of a ration containing 10 to 40 g/ton monensin and 8 to 10 g/ton tylosin phosphate, to provide 0.14 to 0.42 mg monensin/lb body weight/day, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day and 60 to 90 mg/head/day tylosin. A withdrawal time has not been established for pre-ruminating calves. Do not use in calves to be processed for veal. Tylosin provided by Nos. 016592 or 058198; monensin as provided by No. 058198; ractopamine provided by Nos. 054771 or 058198 in § 510.600(c) of this chapter.	054771 058198

Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(x) 8 to 10	Monensin 10 to 40 plus ractopamine 9.8 to 24.6.	Cattle fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes*; for prevention and control of coccidiosis caused by *Eimeria bovis* and *E zuernii*; and for increased rate of weight gain, improved feed efficiency, and increased carcass leanness in cattle fed in confinement for slaughter for the last 28 to 42 days on feed.	Feed continuously as sole ration to provide 90 to 430 mg/head/day ractopamine and 0.14 to 0.42 mg monensin/lb body weight per day, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day and 60 to 90 mg/head/day tylosin for the last 28 to 42 days on feed. A withdrawal time has not been established for pre-ruminating calves. Do not use in calves to be processed for veal. Tylosin provided by Nos. 016592 or 058198; monensin as provided by No. 058198; ractopamine as provided by Nos. 054771 or 058198 in § 510.600(c) of this chapter.	054771 058198
(xi) 8 to 10	Monensin, 10 to 40 plus ractopamine, 9.8 to 24.6 plus melengestrol, 0.125 to 1 mg/lb.	Heifers fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium* (*Actinomyces*) *pyogenes*; for prevention and control of coccidiosis caused by *Eimeria bovis* and *E zuernii*; for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; and suppression of estrus (heat).	Feed continuously as sole ration to provide 90 to 430 mg/head/day ractopamine and 0.14 to 0.42 mg monensin/lb body weight per day, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day and 60 to 90 mg/head/day tylosin for the last 28 to 42 days on feed. Feed melengestrol as a top dress or mixed with a complete ration at the rate of 0.5 to 2.0 pound/head/day (specify one level) to provide 0.25 to 0.5 mg melengestrol acetate/head/day (specify one level). A withdrawal time has not been established for pre-ruminating calves. Do not use in calves to be processed for veal. Tylosin provided by Nos. 016592 or 058198; monensin as provided by No. 058198; ractopamine as provided by Nos. 054771 or 058198 in § 510.600(c) of this chapter.	054771 058198
(xii) 8 to 10	Monensin, 10 to 40 plus zilpaterol, 6.8.	Cattle fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes*; for prevention and control of coccidiosis caused by *Eimeria bovis* and *E zuernii*; and for increased rate of weight gain, improved feed efficiency, and increased carcass leanness in cattle fed in confinement for slaughter for the last 20 to 40 days on feed.	Feed continuously as the sole ration to cattle during the last 20 to 40 days on feed to provide 60 to 90 mg/head/day zilpaterol, 0.14 to 0.42 mg/lb body weight/day monensin, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day monensin, and 60 to 90 mg/head/day tylosin. Do not use in veal calves. Withdrawal period 3 days. Tylosin provided by Nos. 016592 or 058198; monensin as provided by No. 058198; zilpaterol as provided by No. 000061 in § 510.600(c) of this chapter.	000061 016592
(xiii) 8 to 10	Monensin, 10 to 40 plus zilpaterol, 6.8 to 24.	Cattle fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes*; for prevention and control of coccidiosis caused by *Eimeria bovis* and *E zuernii*; and for increased rate of weight gain, improved feed efficiency, and increased carcass leanness in cattle fed in confinement for slaughter for the last 20 to 40 days on feed.	Feed this component feed continuously to cattle during the last 20 to 40 days on feed to provide 60 mg/head/day zilpaterol, 0.14 to 0.42 mg/lb body weight/day monensin, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day monensin, and 60 to 90 mg/head/day tylosin. Do not use in veal calves. Withdrawal period 3 days. Tylosin provided by Nos. 016592 or 058198; monensin as provided by No. 058198; zilpaterol as provided by No. 000061 in § 510.600(c) of this chapter.	000061 016592

Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(xiv) 8 to 10	Monensin, 10 to 40 plus zilpaterol, 6.8 plus melengestrol, 0.125 to 1 mg/lb.	Heifers fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium* (*Actinomyces*) *pyogenes*; for prevention and control of coccidiosis caused by *Eimeria bovis* and *E zuernii*; and for increased rate of weight gain, improved feed efficiency, and increased carcass leanness in cattle fed in confinement for slaughter for the last 20 to 40 days on feed; and for suppression of estrus (heat).	Feed continuously as the sole ration to cattle during the last 20 to 40 days on feed to provide 60 to 90 mg/head/day zilpaterol, 0.14 to 0.42 mg/lb body weight/day monensin, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day monensin, and 60 to 90 mg/head/day tylosin. Feed melengestrol as a top dress or mixed with a complete ration at the rate of 0.5 to 2.0 pound/head/day (specify one level) to provide 0.25 to 0.5 mg melengestrol acetate/head/day (specify one level). Do not use in veal calves. Withdrawal period 3 days. Tylosin as provided by Nos. 016592 or 058198; monensin as provided by No. 058198; zilpaterol as provided by No. 000061; melengestrol provided by Nos. 054771 or 058198 in § 510.600(c) of this chapter.	000061 016592 058198
(xv) 8 to 10	Monensin, 10 to 40 plus zilpaterol, 6.8 to 24 plus melengestrol, 0.125 to 1 mg/lb.	Heifers fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium* (*Actinomyces*) *pyogenes*; for prevention and control of coccidiosis caused by *Eimeria bovis* and *E zuernii*; and for increased rate of weight gain, improved feed efficiency, and increased carcass leanness in cattle fed in confinement for slaughter for the last 20 to 40 days on feed; and for suppression of estrus (heat).	Feed this component feed continuously to cattle during the last 20 to 40 days on feed to provide 60 mg/head/day zilpaterol, 0.14 to 0.42 mg/lb body weight/day monensin, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day monensin, and 60 to 90 mg/head/day tylosin. Feed melengestrol as a top dress or mixed with a complete ration at the rate of 0.5 to 2.0 pound/head/day (specify one level) to provide 0.25 to 0.5 mg melengestrol acetate/head/day (specify one level). Do not use in veal calves. Withdrawal period 3 days. Tylosin as provided by Nos. 016592 or 058198; monensin as provided by No. 058198; zilpaterol as provided by No. 000061; melengestrol provided by Nos. 054771 or 058198 in § 510.600(c) of this chapter.	000061 016592 058198

■ 40. Revise § 558.630 to read as follows:

§ 558.630 Tylosin and sulfamethazine.

(a) *Specifications.* Type A medicated articles containing equal amounts of tylosin phosphate and sulfamethazine, available in concentrations of 5, 10, 20, or 40 grams each, per pound.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) No. 058198 for use as in paragraph (e)(1) of this section.

(2) No. 054771: 10 or 40 grams per pound each for use as in paragraph (e)(2) of this section.

(c) *Related tolerances.* See §§ 556.670 and 556.740 of this chapter.

(d) *Special considerations*—(1) Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian. See § 558.6 for additional requirements.

(2) The expiration date of VFDs for tylosin and sulfamethazine medicated feeds must not exceed 6 months from the date of issuance. VFDs for tylosin and sulfamethazine shall not be refilled.

(3) Labeling shall bear the statement: ''Do not use in medicated feeds containing in excess of 2% bentonite.''

(e) *Conditions of use.* It is used in feed for swine as follows:

Tylosin phosphate and sulfamethazine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(1) 100 each		For reduction in the severity of effects of atrophic rhinitis; lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis; prevention of swine dysentery associated with *Brachyspira hyodysenteriae;* control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Arcanobacterium pyogenes*); reducing the incidence of cervical lymphadenitis (jowl abscesses) caused by Group E *Streptococci.* Only the sulfamethazine portion of this combination is active in controlling jowl abscesses.	Withdraw 15 days before swine are slaughtered.	058198
(2) 100 each		For reduction in the severity of effects of atrophic rhinitis; lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis; prevention of swine dysentery associated with *Brachyspira hyodysenteriae;* and control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Arcanobacterium pyogenes*).	Withdraw 15 days before swine are slaughtered.	054771

■ 41. Revise § 558.635 to read as follows:

§ 558.635 Virginiamycin.

(a) *Specifications.* Type A medicated articles containing 5, 10, 20, 50, 136.2, or 227 grams per pound virginiamycin.

(b) *Sponsors.* See No. 066104 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.750 of this chapter.

(d) *Special considerations*—(1) [Reserved]

(2) [Reserved]

(3) Not for use in breeding swine over 120 pounds.

(4) Dilute Type A article with at least 10 pounds of a feed ingredient prior to final mixing in 1 ton of Type C feed.

(e) *Conditions of use*—(1) *Chickens*—

Virginiamycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(i) 5		Broiler chickens: For increased rate of weight gain and improved feed efficiency.	Not for use in layers	066104
(ii) 5	Monensin, 90 to 110.	Broiler chickens: For increased rate of weight gain and improved feed efficiency; as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. maxima,* and *E. mivati.*	Feed continuously as the sole ration. Do not feed to laying chickens. Virginiamycin as provided by No. 066104; monensin as provided by No. 058198 in § 510.600(c) of this chapter.	066104
(iii) 5	Salinomycin, 40 to 60.	Broiler chickens: For increased rate of weight gain and improved feed efficiency; for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*	Feed continuously as the sole ration. Do not feed to layers or to chickens over 16 weeks of age. Not approved for use with pellet binders. May be fatal if accidentally fed to adult turkeys or horses. Virginiamycin as provided by No. 066104; salinomycin as provided by No. 054771 in § 510.600(c) of this chapter.	066104 016592
(iv) 5	Semduramicin, 22.7	Broiler chickens: For increased rate of weight gain and improved feed efficiency; for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati/mitis, E. necatrix,* and *E. tenella.*	Feed continuously as the sole ration. Do not feed to laying hens. Semduramicin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(v) 5	Semduramicin (biomass), 22.7.	Broiler chickens: For increased rate of weight gain and improved feed efficiency; for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati/mitis, E. necatrix,* and *E. tenella.*	Feed continuously as the sole ration. Withdraw 1 day before slaughter. Do not feed to laying hens. Virginiamycin and semduramicin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(vi) 5 to 15		Broiler chickens: For increased rate of weight gain.	Not for use in layers	066104

Virginiamycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(vii) 5 to 15	Amprolium, 113.5 and ethopabate, 36.3.	Broiler chickens: For increased rate of weight gain; as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur.	Feed continuously as the sole ration and as the sole source of amprolium. Do not feed to laying chickens. Not for chickens over 16 weeks of age. Virginiamycin as provided by No. 066104; amprolium and ethopabate as provided by No. 016592 in § 510.600(c) of this chapter.	066104
(viii) 5 to 15	Monensin, 90 to 110.	Broiler chickens: For increased rate of weight gain; as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. maxima,* and *E. mivati*.	Feed continuously as the sole ration. Do not feed to laying chickens. Monensin as provided by No. 000986 in § 510.600(c) of this chapter.	066104
(ix) 5 to 15	Salinomycin, 40 to 60.	Broiler chickens: For increased rate of weight gain; as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati*.	Feed continuously as the sole ration. Do not feed to layers or to chickens over 16 weeks of age. Not approved for use with pellet binders. May be fatal if accidentally fed to adult turkeys or horses. Virginiamycin as provided by No. 066104; salinomycin as provided by Nos. 016592 or 054771 in § 510.600(c) of this chapter.	016592 066104
(x) 5 to 15	Semduramicin, 22.7	Broiler chickens: For increased rate of weight gain; for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati/mitis, E. necatrix,* and *E. tenella*.	Feed continuously as the sole ration. Do not feed to laying hens. Semduramicin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(xi) 5 to 15	Semduramicin (biomass), 22.7.	Broiler chickens: For increased rate of weight gain; for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E mivati/mitis, E. necatrix,* and *E. tenella*.	Feed continuously as the sole ration. Withdraw 1 day before slaughter. Do not feed to laying hens. Virginiamycin as provided by No. 066104; semduramicin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(xii) 15	Amprolium, 113.5 and ethopabate, 36.3.	Broiler chickens: For increased rate of weight gain and improved feed efficiency; as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur.	Feed continuously as the sole ration and as the sole source of amprolium. Do not feed to laying chickens. Not for chickens over 16 weeks of age. Virginiamycin as provided by No. 066104; amprolium and ethopabate as provided by No. 016592 in § 510.600(c) of this chapter.	066104
(xiii) 20		Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium* spp. susceptible to virginiamycin.	Not for use in layers	066104
(xiv) 20	Lasalocid, 68 to 113.	Broiler chickens: For increased rate of weight gain and improved feed efficiency; for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*.	Feed continuously as the sole ration. Do not feed to laying chickens. Lasalocid sodium as provided by No. 054771 in § 510.600(c) of this chapter.	066104
(xv) 20	Monensin, 90 to 110.	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium* spp. susceptible to virginiamycin; and as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. maxima,* and *E. mivati*.	Feed continuously as the sole ration. Do not feed to laying chickens. Monensin as provided by No. 058198 in § 510.600(c) of this chapter.	066104
(xvi) 20	Semduramicin, 22.7	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium* spp. susceptible to virginiamycin; for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati/mitis, E. necatrix,* and *E. tenella*.	Feed continuously as the sole ration. Do not feed to laying hens. Semduramicin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(xvii) 20	Semduramicin (biomass), 22.7.	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium* spp. susceptible to virginiamycin; for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati/mitis, E. necatrix,* and *E. tenella*.	Feed continuously as the sole ration. Withdraw 1 day before slaughter. Do not feed to laying hens. Semduramicin as provided by No. 066104 in § 510.600(c) of this chapter.	066104

(2) *Turkeys*—

Virginiamycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(i) 10 to 20		Growing turkeys: For increased rate of weight gain and improved feed efficiency.	Not for use in layers	066104
(ii) 10 to 20	Lasalocid, 68 to 113.	Growing turkeys: For increased rate of weight gain and improved feed efficiency; and for the prevention of coccidiosis caused by *Eimeria meleagrimitis, E. gallopavonis,* and *E. adenoeides*.	Lasalocid sodium as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(iii) 10 to 20	Monensin, 90 to 110.	Growing turkeys: For increased rate of weight gain and improved feed efficiency; and for the prevention of coccidiosis caused by *Eimeria meleagrimitis, E. gallopavonis,* and *E. adenoeides*.	Monensin as provided by No. 058198 in § 510.600(c) of this chapter.	066104

(3) *Swine*—

Virginiamycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(i) 5 or 10		Growing-finishing swine: For increased rate of weight gain and improved feed efficiency.	Feed continuously from weaning to market weight. Feed 10 grams per ton from weaning up to 120 pounds, followed by 5 grams per ton to market weight.	066104
(ii) 5 to 10		Growing-finishing swine: For increased rate of weight gain.	Feed continuously from weaning to market weight. Feed 10 grams per ton from weaning up to 120 pounds for increased rate of weight gain and improved feed efficiency, followed by 5 to 10 grams per ton to market weight for increased rate of weight gain.	066104
(iii) 25		Growing-finishing swine: As an aid in control of dysentery in swine up to 120 pounds in animals or on premises with a history of swine dysentery but where symptoms have not yet occurred.		066104
(iv) 50 or 100		Growing-finishing swine: For treatment and control of swine dysentery in swine up to 120 pounds.	Feed 100 grams per ton for 2 weeks, 50 grams per ton thereafter.	066104
(v) 100		Growing-finishing swine: For treatment of swine dysentery in nonbreeding swine over 120 pounds.	Feed for 2 weeks	066104

(4) *Cattle*—

Virginiamycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(i) 11.0 to 16.0		Cattle fed in confinement for slaughter: For improved feed efficiency.	Feed continuously as the sole ration to provide 70 to 240 milligrams per head per day. Not for use in animals intended for breeding.	066104
(ii) 13.5 to 16.0		Cattle fed in confinement for slaughter: For reduction of incidence of liver abscesses.	Feed continuously as the sole ration to provide 85 to 240 milligrams per head per day. Not for use in animals intended for breeding.	066104
(iii) 16.0 to 22.5		Cattle fed in confinement for slaughter: For increased rate of weight gain.	Feed continuously as the sole ration to provide 100 to 340 milligrams per head per day. Not for use in animals intended for breeding.	066104

■ 42. In § 558.665, remove and reserve paragraphs (e)(5) and (6); remove paragraphs (e)(11) and (12); and add paragraph (f) to read as follows:

§ 558.665 Zilpaterol.

* * * * *

(f) Zilpaterol may also be used in combination with tylosin as in § 558.625.

■ 43. In § 558.680, remove paragraph (d)(1)(x); and add paragraph (e)(3) to read as follows:

§ 558.680 Zoalene.

* * * * *

(e) * * *

(3) Zoalene may also be used in combination with lincomycin as in § 558.325.

Dated: December 20, 2016.

Tracey H. Forfa,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 2016–31083 Filed 12–23–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2016–N–0002]

New Animal Drugs; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 11 new animal drug applications (NADAs) and 4 abbreviated new animal drug applications (ANADAs). These withdrawals of approval of NADAs and ANADAs for antimicrobial drugs of importance to human medicine that are administered to food-producing animals in medicated feed are being made because the products are no longer being manufactured or marketed. These actions are consistent with the FDA Center for Veterinary Medicine's initiative for the Judicious Use of Antimicrobials.

DATES: Withdrawal of approval is effective December 30, 2016.

FOR FURTHER INFORMATION CONTACT: Sujaya Dessai, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5761, *sujaya.dessai@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is withdrawing approval of 11 NADAs and 4 ANADAs. These applications were identified as being affected by guidance for industry (GFI) #213, ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With GFI #209,'' December 2013 (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM299624.pdf*). Their withdrawal of approval is consistent with the FDA Center for Veterinary Medicine's initiative for the Judicious Use of Antimicrobials.

Approval of the following applications for new animal drugs administered in medicated feed is being voluntarily withdrawn at the sponsors' requests because these products are no longer manufactured or marketed:

File No.	Product name	Sponsor
034–085	LINCOMIX (lincomycin hydrochloride monohydrate) Type A Medicated Article.	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.
035–287	OM–5 Premix (oleandomycin) Type A Medicated Article	Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666.
046–668	Penicillin G Procaine 50% Type A Medicated Article	Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666.
091–668	CHLORMAX–SP 500 (chlortetracycline, sulfamethazine, penicillin G procaine) Type A Medicated Article.	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.
108–116	LINCOMIX (lincomycin)/NICARB (nicarbazin)	Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666.
133–334	Virginiamycin Type A Medicated Article	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.
139–473	STAFAC (virginiamycin)/STENEROL (halofuginone hydrobromide).	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria.
140–340	LINCOMIX (lincomycin)/STENOROL (halofuginone hydrobromide).	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria.
140–443	HYGROMIX 1.6 (hygromycin B) Type A Medicated Article	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.
140–947	LINCOMIX (lincomycin)/MAXIBAN (narasin and nicarbazin)	Elanco US, Inc., 2500 Innovation Way, Greenfield, IN 46140.
141–090	STAFAC (virginiamycin)/CLINICOX (diclazuril)	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria.
200–171	LINCOMIX (lincomycin)/NICARMIX (nicarbazin)	Planalquimica Industrial Ltda., Rua das Magnolias nr. 2405, Jardim das Bandeiras, CEP 13053–120, Campinas, Sao Paulo, Brazil.
200–569	TYLAN (tylosin)/SACOX (salinomycin)	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria.
200–570	TYLOVET 100 (tylosin)/BIO–COX (salinomycin)	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria.
200–580	TYLOVET 100 (tylosin)/SACOX (salinomycin)	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sophia, Bulgaria.

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADAs 034–085, 035–287, 046–668, 091–668, 108–116, 133–334, 139–473,

140–340, 140–443, 140–947, 141–090, 200–171, 200–569, 200–570, and 200–580, and all supplements and amendments thereto, is hereby withdrawn, effective December 31, 2016.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the voluntary withdrawal of approval of these applications.

Dated: December 20, 2016.

Tracey H. Forfa,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 2016–31082 Filed 12–23–16; 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–2015–F–4282]

Food Additives Permitted in Feed and Drinking Water of Animals; Feed Grade Sodium Formate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, we, the Agency) is amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of feed grade sodium formate as a feed acidifying agent in complete poultry feeds. This action is in response to a food additive petition filed by BASF Corp.

DATES: This rule is effective December 27, 2016. Submit either written or electronic objections and requests for a hearing by January 26, 2017. See section V of this document for information on the filing of objections.

ADDRESSES: You may submit objections and requests for a hearing as follows:

Electronic Submissions

Submit electronic objections in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, that information will be posted on *https://www.regulations.gov.*

• If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection 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 objections submitted to the Division of Dockets Management, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–F–4282 for ''Food Additives Permitted in Feed and Drinking Water of Animals; Feed Grade Sodium Formate.'' Received objections will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 an objection with confidential information that you do not wish to be made publicly available, submit your objections 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 objections. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://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 objections 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 objections received, go to *https://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: Chelsea Trull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *chelsea.trull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of November 24, 2015 (80 FR 73153), FDA announced that we had filed a food additive petition (animal use) (FAP 2293) submitted by BASF Corp., 100 Park Ave., Florham Park, NJ 07932. The petition proposed that the regulations for food additives permitted in feed and drinking water of animals be amended to provide for the safe use of feed grade sodium formate as a feed acidifying agent in complete poultry feeds.

II. Conclusion

FDA concludes that the data establish the safety and utility of feed grade sodium formate for use as a feed acidifying agent in complete poultry feeds and that the food additive regulations should be amended as set forth in this document.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 571.1(h), we will delete from the documents any materials that are not available for public disclosure.

IV. Environmental Impact

The Agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment, nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.*

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. In § 573.696, revise the introductory text and paragraph (b) to read as follows:

§ 573.696 Feed grade sodium formate.

The food additive, feed grade sodium formate, may be safely used in the manufacture of complete swine and poultry feeds in accordance with the following prescribed conditions:

* * * * *

(b) The additive is used or intended for use as a feed acidifying agent, to lower the pH, in complete swine and poultry feeds at levels not to exceed 1.2 percent of the complete feed.

* * * * *

Dated: December 20, 2016.

Tracey H. Forfa,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 2016–31079 Filed 12–23–16; 8:45 am]

BILLING CODE 4164–01–P

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1506

RIN 3005–AA00

Collection of Claims

AGENCY: U.S. African Development Foundation.

ACTION: Final rule.

SUMMARY: The U.S. African Development Foundation (USADF) is revising its regulations on collection of claims in accordance with the Debt Collection Improvement Act of 1996 (DCIA), as implemented by the Department of Justice (Justice) and the Department of the Treasury (Treasury) in the revised Federal Claims Collection Standards (FCCS). The FCCS prescribes the standards that Federal agencies must use in the administrative collection, offset, compromise, and suspension or termination of collection activity for civil claims of money, funds, or property as defined by law.

DATES: This final rule is effective February 27, 2017.

FOR FURTHER INFORMATION CONTACT: June B. Brown, 202–233–8882.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the requirements of the DCIA and the implementing regulations promulgated by Justice and Treasury at 31 CFR parts 900–904, USADF is revising its regulations to establish procedures for the administrative collection, offset, compromise, suspension and termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), and the process by which USADF can refer civil claims to Treasury, Treasury-designated debt collection centers, or Justice for collection by further administrative action or litigation, as applicable. The regulations do not apply to claims between federal agencies. The rules affect USADF's debtors. The regulations clarify and prescribe the steps USADF must take before initiating debt collection to ensure that individuals' rights are protected. These steps include notifying the debtor of the debt and the consequences of failing to resolve the debt.

II. Section-by-Section Analysis

Subpart A announces the purpose and scope of the regulations, defines terms used in Part 1506, and addresses whether USADF can impose sanctions or remedies other than those prescribed in Part 1506, whether USADF will subdivide a claim exceeding $100,000, and how claims involving fraud are processed.

Subpart B describes the steps involved in a collection action, including the information USADF includes in a written demand for payment, a debtor's request for review of a claim, the determination of interest, penalty and administrative costs, and the reporting and consequences of delinquent debts.

Subpart C provides for salary offset collection procedures, notice and hearing requirements prior to offset, and USADF's use of offset for claims of another Federal agency.

Subpart D addresses the compromise of debts through reduction or negotiation of the claim amount, joint and several liability on a claim, and releasing the debtor after full payment of a compromised amount.

Subpart E prescribes the circumstances and criteria for USADF to suspend or terminate a collection action.

Subpart F describes the circumstances for USADF to discharge a delinquent debt and reporting a discharge of debt to the Internal Revenue Service.

Subpart G addresses when USADF refers claims to the Department of Justice for litigation.

Subpart H addresses when USADF is required to transfer debts to the Financial Management Service of the Department of the Treasury.

III. Matters of Regulatory Procedure

Executive Order 12866

The proposed regulations have been determined to be non-significant within the meaning of Executive Order 12866.

Regulatory Flexibility Act

The USADF President, in accordance with the Regulatory Flexibility Act, 5

U.S.C. 605(b), has reviewed the proposed regulations and by approving them certifies that they will not have a significant economic impact on a substantial number of small entities. The regulations pertain to the administrative collection of individual debts owed to USADF and do not affect acquisition, inter-agency or foreign claims.

Unfunded Mandates Reform Act of 1995

These regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 22 CFR Part 1506

Claims collection.

Approved: December 20, 2016.

June B. Brown,

Associate General Counsel, U.S. African Development Foundation.

■ For the reasons set forth in the preamble, USADF is revising 22 CFR part 1506 to read as follows:

PART 1506—COLLECTION OF CLAIMS

Subpart A—General Provisions

Sec.
1506.1 What is the purpose of this part?
1506.2 What types of claims do these standards and procedures cover?
1506.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?
1506.4 What definitions apply to the regulations in this part?
1506.5 Does the application of remedies prescribed in this part preclude USADF from imposing other sanctions or remedies?
1506.6 Will USADF subdivide a claim in excess of $100,000?
1506.7 How does USADF process claims involving fraud?
1506.8 Will an omission by the Agency in complying with this part serve as a debtor's defense against payment?

Subpart B—Collection

1506.9 What does a collection action entail?
1506.10 What information is included in a written demand for payment?
1506.11 May I request a review of the existence or amount of a claim?
1506.12 What happens if my debt becomes past due?
1506.13 How are interest, penalty, and administrative costs determined?
1506.14 Does interest accrue during the period pending waiver or review?
1506.15 Does USADF contract with other agencies for collection services?
1506.16 Does USADF report delinquent debts to consumer reporting agencies?
1506.17 For what purposes may USADF use my mailing address?
1506.18 Will USADF suspend or revoke my financial assistance or other privileges if I fail to pay my debt?
1506.19 May I pay my debt in installments?

Subpart C—Salary Offset

1506.20 When and how will USADF collect past due debt through administrative offset?
1506.21 I am a USADF employee; when will the Agency offset my salary to satisfy a debt against me?
1506.22 Am I entitled to notice and hearing prior to salary offset?
1506.23 Will the debt be collected in a lump sum or by installment deductions from my pay account?
1506.24 Are there any limitations on the amount of salary deduction?
1506.25 When will deduction from my pay account begin?
1506.26 What happens if my employment with USADF ends prior to repaying the full amount of my debt?
1506.27 How are interest, penalty, and administrative costs assessed?
1506.28 Will I receive a refund if the claim against me is found to be without merit?
1506.29 Is there a time limit for initiating collection by salary offset?
1506.30 Can USADF use salary offset as a means to collect a claim against me if USADF is not the creditor agency?

Subpart D—Compromise of Debts

1506.31 May USADF reduce or negotiate a claim amount?
1506.32 If I am jointly and severally liable on a claim, will USADF delay collection action against me until the other debtors pay their proportional share?
1506.33 Under what circumstances will USADF compromise a claim?
1506.34 Can I pay a compromised claim in installments?
1506.35 Will USADF execute a release after full payment of a compromised amount?

Subpart E—Suspension or Termination of Collection Action

1506.36 Under what circumstances may USADF suspend collection actions?
1506.37 What are the criteria for suspension?
1506.38 Under what circumstances may USADF terminate collection actions?
1506.39 What are the criteria for termination?
1506.40 What actions by the Agency are permitted after termination of collection activity?
1506.41 Can the Agency collect against a debt that has been discharged in bankruptcy?

Subpart F—Discharge of Indebtedness and Reporting Requirements

1506.42 Under what circumstances will USADF discharge a delinquent debt?
1506.43 Will USADF report a discharge of debt to the IRS?

Subpart G—Referrals to the Department of Justice

1506.44 When will USADF refer claims to the Department of Justice for litigation?

Subpart H—Mandatory Transfer of Delinquent Debt to the Bureau of Fiscal Services (BFS) of the Department of Treasury

1506.45 When is it mandatory for USADF to transfer debts to BFS?
1506.46 When is USADF not required to transfer a debt to BFS?

Authority: Title V of the International Security and Development Cooperation Act of 1980, 22 U.S.C. 290h; 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 31 CFR part 285; 31 CFR 900–904; 5 CFR 550, subpart K; 31 U.S.C. 3720A.

Subpart A—General Provisions

§ 1506.1 What is the purpose of this part?

This part prescribes the standards and procedures to be used by the United States African Development Foundation (USADF) in the collection and disposal of non-tax debts owed to USADF and the United States. It covers USADF's collection, compromise, suspension, termination, and referral of claims to the Department of Justice.

§ 1506.2 What types of claims do these standards and procedures cover?

These standards and procedures are applicable to all claims and debts for which a statute, regulation or contract does not prescribe different standards or procedures.

§ 1506.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of the FCCS. Except as otherwise provided by law, USADF will conduct administrative actions to collect claims (including offset, compromise, suspension termination, disclosure, and referral) in accordance with the FCCS.

§ 1506.4 What definitions apply to the regulations in this part?

Administrative offset means the withholding of funds payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes to the Government.

Administrative wage garnishment means the process by which federal agencies require a private sector employer to withhold up to 15% of an employee's disposable pay to satisfy a delinquent debt owed to the Federal government. A court order is not required.

Agency means the United States African Development Foundation (USADF).

CFO means the Chief Financial Officer of USADF or the USADF official designated to act as the CFO.

Claim or debt means an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency.

Compromise means the creditor agency's acceptance of an amount less than the full amount of an outstanding debt in full satisfaction of the entire amount of the debt.

Creditor agency means the Federal agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

Debtor means an individual, organization, association, corporation, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

Delinquent claim or debt means any claim or debt that has not been paid by the date specified in the agency's Bill for Collection or demand letter for payment or which has not been satisfied in accordance with a repayment agreement.

Discharge means the release of a debtor from personal liability for the debt. Further collection action is prohibited.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of the employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders) in accordance with 5 CFR parts 581 and 582. Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (Title 26, United States Code) and deductions described in 5 CFR 581.105(b) through (f). These deductions include, but are not limited to: Social Security withholdings; Federal, State, and local tax withholdings; health insurance premiums; retirement contributions; and life insurance premiums.

Employee means a current employee of the Federal Government including a current member of the Armed Forces or a Reserve of the Armed Forces.

Employee salary offset means the administrative collection of a debt by deductions at one or more officially established pay intervals from the current pay account of an employee without the employee's consent.

Person means an individual, firm, partnership, corporation, association, organization, State or local government, or any other type of entity other than a Federal agency, foreign government, or public international organization.

Suspension means the temporary cessation of an active debt collection pending the occurrence of an anticipated event.

Termination means the cessation of all active debt collection action for the foreseeable future.

Waiver means the cancellation, remission, forgiveness or non-recovery of a debt or debt-related charge as permitted or required by law.

Withholding order means any order for withholding or garnishment of pay issued by USADF or a judicial or administrative body. For the purposes of this Part, wage garnishment order and garnishment order have the same meaning as withholding order.

§ 1506.5 Does the application of remedies prescribed in this part preclude USADF from imposing other sanctions or remedies?

(a) The remedies and sanctions available to USADF under this part for collecting debts are not intended to be exhaustive. USADF may impose, where authorized, other appropriate formal and informal sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt.

(b) Nothing in this part is intended to deter USADF from demanding the return of specific property or the payment of its value.

(c) This part does not supersede or require omission or duplication of administrative proceedings required by contract, statute, regulation or other USADF procedures, *e.g.,* resolution of audit findings under grants or contracts, informal grant appeals, formal grant appeals, or review under a procurement contract.

§ 1506.6 Will USADF subdivide a claim in excess of $100,000?

USADF will not subdivide a claim to avoid the $100,000 limit on the Agency's authority to compromise, suspend, or terminate a debt. A debtor's liability arising from a particular transaction or contract is a single claim.

§ 1506.7 How does USADF process claims involving fraud?

(a) The CFO will refer claims involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim to the United States Agency for International Development (USAID) Office of Inspector General (OIG), which has statutory jurisdiction over USADF. The OIG has the responsibility for investigating or referring the matter, where appropriate, to the Department of Justice (DOJ), and/or returning it to USADF for further action.

(b) The CFO will not administratively compromise, terminate, suspend or otherwise dispose of debts involving fraud, the presentation of a false claim or misrepresentation on the part of the debtor or any party having an interest in the claim without the approval of DOJ.

§ 1506.8 Will an omission by the Agency in complying with this part serve as a debtor's defense against payment?

Failure by USADF to comply with any provision of this Part is not available to a debtor as a defense against payment of a debt.

Subpart B—Collection

§ 1506.9 What does a collection action entail?

(a) The Agency will undertake prompt action to collect all debts owed to the United States arising out of USADF activities and to reduce debt delinquencies. A collection action may include sending a written notice in the form of a Bill for Collection or demand letter to the debtor's last known address. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), a written demand may be preceded by other appropriate actions under the Federal Claims Collection Standards, including the immediate referral to DOJ for litigation or collection by salary offset. The CFO may contact the debtor by telephone, in person and/or in writing to demand prompt payment, to discuss the debtor's position regarding the existence, amount or repayment of the debt, to inform the debtor of its rights (*e.g.,* to apply for a waiver of indebtedness or to request an administrative review) and of the basis for the debt and the consequences of nonpayment or delay in payment.

(b) The CFO will maintain an administrative file for each claim. The administrative file will document the basis for the debt, all administrative collection actions regarding the debt (including communications to and from the debtor) and the final disposition of the debt. Information on an individual debtor may be disclosed only for purposes consistent with this Part, the Privacy Act of 1974, and other applicable law.

§ 1506.10 What information is included in a written demand for payment?

(a) The Bill for Collection or demand letter shall inform the debtor of:

(1) The amount, nature and basis of the debt;

(2) The right of the debtor to inspect and copy records related to the debt;

(3) The right of the debtor to discuss and propose a repayment agreement;

(4) Any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt);

(5) The applicable standards for imposition of interest charges and penalty charges and administrative costs that may be assessed against a delinquent debt;

(6) The date by which payment should be made to avoid late charges (*i.e.* interest, penalties, and administrative costs), which may be not more than 30 days from the date that the demand letter is mailed or hand-delivered;

(7) The name, address, and telephone number of a person or office within USADF available to discuss the debt;

(8) The intention of USADF to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) Offset from Federal payments otherwise due to the debtor, including income tax refunds, salary, certain benefit payments, retirement, vendor payments, travel reimbursement and advances, and other Federal payments;

(ii) Referral to a private collection agency;

(iii) Report to credit bureaus;

(iv) Administrative wage garnishment;

(v) Referral to the Department of Justice for litigation action if the debt cannot be collected administratively;

(vi) Transfer of any debt delinquent for more than 180 days to the Department of Treasury for collection; and

(vii) Other actions authorized by the FCCS and applicable law.

(9) Any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt);

(10) The instructions for making electronic payment; and

(11) Requirement that the debtor advise USADF of any bankruptcy proceeding.

(b) USADF may omit from the written demand for payment one or more of the provisions contained in paragraphs (a)(8) through (11) of this section if USADF determines that any provision is not legally required given the collection remedies to be applied to a particular debt, or which have already been provided by prior notice, applicable agreement, or contract.

(c) USADF will respond promptly to communications from the debtor. Responses will generally be made within 30 days of the receipt of the communication from the debtor.

§ 1506.11 May I request a review of the existence or amount of a claim?

(a) USADF shall provide the debtor with a reasonable opportunity for an internal review of the existence or amount of the debt. For offset of current Federal salary under 5 U.S.C. 5514, a debtor may also request a hearing. (See subpart C of this part).

(b) A request for a review must be submitted in writing to the appropriate contact office by the payment due date indicated in the Bill for Collection or demand letter. The request must state the basis for the debtor's dispute of the claim and include any relevant documentation in support.

(1) USADF will provide for an internal review of the debt by an appropriate official. The review may include examination of documents, internal discussions with relevant officials and discussions with the debtor, at USADF's discretion.

(2) An oral hearing is not required when USADF determines that the matter can be decided on the documentary record. When an oral hearing is not required, USADF shall accord the debtor a ''paper hearing,'' that is, a determination of the request for reconsideration based upon a review of the written record.

(3) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although USADF will carefully document all significant matters discussed at the hearing.

§ 1506.12 What happens if my debt becomes past due?

USADF will transfer to the Department of Treasury's Bureau of Fiscal Services (BFS) any past due, legally enforceable non-tax debt that has been delinquent for 120 days or more for administrative offset, and delinquent for 180 days or more for other collections. BFS may take appropriate action to collect the debt in accordance with applicable law and regulation. USADF may transfer any past due, legally enforceable debt that has been delinquent for fewer than 120 days to BFS for collection in accordance with applicable law and regulation.

§ 1506.13 How are interest, penalty, and administrative costs determined?

(a) *Interest.* USADF will assess interest on all delinquent debts, unless prohibited by statute, regulation, or contract.

(1) Interest begins to accrue on all debts from the payment due date established in the initial notice to the debtor, or as otherwise provided by law. USADF shall charge an annual rate of interest that is equal to the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 unless a different rate is necessary to protect the rights of the United States. USADF will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

(2) The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness. If a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(3) Interest will not be assessed on interest charges, administrative costs or late payment penalties. However, where a debtor defaults on a previous repayment agreement and interest, administrative costs and penalty charges that had been waived under the defaulted agreement may be reinstated and added to the debt principal under any new agreement and interest may be charged on the entire amount of the debt.

(b) *Administrative costs of collecting overdue debts.* The costs of USADF's administrative processing of overdue debts, including charges assessed by the Department of Treasury in cross-servicing the debts based on either actual or average cost incurred, will be charged on all debts. These costs include both direct and indirect costs.

(c) *Penalties.* Penalty charges will be assessed at 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first towards outstanding administrative costs, penalty assessments, accrued interest and then towards the outstanding debt principal.

(e) *Waivers.* (1) USADF will waive the collection of interest and administrative charges on any portion of the debt that is paid within 30 days after the date on which late payment charges begin to accrue. This 30 day period may be extended on a case-by-case basis where

the Agency determines that such action is in the best interest of the Government.

(2) USADF may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty or administrative costs, where it determines that:

(i) Waiver is justified under the criteria of subpart D; or

(ii) Collection of these charges would be against equity and good conscience or not in the best interest of the United States.

(3) A decision to waive interest, penalty charges or administrative costs may be made at any time.

§ 1506.14 Does interest accrue during the period pending waiver or review?

During the period pending waiver or review, USADF may suspend accrual of interest, penalty charges, and administrative costs on any disputed portion of the debt if it is determined that suspension is in the Agency's best interest or would serve equity and good conscience. Interest, penalty, and administrative costs will not be assessed where a statute or regulation specifically prohibits collection of the debt during the period of the administrative appeal or the Agency review.

§ 1506.15 Does USADF contract with other agencies for collection services?

(a) USADF has entered into a cross-servicing agreement with the Bureau of Fiscal Services (BFS) of the Department of Treasury. BFS will take appropriate action to collect and/or compromise transferred debts in accordance with applicable statutory and regulatory requirements. BFS may take any of the following collection actions on behalf of USADF:

(1) Send demand letters on U.S. Treasury letterhead and telephone debtors;

(2) Refer accounts to credit bureaus;

(3) Purchase credit reports to assist in the collection effort;

(4) Refer accounts for offset, including tax refund, Federal employee salary, administrative wage garnishment, and general administrative offset under the Treasury Offset Program;

(5) Refer accounts to private collection agencies;

(6) Refer accounts to the Department of Justice for litigation;

(7) Report written off or discharged debt to the Internal Revenue Service (IRS) on the appropriate Form 1099;

(8) Take any additional steps necessary to enforce recovery; and

(9) Terminate collection action, as appropriate.

(b) BFS will maintain records on debt transferred to it, assure that accounts are updated as necessary, and modify its delinquent debt and debtor records with information obtained from its skip tracking and asset-location services as appropriate. In the event that a referred debtor disputes the validity of a debt or any terms and conditions related to any debt not reduced by judgment, BFS may return the disputed debt to USADF for its determination of debt validity.

§ 1506.16 Does USADF report delinquent debts to consumer reporting agencies?

USADF may report delinquent debts to appropriate credit reporting bureaus and other automated databases through the cross-servicing agreement with BFS. Any such disclosure will be done in accordance with 31 U.S.C. 3711(e) and the Federal Claims Collection Standards, 31 CFR 901.4, and in compliance with the Bankruptcy Code and Privacy Act 5 U.S.C. 552a.

§ 1506.17 For what purposes may USADF use my mailing address?

When attempting to locate a debtor in order to collect or compromise a debt, USADF may obtain the debtor's mailing address from the Internal Revenue Service. Addresses obtained from the Internal Revenue Service will be used by USADF, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of debts, and may be disclosed to other agencies and to collection agencies only for collection purposes.

§ 1506.18 Will USADF suspend or revoke my financial assistance or other privileges if I fail to pay my debt?

Unless waived by the Head of the Agency, USADF will not extend financial assistance in the form of a grant, loan, or loan guarantee to any person delinquent on a non-tax debt owed to a Federal agency. The authority to waive the application of this section may be delegated to the Chief Financial Officer and re-delegated. USADF may also suspend or revoke other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay a claim. Additionally, the Agency may suspend or disqualify any contractor, lender, broker, borrower, grantee or other debtor from doing business with USADF or engaging in programs USADF sponsors or funds if a debtor fails to pay its debts to the Government within a reasonable time. Debtors will be notified before such action is taken and applicable debarment procedures will be used.

§ 1506.19 May I pay my debt in installments?

(a) Whenever feasible, USADF shall collect the total amount of a debt (including interest, penalty, and administrative cost) in one lump sum. If the debtor is financially unable to pay the debt in one lump sum, USADF may accept payment in regular installments. USADF will obtain financial statements from debtors who represent that they are unable to pay on one lump sum and independently verify such representations whenever possible. In addition, USADF will obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and contains a provision accelerating the debt in the event of a default.

(b) The size and frequency of the installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. To the extent possible, the installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(c) In appropriate cases, the Agency will obtain security for deferred payments. However, USADF may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security.

Subpart C—Administrative Offset

§ 1506.20 When and how will USADF collect past due debt through administrative offset?

(a) Payments otherwise due the debtor from the United States shall be offset from the debt in accordance with 31 CFR 901.3. These may be funds under the control of USADF or other Federal agencies. Collection may be through centralized offset by the Bureau of Fiscal Service (BFS) of the Department of the Treasury.

(b) Such payments include but are not limited to vendor payments, salary, retirement, lump sum payments due upon Federal employment separation, travel reimbursements, tax refunds, loans or other assistance. Offset of Federal salary payments will be in accordance with 5 U.S.C. 5514.

(c) Before administrative offset is instituted by another Federal agency or the BFS, USADF shall certify in writing to that entity that the debt is past due and legally enforceable and that USADF has complied with all applicable due process and other requirements as described in this part and other Federal law and regulations.

§ 1506.21 I am a USADF employee; when will the Agency offset my salary to satisfy a debt against me?

Any amount advanced to an employee for allowable travel expenses but not used for such purposes is recoverable from the employee, in accordance with

5 U.S.C. 5705, by salary offset without regard to the due process provisions in § 1506.22. This section does not apply to debts where collection by salary offset is explicitly prohibited by another statute. Collection of debt by salary offset will be in accordance with 5 U.S.C. 5514.

§ 1506.22 Am I entitled to notice and hearing prior to salary offset?

(a) *Due process requirements—Notice, hearing, written response and decision.* (1) Prior to initiating collection action through salary offset, the Agency will provide all employees that owe a debt to the Government an opportunity to repay in full the amount owed, unless such opportunity will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided otherwise, each employee from whom the Agency proposes to collect a debt by salary offset will receive a written notice 30 days prior to any deductions from pay. The notification will include the Agency's determination that a debt is owed, the amount of the debt, the Agency's intention to collect the debt by means of deductions from the employee's pay account, and the employee's right to request a hearing on the claim.

(3) An employee facing collection of debt by salary offset is entitled to request a hearing on the claim. The request must be filed in writing and signed by the employee. It must be received by the Agency within 15 days of the employee's receipt of the notification of proposed deduction. Late request for a hearing may be accepted if the employee can show that the delay in filing the request was due to circumstances beyond the employee's control.

(4) The Agency will make hearing arrangements that are consistent with law and regulations. Where a hearing is held, the employee is entitled to a written decision on the following:

(i) A determination of the Agency concerning the existence and amount of the debt; and

(ii) A repayment schedule.

(b) *Exceptions to the due process requirements—pay and allowances.* The procedural requirements of paragraph (a) of this section are not applicable to overpayments of salary or allowances in the following situations:

(1) Adjustments of pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deduction from payment, if the amount to be recovered accumulated over four pay periods or less;

(2) Routine intra-agency adjustments in pay or allowances that are made to correct overpayments of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayments accrued over four pay periods or less; and

(3) Any adjustment to collect a debt amounting to $50 or less.

(c) *Form of hearing, written response and final decision.* (1) The hearing official will make a decision based upon a review of the claim and any additional material submitted by the debtor. Where the hearing official determines that the validity of the debt turns on an issue of veracity or credibility which cannot be resolved through a review of documentary evidence, the hearing official at his discretion may afford the debtor an opportunity for an oral hearing. An oral hearing will consist of an informal conference before a hearing official in which the employee and the Agency may present evidence, witnesses and arguments. The employee may be represented by an individual of his/her choosing. The Agency shall maintain a summary record of all oral hearings provided under the procedures of this section.

(2) Written decisions rendered pursuant to a hearing will include the hearing official's analysis, findings and conclusions. The decision will be final and binding on the parties.

(d) *Request for waiver.* In certain circumstances, an employee may have a statutory right to request a waiver of overpayment of pay or allowances, *e.g.,* 5 U.S.C. 5584 or 5 U.S.C. 5724(i). When an employee requests a waiver consideration under a right authorized by statue, further collection on the debt will be suspended until a final administrative decision is made on the waiver request.

(e) *Non-waiver of right by payment.* An employee's payment of all or any portion of a debt does not waive any rights that the employee may have under either the procedures in this section or any other provision of law.

§ 1506.23 Will the debt be collected in a lump sum or by installment deductions from my pay account?

A debt will be collected in a lump sum or by installment deductions at established pay intervals from an employee's current pay account. If the employee is financially unable to pay a debt in a lump sum or the amount of debt exceeds 15 percent of disposable pay, collection will be made in installments, unless the employee and the Agency agree to alternative arrangements for payment. Alternative payment schedules must be in writing, signed by both the employee and the CFO and will be documented in the Agency's files.

§ 1506.24 Are there any limitations on the amount of salary deduction?

Installment deduction will be made over the period of active duty or employment. The size and frequency of the installment deductions generally will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, an amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payments should be in amounts sufficient to liquidate the debt within a period of three years or less. Installment payments of less than $50 will be accepted only in the most unusual circumstances.

§ 1506.25 When will deduction from my pay account begin?

(a) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's Bill for Collection or demand letter notice of intention to collect from the employee's current pay, unless the debt has been repaid in full or the employee has filed a timely request for hearing.

(b) If an employee files a timely request for hearing, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed to the Government. Following the decision by the hearing official, the employee will be given 30 days to repay the amount owed prior to collection through salary offset, unless otherwise provided by the hearing official.

§ 1506.26 What happens if my employment with USADF ends prior to repaying the full amount of my debt?

If the employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset from subsequent payments of any nature due the employee (*e.g.* final salary payment, lump-sum leave, etc.).

§ 1506.27 How are interest, penalty, and administrative costs assessed?

USADF will assess interest, penalties and administrative costs on debts collected under the procedures in this section. Interest, penalty and administrative costs will continue to accrue during the period that the debtor is seeking formal or informal review of the debt or requesting a waiver. The following guidelines apply to the

assessment of these costs on debts collected by salary offset:

(a) Interest will be assessed on all debts not collected by the payment due date specified in the Bill for Collection or demand letter. USADF will waive the interest and administrative charges on the portion of the debt that is paid within 30 days after the date on which interest begins to accrue.

(b) Administrative costs will be assessed if the debt is referred to Treasury for cross-servicing.

(c) Deductions by administrative offset normally begin prior to the time for assessment of a penalty. Therefore, a penalty charge will not be assessed unless deductions occur more than 90 days from the due date in the Bill for Collection or demand letter.

§ 1506.28 Will I receive a refund if the claim against me is found to be without merit?

USADF will promptly refund to the employee any amounts paid or deducted pursuant to this section that are subsequently waived or found not owing to the United States Government. Refunds do not bear interest unless specifically authorized by law.

§ 1506.29 Is there a time limit for initiating collection by salary offset?

USADF will not initiate salary offset to collect a debt more than 1 year after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not have been known through the exercise of reasonable care by the Government official responsible for discovering and collecting such debt.

§ 1506.30 Can USADF use salary offset means to collect a claim against me if USADF is not the creditor agency?

(a) USADF will use salary offset means of collecting debt against one of its employees that is indebted to another agency if requested to do so by that agency. The requesting agency must certify that the USADF employee owes a debt and that the procedural requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met. The creditor agency must also advise USADF of the amount of debt, and the number and amount of the installments to be collected.

(b) Request for salary offset must be submitted to the CFO of USADF.

(c) Processing of the claim by USADF—

(1) *Incomplete claims.* A creditor agency will be required to supply USADF with all the required information prior to any salary offset from the employee's current pay account.

(2) *Complete claims.* If the claim procedures in paragraph (a) of this section have been properly completed, deduction will begin on the next established pay period. USADF will not review the merits of the creditor agency's determinations with respect to the amount or validity of the debt as stated in the debt claim form. USADF will not assess a handling or any other related charge to cover the cost of its processing the claim.

(d) Employees separating from USADF before a debt to another agency is collected—

(1) *Employees separating from Government service.* If an employee begins separation action before USADF collects the total debt due the creditor agency, the following actions will be taken:

(i) To the extent possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from USADF;

(ii) If the total amount of the debt cannot be recovered, USADF will certify to the creditor agency and the employee the total amount of USADF's collection; and

(iii) If USADF is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it will provide such information to the creditor agency so that it can file a certified claim against the payments.

(2) *Employees who transfer to another Federal agency.* If an USADF employee transfers to another Federal agency before USADF collects the total amount due the creditor agency, USADF will certify the total amount of the collection made on the debt. It is the responsibility of the creditor agency to ensure that the collection is resumed by the new employing agency.

Subpart D—Compromise of Debts

§ 1506.31 May USADF reduce or negotiate a claim amount?

USADF may compromise claims for money or property where the principal balance of a claim, excluding interest, penalty and administrative costs, does not exceed $100,000. Where the claim exceeds $100,000, the authority to accept the compromise rests solely with DOJ. The CFO may reject an offer of compromise in any amount. Where the claim exceeds $100,000, USADF may refer the claim to DOJ for approval with a recommendation to accept an offer of compromise. The referral will be in the form of a Claims Collection Litigation Report (CCLR) and will outline the basis for USADF's recommendation.

§ 1506.32 If I am jointly and severally liable on a claim, will USADF delay collection action against me until the other debtors pay their proportional share?

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

§ 1506.33 Under what circumstances will USADF compromise a claim?

(a) USADF may compromise a claim pursuant to this section if the debtor does not have the financial ability to pay the full amount of the debt within a reasonable time, or the debtor refuses to pay the claim in full and the Government does not have the ability to enforce collection in full within a reasonable time by collection proceedings. In evaluating the acceptability of a compromise offer, the CFO may consider, among other factors, the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; or

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

(b) USADF may compromise a claim, or recommend acceptance of a compromise offer to DOJ, if:

(1) There is significant doubt concerning the Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or a bona fide dispute as to the facts; or

(2) The cost of collection does not justify the enforced collection of the full amount of the debt.

The amount accepted in compromise in such cases will reflect the costs of collection, the probability of prevailing on the legal issues involved, and the likely amount of court costs and attorney's fees in litigation.

(c) To assess the merits of a compromise offer, USADF generally will require a current financial statement from the debtor, executed

under penalty of perjury, showing the debtor's assets, liabilities, income and expenses.

(d) Statutory penalties, forfeitures or debt established as an aid to enforcement and compel compliance may be compromised where the CFO determines that the Agency's enforcement policy, in terms of deterrence and securing compliance (both present and future), will be adequately served by accepting the offer.

§ 1506.34 Can I pay a compromised claim in installments?

The debtor may not pay a compromised claim in installments unless the CFO determines that payment in installments is necessary to effect collection.

§ 1506.35 Will USADF execute a release after full payment of a compromised amount?

Upon receipt of a payment in full or a compromised amount of a claim, USADF will prepare and execute a release.

Subpart E—Suspension or Termination of Collection Action

§ 1506.36 Under what circumstances may USADF suspend collection actions?

USADF may suspend or terminate the Agency's collection actions on a debt where the outstanding debt principal does not exceed $100,000. Unless otherwise provided by DOJ regulations, USADF must refer all requests for suspension of debt exceeding $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. If prior to referral to DOJ, USADF determines that a debt is plainly erroneous or clearly without legal merit, the Agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence. USADF may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an estimated time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension.

§ 1506.37 What are the criteria for suspension?

(a) USADF may suspend collection action on a debt when:

(1) The debtor cannot be located;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, USADF may suspend collection activity on a debt when the debtor's future prospects justify retention of the claim for periodic review, and:

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by offset; or

(3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) USADF will suspend collection activity during the time required for waiver consideration or administrative review prior to agency collection of a debt if the statute under which the request is sought prohibits the Agency from collecting the debt during that time. USADF will ordinarily suspend collection action during the pendency of its consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail.

(d) USADF may suspend collection activities on debts of $100,000 or less during the pendency of a permissive waiver or administrative review when there is no statutory requirement and where it determines that:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) USADF will decline to suspend collection where it determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

§ 1506.38 Under what circumstances may USADF terminate collection actions?

USADF may terminate collection actions including accrued interest, penalty and administrative costs, where the debt principal does not exceed $100,000. If the debt exceeds $100,000, USADF must obtain the approval from DOJ to terminate further collection actions. Unless otherwise provided for by DOJ regulations, requests to terminate collection on debts in excess of $100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

§ 1506.39 What are the criteria for termination?

A debt may be terminated where USADF determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed; or

(f) The debt against the debtor has been discharged in bankruptcy.

§ 1506.40 What actions by the Agency are permitted after termination of collection activity?

Termination ceases active collection of a debt. However, termination does not preclude the Agency from retaining a record of the account for purposes of:

(a) Selling the debt if the CFO determines that such sale is in the best interests of USADF;

(b) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(c) Offsetting against future income or assets not available at the time of termination of collection activity; or

(d) Screening future applicants for prior indebtedness.

§ 1506.41 Can the Agency collect against a debt that has been discharged in bankruptcy?

USADF will generally terminate collection activity on a debt that has been discharged in bankruptcy regardless of the amount. However, USADF may continue collection activity subject to the provisions of the Bankruptcy Code for any payments provided under a plan of reorganization. The CFO will seek legal advice from the General Counsel's office if s/he believes that any claims or offsets may have survived the discharge of a debtor.

Subpart F—Discharge of Indebtedness and Reporting Requirements

§ 1506.42 Under what circumstances will USADF discharge a delinquent debt?

Before discharging a delinquent debt, USADF will make a determination that collection action is no longer warranted and request that litigation counsel release any liens of record securing the debt. Discharge of indebtedness is distinct from termination or suspension of collection activity and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part. When a debt is discharged in full or in part, further collection action is prohibited and USADF must terminate all debt collection activities.

§ 1506.43 Will USADF report a discharge of debt to the IRS?

Upon discharge of a debt, USADF will report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. USADF may request the Bureau of Fiscal Services of the Department of Treasury to file such a discharge report to the IRS on the agency's behalf.

Subpart G—Referrals to the Department of Justice

§ 1506.44 When will USADF refer claims to the Department of Justice for litigation?

Unless otherwise provided by DOJ regulations or procedures, USADF will refer for litigation debts of more than $2,500 but less than $1,000,000 to the Department of Justice's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. Debts of over $1,000,000 shall be referred to the Civil Division at the Department of Justice. Any debt involving fraud, false claim, and misrepresentation will be referred to the Department of Justice.

Subpart H—Mandatory Transfer of Delinquent Debt to the Bureau of Fiscal Services (BFS) of the Department of Treasury

§ 1506.45 When is it mandatory for USADF to transfer debts to BFS?

(a) USADF will transfer legally enforceable debt to BFS 90 days after the Bill for Collection or demand letter is issued. A debt is legally enforceable if there has been a final agency determination that the debt is due and there are no legal bars to collection action. A debt is not legally enforceable for purposes of mandatory transfer to BFS if it is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited.

(b) Except as set forth in paragraph (a) of this section, USADF will transfer any debt covered by this part that is more than 180 days delinquent to BFS for debt collection services. A debt is 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable.

§ 1506.46 When is USADF not required to transfer a debt to BFS?

USADF is not required to transfer a debt to BFS pursuant to § 1506.37(b) during the period of time that the debt:

(a) Is in litigation or foreclosure;

(b) Is scheduled for sale;

(c) Is at a private collection contractor;

(d) Is at a debt collection center if the debt has been referred to a Treasury-designated debt collection center;

(e) Is being collected by internal offset; or

(f) Is covered by an exemption granted by Treasury.

[FR Doc. 2016–31125 Filed 12–23–16; 8:45 am]

BILLING CODE 6117–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2201

Regulations Implementing the Freedom of Information Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Review Commission (''OSHRC'') revises its regulations implementing the Freedom of Information Act (''FOIA''). These revisions account for statutory amendments included in the FOIA Improvement Act of 2016 (''FOIA Improvement Act''), as well as the addition of procedures pertaining to confidential commercial information and preservation of records, clarifications of existing procedures, and updates to contact information.

DATES: Effective December 27, 2016.

FOR FURTHER INFORMATION CONTACT: Noelle Chadwick, OSHRC's FOIA Public Liaison, by telephone at (202) 606–5410 or email at *NChadwick@oshrc.gov.*

SUPPLEMENTARY INFORMATION: OSHRC is publishing a final rule revising its regulations implementing the FOIA. On November 30, 2016, OSHRC published for comment a notice of proposed rulemaking (''NPRM''), at 81 FR 86297, that proposed revisions to OSHRC's regulations at 29 CFR part 2201, implementing the FOIA, 5 U.S.C. 552. Interested persons were afforded an opportunity to participate in the rulemaking process through the submission of written comments on the NPRM. OSHRC received comments from the National Archives and Records Administration (''NARA'') suggesting two minor changes: (1) Changing the word ''mediation'' to ''dispute resolution'' in two places to reflect an anticipated new regulation from NARA's Office of Government Information Services (''OGIS'') that clarifies for requesters the difference between formal mediation and the broader services OGIS provides; and (2) changing the reference to a General Records Schedule pertaining to the preservation of records, as General Records Schedule 4.2 recently replaced (in part) General Records Schedule 14. OSHRC received no other public comments suggesting changes to the proposed regulations. OSHRC updated the Web site address containing information for the FOIA Requester Service Center, modified the proposed regulations in light of NARA's comments, reviewed the proposed regulations and adopts them in this final rule.

I. Background

OSHRC makes several substantive and procedural revisions to its regulations implementing the FOIA that fall within four general categories. First, OSHRC modifies its existing FOIA regulations to reflect the amendments to the FOIA contained in the FOIA Improvement Act of 2016, Public Law 114–185. The FOIA Improvement Act amended various practices under the FOIA, such as requiring notification to requesters of the right to seek dispute resolution at various times throughout the FOIA process from OGIS, a ninety-day minimum time period to file administrative appeals, and limitations on assessing certain fees and exceptions to those limitations.

Second, OSHRC revises its regulations to further clarify and update its procedures relating to the submission and processing of FOIA requests.

Third, OSHRC adds a new section to its regulations establishing procedures to notify submitters of records containing confidential commercial information when those records are requested under the FOIA, in compliance with Executive Order 12,600.

Fourth, OSHRC adds a new section to its regulations explaining the procedure

for the preservation of records related to FOIA requests.

Accordingly, OSHRC revises its regulations implementing the FOIA. The specific amendments to each section of 29 CFR part 2201 are discussed hereafter in regulatory sequence.

In 29 CFR 2201.3, OSHRC revises paragraph (a) to direct requestors to OSHRC's FOIA Reference Guide for further information. OSHRC revises paragraph (c) explaining the role of the FOIA Public Liaison. OSHRC also revises paragraph (d) to update the contact information for the FOIA Requester Service Center, including the web address previously identified in the proposed rule.

In 29 CFR 2201.4, OSHRC revises a reference to another section of the regulations included in paragraph (a). OSHRC removes paragraph (b) regarding examination of records in cases appealed to courts as the provision is no longer necessary. OSHRC revises new paragraph (b), previously paragraph (c), to update the list of records available at the OSHRC e-FOIA Reading Room. In response to the codification of the ''Rule of 3'' in the FOIA Improvement Act, OSHRC also adds to new paragraph (b) that it will make publicly available copies of records that have been released to a person under the FOIA and have been requested three or more times. OSHRC revises new paragraph (c), previously paragraph (d), to clarify the location of records available onsite at the OSHRC National Office. OSHRC changes paragraph (e) to paragraph (d) due to the removal of paragraph (b) in this section.

In 29 CFR 2201.5, OSHRC revises paragraph (a) to clarify the procedure for how to make a FOIA request regarding the ability to submit a request in multiple ways, including by email and OSHRC's online FOIA request form. OSHRC changes paragraph (b) to describe the procedures for a requester making a request for records about himself or herself. OSHRC adds paragraph (c) to describe the procedure enabling a requester to receive greater access when a request for records pertains to another individual. OSHRC also adds paragraph (d) to explain what elements should be included in the description of records in a FOIA request. OSHRC adds paragraph (e), previously included in part in another paragraph in this section, to explain the procedure for requests regarding the preferred form or format of a response. OSHRC adds paragraph (f) to describe the necessary contact information to be provided by a requestor. OSHRC further adds paragraph (g), previously included in another paragraph of this section, to describe how OSHRC determines the date of receipt of a FOIA request and revises the reference in this paragraph to reflect the changes to paragraph designations in a subsequent section.

In 29 CFR 2201.6, OSHRC revises paragraphs (c) and (f) to include notification to the requestor of the availability of assistance from the FOIA Public Liaison and the right to seek dispute resolution services from OGIS. OSHRC also revises the references in paragraph (f) to reflect the changes to paragraph designations in subsequent sections. OSHRC revises paragraph (h) to reflect changes to the procedure notifying a requester of the tracking number assigned to the FOIA request.

OSHRC redesignates 29 CFR 2201.7 to 29 CFR 2201.10 as 29 CFR 2201.8 to 29 CFR 2201.11, respectively, and then adds a new 29 CFR 2201.7. This new section pertains to ''confidential commercial information,'' and describes this type of information and how it is designated as such by a submitter, the circumstances under which OSHRC must notify the submitter of such information when it is contained in records requested under the FOIA, exceptions to this notice requirement, and the process for the submitter to object to the disclosure of such information.

In redesignated 29 CFR 2201.8, OSHRC revises paragraph (a) to explain that OSHRC shall charge fees in accordance with the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget. OSHRC also revises paragraph (b) to explain the limitations on assessing certain fees and exceptions to those limitations, as well as revises a reference to the Commission. OSHRC revises paragraphs (h) and (i) to reflect the change in name for the Commission's Office of the Executive Director. OSHRC revises the references in this entire section to reflect the changes to paragraph designations in previous and subsequent sections.

In redesignated 29 CFR 2201.9, OSHRC revises the reference in this section to reflect the changes to paragraph designations in a previous section.

In redesignated 29 CFR 2201.10, OSHRC adds paragraph (a) to revise the time period to file an appeal, as well as identify information to be included with the appeal. OSHRC adds paragraph (b) to clarify the procedure for adjudication of appeals. OSHRC also adds paragraph (c) to explain the content of and procedure for decisions on appeals. OSHRC adds paragraph (d) to explain the process of dispute resolution provided by OGIS. In response to comments from NARA, OSHRC changes the word ''mediation'' to ''dispute resolution'' in paragraphs (c) and (d) of the proposed rule. OSHRC also adds paragraph (e) to describe the requirements for seeking review by a court of an adverse determination by OSHRC.

In redesignated 29 CFR 2201.11, OSHRC revises a reference to OSHRC's Web site.

OSHRC adds a new section at 29 CFR 2201.12 on the procedures for preserving records pertaining to FOIA requests. In response to comments from NARA, OSHRC revises a reference in this section of the proposed rule from ''the General Records Schedule 14'' to ''the applicable General Records Schedule.''

II. Statutory and Executive Order Reviews

Executive Orders 12866 and 13132, and the Unfunded Mandates Reform Act of 1995: OSHRC is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Regulatory Flexibility Act: The Chairman of OSHRC certifies under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these rules will not have a significant economic impact on a substantial number of small entities. The only revisions that could economically impact a small entity pertain to how OSHRC charges its FOIA fees. OSHRC, however, receives relatively few FOIA requests from ''small entities'' that result in fees being assessed; when fees are assessed, the amounts are generally minimal; and it is not anticipated that the amendments will have much affect (if any) on the number of entities responsible for paying FOIA fees or the amounts of those fees. For these reasons, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1995: OSHRC has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

Congressional Review Act: These revisions do not constitute a ''rule,'' as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C), because they involve changes to agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 29 CFR Part 2201

Freedom of information.

Cynthia L. Attwood,

Chairman.

For the reasons set forth in the preamble, OSHRC amends 29 CFR part 2201 as follows:

PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 2201 continues to read as follows:

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552.

§ 2201.3 [Amended]

■ 2. Amend § 2201.3 by:

■ a. Removing the words ''FOIA handbook'' and adding, in their place, the words ''FOIA Reference Guide'' in paragraph (a)(5).

■ b. Removing the word ''supervisory'' in paragraph (c).

■ c. Revising paragraph (d) to read as follows:

§ 2201.3 Delegation of authority and responsibilities.

* * * * *

(d) OSHRC establishes a FOIA Requester Service Center that shall be staffed by the FOIA Disclosure Officer(s) and FOIA Public Liaison(s). The address of the FOIA Requester Service Center is 1120 20th Street NW., 9th Floor, Washington, DC 20036–3457. The telephone number, fax number and additional contact information for the FOIA Requester Service Center is located on the agency's Web site at: *http://www.oshrc.gov/foia/index.html.* The FOIA Requester Service Center is available to provide information about the status of a request to the requester using the assigned tracking number (as described in § 2201.6(h)), including:

(1) The date on which the agency originally received the request; and

(2) An estimated date on which the agency will complete action on the request.

* * * * *

§ 2201.4 [Amended]

■ 3. Amend § 2201.4 by:

■ a. Removing the citation ''§ 2201.5(a)'' and adding, in its place, the citation ''§ 2201.5'' in paragraph (a).

■ b. Removing paragraph (b).

■ c. Redesignating paragraphs (c) through (e) as paragraphs (b) through (d), respectively.

■ d. Revising the introductory text of redesignated paragraph (b), and paragraphs (b)(1), (b)(5), (b)(6), and (c) to read as follows:

§ 2201.4 General policy and definitions.

* * * * *

(b) *Record availability at the OSHRC e-FOIA Reading Room.* The records of Commission activities are publicly available for inspection and copying, and may be accessed electronically on the Commission's Web site at *http://www.oshrc.gov/foia/foia_reading_room.html.* These records include:

(1) Final decisions, including concurring and dissenting opinions, remand orders, as well as Administrative Law Judge decisions pending OSHRC review, briefing notices, and other significant orders;

* * * * *

(5) Copies of records that have been released to a person under the FOIA that, because of the subject matter, the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records, or that have been requested three or more times, as well as records the Commission determines absent a FOIA request could be of significant public interest; and

(6) A general index of records referred to under paragraph (b)(5) of this section.

(c) *Record availability onsite at OSHRC National Office.* Any member of the public may, upon request, access OSHRC's e-FOIA Reading Room via a computer terminal at the OSHRC National Office, located at 1120 20th St. NW., 9th Floor, Washington, DC 20036–3457. Such a request must be made in writing to the FOIA Requester Service Center, and indicate a preferred date and time for the requested access. OSHRC reserves the right to arrange a different date and time with the requester, if necessary.

* * * * *

■ 4. Revise § 2201.5 to read as follows:

§ 2201.5 Procedure for requesting records.

(a) *General information.* All requests for information must be made in writing to the FOIA Disclosure Officer and may be: Mailed or delivered; faxed; or emailed. Requests may also be made using the Commission's online FOIA request form (which is a downloadable PDF file found at *http://www.oshrc.gov/foia/foia_request_form.html*) and the completed form can be submitted by mail, fax, or email. Contact information for the FOIA Disclosure Officer is described in § 2201.3(d). For mailed or delivered requests, the words ''Freedom of Information Act Request'' must be printed on the face of the request's envelope or covering as well as the request itself.

(b) A requester who is making a request for records about himself or herself must comply with verification of identity requirements as required by 29 CFR 2400.6 in OSHRC's Privacy Act regulations.

(c) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary).

(d) *Description of records sought.* A request must describe the records sought in sufficient detail to enable the Commission to locate them with a reasonable amount of effort. To the extent possible, the request should include specific information to identify the requested records, such as the docket number(s) or case name(s). Before submitting a request, the requester may contact the FOIA Disclosure Officer, as described in § 2201.3(d), to discuss the records being sought and receive assistance in describing them. If a determination is made after receiving a request that it does not reasonably describe the records sought, the FOIA Disclosure Officer will contact the requester to explain what additional information is needed or why the request is otherwise insufficient. A requester attempting to reformulate or modify such a request is encouraged to discuss the request with the FOIA Disclosure Officer. If a request does not reasonably describe the records sought, the agency's response may be delayed.

(e) Requests may specify the preferred form or format (including electronic formats) of the response. The FOIA Disclosure Officer shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format. When a requester does not specify the preferred form or format of the response, the FOIA Disclosure Officer shall respond in the form or format in which the record is most accessible to the Commission.

(f) The requester must provide contact information, such as a phone number, email address, and/or mailing address, to facilitate the agency's communication with the requester.

(g) *Date of receipt.* A request that complies with paragraph (a) of this section is deemed received on the actual date it is received by the Commission. A request that does not comply with paragraph (a) of this section is deemed

received when it is actually received by the FOIA Disclosure Officer. For requests that are expected to result in fees exceeding $250, the request shall not be deemed to have been received until the requester is advised of the anticipated costs and the Commission has received full payment or satisfactory assurance of full payment as provided under § 2201.8(f).

■ 5. Amend § 2201.6 by revising paragraphs (c), (f), and (h) to read as follows:

§ 2201.6 Responses to requests.

* * * * *

(c) *Additional extension.* The FOIA Disclosure Officer shall notify the requester in writing when it appears that a request cannot be completed within the allowable time (20 working days plus a 10-working-day extension). In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing. The FOIA Disclosure Officer or FOIA Public Liaison shall be available to assist the requester for this purpose and shall notify the requester of the right to seek dispute resolution services from the National Archives and Records Administration's Office of Government Information Services (OGIS).

* * * * *

(f) *Content of denial.* When the FOIA Disclosure Officer denies a request for records, either in whole or in part, a request for expedited processing, and/or a request for fee waivers (see § 2201.9), the written notice of the denial shall state the reason for denial, give a reasonable estimate of the volume of matter denied (unless doing so would harm an interest protected by the exemption(s) under which the request was denied), set forth the name and title or position of the person responsible for the denial of the request, notify the requester of the right to appeal the determination as specified in § 2201.10, and notify the requester of the assistance available from the FOIA Public Liaison and the dispute resolution services offered by OGIS. A refusal by the FOIA Disclosure Officer to process the request because the requester has not made advance payment or given a satisfactory assurance of full payment required under § 2201.8(f) may be treated as a denial of the request and appealed under § 2201.10.

* * * * *

(h) *Tracking numbers.* The FOIA Disclosure Officer shall assign an individualized tracking number to each request received for processing and provide the requester with the tracking number.

* * * * *

§§ 2201.7 through 2201.10 [Redesignated as §§ 2201.8 through 2201.11]

■ 6. Redesignate §§ 2201.7 through 2201.10 as §§ 2201.8 through 2201.11, respectively.

■ 7. Add new § 2201.7 to read as follows:

§ 2201.7 Confidential commercial information.

(a) *Definitions.* (1) *Confidential commercial information* means commercial or financial information obtained by OSHRC from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to OSHRC.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* OSHRC shall promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if OSHRC determines that it may be required to disclose the records, provided the submitter has complied with paragraph (b) of this section or OSHRC has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure. The notice must either describe the commercial information requested or include a copy of the requested records or portions of records containing the information.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) OSHRC determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, OSHRC shall give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* OSHRC shall specify a reasonable time period within which the submitter must provide a response to the notice referenced above. If a submitter has any objections to disclosure, it should provide a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential. A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. OSHRC is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* OSHRC shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of decision.* OSHRC shall provide the submitter with written notice once a decision is made as to whether or not to disclose information over the submitter's objection. When a decision is made to disclose information over the submitter's objection, this notice shall include a statement of the reasons why each of the submitter's disclosure objections was not sustained, a description of the information to be disclosed or copies of the records as the agency intends to release them, and a specified disclosure date (which must be a reasonable time after the notice).

(h) *Notice of FOIA lawsuit.* OSHRC shall promptly notify the submitter when a requester files a lawsuit seeking to compel the disclosure of confidential commercial information.

(i) *Requester notification.* OSHRC shall notify the requester whenever it

provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

■ 8. Amend redesignated § 2201.8 by:

■ a. Redesignating paragraph (b)(3) as paragraph (b)(5).

■ b. Revising paragraph (a), the introductory text of paragraph (b), and paragraphs (b)(1) and (b)(2)(v);

■ c. Adding new paragraphs (b)(3) and (b)(4); and

■ d. Revising redesignated paragraph (b)(5), and paragraphs (h) and (i), to read as follows:

§ 2201.8 Fees for copying, searching, and review.

(a) *Fees required unless waived.* The FOIA Disclosure Officer shall charge fees in accordance with the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget and in accordance with paragraph (b) of this section. See Appendix A to this part. If the fees for a request are less than the threshold amount as provided in OSHRC's fee schedule, no fees shall be charged. The FOIA Disclosure Officer shall, however, waive the fees in the circumstances stated in § 2201.9.

(b) *Calculation of fees.* Fees for copying, searching and reviewing will be based on the direct costs of these services, including the average hourly salary (base plus DC locality payment), plus 16 percent for benefits, of the following three categories of employees involved in responding to FOIA requests: Clerical—based on an average of all employees at GS–9 and below; professional—based on an average of all employees at GS–10 through GS–14; and managerial—based on an average of all employees at GS–15 and above. OSHRC will calculate a schedule of fees based on these direct costs. The schedule of fees under this section appears in Appendix A to this part. A copy of the schedule of fees may also be obtained at no charge from the FOIA Disclosure Officer. See § 2201.3(d).

(1) *Copying fee.* The fee per copy of each page shall be calculated in accordance with the per-page amount established in OSHRC's fee schedule. See Appendix A to this part. For other forms of duplication, direct costs of producing the copy, including operator time, shall be calculated and assessed. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use. No copying fee shall be charged for educational, scientific, or news media requests if the agency fails to comply with any time limit in § 2201.6, provided that no unusual or exceptional circumstances (as those terms are defined in § 2201.6(b) and § 2201.4(d), respectively) apply to the processing of the request.

(2) * * *

(v) *Failure to comply with time limits.* No search fee shall be charged if the Commission fails to comply with any time limit in § 2201.6, provided that no unusual or exceptional circumstances (as those terms are defined in § 2201.6(b) and § 2201.4(d), respectively) apply to the processing of the request.

(3) *Unusual circumstances.* (i) If the Commission has determined that unusual circumstances, as defined in § 2201.6(b), apply and has provided timely written notice to the requester, a failure to comply with the time limit shall be excused for an additional 10 days and the Commission shall assess fees as usual.

(ii) If the Commission has determined that unusual circumstances, as defined in § 2201.6(b), apply and more than 5,000 pages are necessary to respond to the request, the Commission may charge search fees, or, in the case of requesters described in § 2201.8(b)(2)(ii), may charge duplication fees, if the Commission provided timely written notice of unusual circumstances to the requester in accordance with § 2201.6(b) and the Commission discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with the FOIA. If this exception is satisfied, the Commission may charge all applicable fees incurred in the processing of the request even if such processing extends beyond an additional 10 days.

(4) If a court has determined that exceptional circumstances exist, as defined in § 2201.4(d), a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(5) *Review fee.* A review fee shall be charged only for commercial requests. Review fees shall be calculated in accordance with the amounts established in OSHRC's schedule of fees. See Appendix A to this part. A review fee shall be charged for the initial examination of documents located in response to a request to determine if it may be withheld from disclosure, and for the excision of withholdable portions. However, a review fee shall not be charged for review by the Chairman under § 2201.10 (Appeal of denials).

* * * * *

(h) *Interest on unpaid bills.* The Commission's Office of the Executive Director shall begin assessing interest charges on unpaid bills starting on the thirty-first day after the date the bill was sent. Interest will accrue from the date of billing until the Commission receives full payment. Interest will be at the rate described in 31 U.S.C. 3717.

(i) *Debt collection procedures.* If bills are unpaid 60 days after the mailing of a written notice to the requester, the Commission's Office of the Executive Director may resort to the debt collection procedures set out in the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

§ 2201.9 [Amended]

■ 9. Amend redesignated § 2201.9 by removing the citation ''§ 2201.7(b)'' in paragraph (a) and adding, in its place, the citation ''§ 2201.8(b)''.

■ 10. Revise redesignated § 2201.10 to read as follows:

§ 2201.10 Appeal of denials.

(a) *Requirements for making an appeal.* A denial of a request for records, either in whole or in part, a request for expedited processing, or a request for fee waivers, may be appealed in writing to the Chairman of the Commission. To be considered timely, the appeal must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days of the date of the agency's written notice of denial. The appeal should clearly identify the agency determination that is being appealed and the assigned FOIA tracking number. To facilitate handling, the requester should mark both the appeal and its envelope, or state in the subject line of an electronic transmission, ''Freedom of Information Act Appeal.''

(b) *Adjudication of appeals.* The Chairman shall act on the appeal under 5 U.S.C. 552(a)(6)(A)(ii) within 20 working days after the receipt of the appeal. An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation. On receipt of any appeal involving classified information, the Chairman shall take appropriate action to ensure compliance with applicable classification rules.

(c) *Decisions on appeals.* The Chairman shall provide the decision on an appeal in writing. If the Chairman wholly or partially upholds the denial of the request, the decision shall contain

a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must include notification that the requester may obtain judicial review of the decision under 5 U.S.C. 552(a)(4)(B)–(G). The decision shall also inform the requester of the dispute resolution services offered by OGIS as a non-exclusive alternative to litigation. If the Chairman's decision is remanded or modified on appeal to the court, the requester will be notified by the agency of that determination in writing. The Commission shall then further process the request in accordance with the appeal determination and shall respond directly to the requester.

(d) *Engaging in dispute services provided by OGIS.* Dispute resolution is a voluntary process. If the Commission agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner in the process in an attempt to resolve the dispute.

(e) *When appeal is required.* Before seeking review by a court of the Commission's adverse determination, a requester generally must first submit a timely administrative appeal.

§ 2201.11 [Amended]

■ 11. Amend redesignated § 2201.11 by removing the words ''through OSHRC's Web site'' and adding, in their place, the words ''on OSHRC's Web site'' in paragraph (b).

■ 12. Add § 2201.12 to read as follows:

§ 2201.12 Preservation of records.

OSHRC shall preserve all correspondence pertaining to FOIA requests, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the applicable General Records Schedule of the National Archives and Records Administration. OSHRC shall not dispose of or destroy records while they are the subject of a pending request, appeal or lawsuit under the FOIA.

[FR Doc. 2016–31133 Filed 12–23–16; 8:45 am]

BILLING CODE 7600–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0280]

Drawbridge Operation Regulation; Chambers Creek, Steilacoom, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Chambers Creek Burlington Northern Santa Fe Railroad vertical lift railroad bridge across Chambers Creek, mile 0.01, near Steilacoom in Pierce County, WA. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is appropriate. This test deviation will change the requirement for a bridge operator, and modify the existing regulation to add an advance notification requirement for obtaining bridge openings during designated evening hours.

DATES: This deviation is effective from Midnight (12:01) on December 28, 2016 to Midnight (11:59) on June 23, 2017.

Comments and related material must reach the Coast Guard on or before June 15, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0280 using Federal eRulemaking Portal at *http://www.regulations.gov*.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *Steven.M.Fischer3@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

The Chambers Creek Burlington Northern Santa Fe Railroad vertical lift railroad bridge across Chambers Creek, mile 0.01, near Steilacoom in Pierce County, WA, has a vertical clearance of 10ft in the closed-to-navigation position, and 50ft of vertical clearance in the open-to-navigation position (reference plane is MHW elevation of 12.2 feet). The bridge currently operates under 33 CFR 117.5.

The bridge owner, Burlington Northern Santa Fe Railroad, has observed minimal to no usage of the drawbridge between 10 p.m. and 6 a.m., and has requested to test this schedule to see if it better balances the needs of marine and rail traffic. The USCG conducted a test deviation from July 1, 2016 to December 27, 2016. However, only one bridge opening request was received during that time, and a quantitative ruling could not be made from the lack of data. The following facts support BNSF's proposal: (1) over the last 6 years only 2% of the subject bridge lifts have occurred between the hours of 10 p.m. and 6 a.m., which equates to approximately 5 openings a year, (2) from February 2009 to June 2015 there were 1932 total openings of which only 40 occurred between the hours of 10 p.m. and 6 a.m., and (3) the navigation traffic consists primarily of the tenants of Chambers Bay marina (recreational users) that are members of the Chambers Bay Boating Association.

The Coast Guard is publishing this temporary deviation to test the proposed schedule change to determine whether a permanent change to the schedule is appropriate to better balance the needs of marine and rail traffic. Under this temporary deviation, in effect from Midnight (12:01) on December 28, 2016 to Midnight (11:59) on June 23, 2017, the subject bridge shall open on signal, except from 10 p.m. to 6 a.m. the draw shall open on signal if at least 4 hours notice is given. The bridge will be required to open as soon a possible, no later than 1 hour after notification, for vessels engaged in emergency response.

The Coast Guard will inform the users of the waterways of this temporary deviation through our Local and Broadcast Notices to Mariners and through direct outreach with the Chambers Creek Boating Association so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation. Vessels able to pass underneath the bridge in the closed-to-navigation position may do so at any time. In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person

in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket, and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Dated: December 19, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–31058 Filed 12–23–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0526; FRL–9957–39–Region 4]

Air Plan Approval; KY; RACM Determination for the KY Portion of the Louisville Area 1997 Annual $PM_{2.5}$

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on August 9, 2016, that addresses reasonably available control measures (RACM) for the Kentucky portion of the Louisville, KY-IN, nonattainment area for the 1997 Annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) (hereinafter referred to as the ''bi-state Louisville Area'' or ''Area'').

DATES: This rule will be effective January 26, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2016–0526. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* 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 *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sanchez can be reached via telephone at (404) 562–9644 and via electronic mail at *sanchez.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1997, EPA promulgated the first air quality standards for $PM_{2.5}$. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (μg/m³) (based on a 3-year average of annual mean $PM_{2.5}$ concentrations) and a 24-hour standard of 65 μg/m³ (based on a 3-year average of the 98th percentile of 24-hour concentrations). *See* 62 FR 38652 (July 18, 1997). On January 5, 2005 (70 FR 944), and supplemented on April 14, 2005 (70 FR 19844), EPA designated the bi-state Louisville Area as nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS. In that action, EPA defined the bi-state Louisville Area to include Bullitt and Jefferson Counties in Kentucky as well as Clark and Floyd Counties and a portion of Jefferson County (Madison Township) in Indiana. Designation of an area as nonattainment for $PM_{2.5}$ starts the process for a state to develop and submit to EPA a SIP revision under title I, part D of the Clean Air Act (CAA or Act). This SIP revision must include, among other elements, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable, but no later than the attainment date required by the CAA.

Originally, EPA designated all 1997 $PM_{2.5}$ NAAQS areas under title I, part D, subpart 1 (hereinafter ''Subpart 1''). Subpart 1, comprised of CAA sections 171–179B, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Section 172(c) contains the general SIP requirements for these areas, including RACM requirements under section 172(c)(1). On April 25, 2007 (72 FR 20586), EPA promulgated a rule, codified at 40 CFR part 51, subpart Z, to implement the 1997 $PM_{2.5}$ NAAQS under Subpart 1 (hereinafter referred to as the ''1997 $PM_{2.5}$ Implementation Rule'').[1] On December 3, 2008, Kentucky submitted an attainment demonstration SIP revision for the Area that addressed RACM and certain other section 172(c) elements including a reasonable further progress (RFP) plan, base-year and attainment-year emissions inventories, and contingency measures for the Area. This SIP revision included a section 172(c)(1) RACM determination that there were no potential emissions control measures that, if considered collectively, would advance the attainment date by one year or more.

In 2011, EPA determined that the bi-state Louisville Area had attained the 1997 Annual $PM_{2.5}$ NAAQS based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 period. *See* 76 FR 55544 (September 7, 2011); 40 CFR 52.929(b). As a result of this determination and in accordance with 40 CFR 51.1004(c), the requirements for the Area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures, and other planning SIP revisions related to attainment of the 1997 Annual $PM_{2.5}$ NAAQS are suspended for so long as: The area is redesignated to attainment,

[1] On January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), the United State Court of Appeals for the District of Columbia Circuit (D.C. Circuit) found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant solely to the general implementation provisions of Subpart 1 rather than the particulate matter-specific provisions in title I, part D, subpart 4. The court remanded both the 1997 $PM_{2.5}$ Implementation Rule and the final rule entitled ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321, May 16, 2008) to EPA to address this error. In 2014, EPA finalized a rule classifying areas previously designated nonattainment for the 1997 and/or 2006 fine particle pollution standards under Subpart 1, including the bi-state Louisville Area, as ''Moderate'' nonattainment areas under subpart 4 and setting deadlines for SIP submissions addressing the requirements of subpart 4. *See* 79 FR 31566 (June 2, 2014) [hereinafter 2014 Rule].

at which time the requirements no longer apply; or EPA determines that the area has violated the $PM_{2.5}$ NAAQS, at which time the area is again required to submit such plans. Therefore, Kentucky withdrew the aforementioned $PM_{2.5}$ attainment demonstration SIP revision except for the portion addressing emissions inventory requirements under section 172(c)(3). EPA later approved Kentucky's 2002 base-year emissions inventory for the Louisville Area pursuant to section 172(c)(3) on August 2, 2012 (77 FR 45956).

On March 5, 2012, Kentucky submitted a request to redesignate the Kentucky portion of the bi-state Louisville Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS.[2] As the result of a 2015 decision from the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) in *Sierra Club* v. *EPA,* 793 F.3d 656 (6th Cir. 2015) requiring a SIP-approved Subpart 1 RACM determination prior to the redesignation of a 1997 Annual $PM_{2.5}$ NAAQS nonattainment area, Kentucky submitted a SIP revision on August 9, 2016, to address the section 172(c)(1) RACM requirements and to support the Commonwealth's March 5, 2012, redesignation request. In that SIP revision, the Commonwealth determined that no additional control measures are necessary in the Area to satisfy the CAA section 172(c)(1) RACM requirements.

In a notice of proposed rulemaking (NPRM) published on October 21, 2016 (81 FR 72755), EPA proposed to conclude that Kentucky's Subpart 1 RACM determination meets the requirements of CAA section 172(c)(1) and to incorporate this RACM determination into the SIP. The details of Kentucky's SIP revision and the rationale for EPA's action are explained in the NPRM. Comments on the proposed rulemaking were due on or before November 21, 2016. EPA did not receive any adverse comments on the proposed action.

II. Final Action

EPA is approving Kentucky's August 9, 2016, SIP revision addressing RACM requirements for the 1997 Annual $PM_{2.5}$ NAAQS for the Kentucky portion of the bi-state Louisville Area. EPA has concluded that Kentucky's Subpart 1 RACM determination meets the requirements of CAA section 172(c)(1) and is incorporating this RACM determination into the SIP.

III. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: December 15, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS]

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

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

Subpart S—Kentucky

■ 2. Section 52.920(e) is amended by adding a new entry for ''RACM for the Kentucky portion of Louisville, KY-IN

[2] Kentucky submitted its redesignation request prior to the aforementioned ruling in *Natural Resources Defense Council* v. *EPA.* As discussed in the 2014 Rule, EPA's position is that this ruling does not apply retroactively. *See* 79 FR at 31568.

Area for the 1997 Annual $PM_{2.5}$ NAAQS'' at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date	Explanations
*	*	*	*	*
RACM for the Kentucky portion of Louisville, KY-IN Area for the 1997 Annual $PM_{2.5}$ NAAQS.	Bullitt and Jefferson Counties	08/09/2016	12/27/2016, [Insert citation of publication].	

[FR Doc. 2016–31023 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0529; FRL–9957–16–Region 5]

Air Plan Approval; Wisconsin; Infrastructure SIP Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of some elements of a July 13, 2015 state implementation plan (SIP) submittal from the Wisconsin Department of Natural Resources (WDNR) regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The proposed rulemaking associated with this final action was published on February 19, 2016, and EPA received adverse comments during the comment period, which ended on March 21, 2016. Responses to comments are included below. In this rulemaking, EPA is not taking action on Wisconsin's satisfaction of the infrastructure requirements of CAA section 110(a)(2)(F), also referred to as ''element F,'' which pertains to stationary source monitoring and reporting. EPA proposed approval of and received an adverse comment on our proposed approval of element F, which will be addressed in a separate rulemaking. In this rulemaking we respond to the remainder of the comments we received on our initial proposed rulemaking, which includes those comments not pertaining to element F, and finalize as initially proposed our approval of the other elements of Wisconsin's 2012 $PM_{2.5}$ infrastructure SIP.

DATES: This final rule is effective on January 26, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2015–0529. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Jenny Liljegren, Physical Scientist, at (312) 886–6832 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6832, *Liljegren.Jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of this SIP submittal?
II. Responses to Comments Received on EPA's Proposed Rulemaking
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background of this SIP submittal?

A. What state SIP submittal does this rulemaking address?

This rulemaking addresses a July 13, 2015 infrastructure SIP submittal from WDNR for the 2012 $PM_{2.5}$ [1] NAAQS.

B. Why did the State make this SIP submittal?

Under section 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2012 $PM_{2.5}$ NAAQS. This submittal must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2) or certifications that the state's existing SIP for the NAAQS already meets those requirements.

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'' and has issued additional guidance documents, the most recent on September 13, 2013, entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and 110(a)(2).'' The SIP submittal referenced in this rulemaking pertains to the applicable

[1] $PM_{2.5}$ refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as ''fine'' particles.

requirements of section 110(a)(1) and (2) and addresses the 2012 $PM_{2.5}$ NAAQS.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submittal from WDNR that addresses the infrastructure requirements of CAA section 110(a)(1) and (2) for the 2012 $PM_{2.5}$ NAAQS. The requirement for states to make SIP submittals of this type arises out of CAA section 110(a)(1). States must make SIP submittals ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submittals are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittal is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submittal must address.

EPA has historically referred to these SIP submittals made for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as ''infrastructure SIP'' submittals. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submittal from submittals that are intended to satisfy other SIP requirements under the CAA, such as SIP submittals that address the nonattainment planning requirements of part D of Title I of the CAA, the Prevention of Significant Deterioration (PSD) requirements of part C of title I of the CAA, and ''regional haze SIP'' submittals required to address the visibility protection requirements of section 169A of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submittals: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (''SSM'') at sources that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion,'' which purport to permit revisions to SIP-approved emissions limits with limited public notice or without requiring further approval by EPA and may be contrary to the CAA; and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Instead, EPA has the authority to address each one of these substantive areas in separate rulemakings. A detailed history, interpretation, and rationale, as they relate to infrastructure SIP requirements, can be found in EPA's May 13, 2014, proposed rule entitled, ''Approval and Promulgation of Air Quality Implementation Plans; Illinois, Michigan, Minnesota, WDNR; Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245).

II. Responses to Comments Received on EPA's Proposed Rulemaking

The public comment period for our proposed rulemaking with respect to WDNR's satisfaction of the infrastructure SIP requirements for the 2012 $PM_{2.5}$ NAAQS closed on March 21, 2016. EPA received two comment letters, one from Clean Wisconsin and one from Midwest Environmental Advocates (MEA). A synopsis of the comments contained in these letters and EPA's responses are provided below. As mentioned previously, EPA is not taking action on CAA section 110(a)(2)(F) in this rulemaking. EPA's action on element F and our response to the comment from MEA pertaining to our proposed approval of element F will be addressed in a separate rulemaking.

Comment 1: With regard to EPA proposing that WDNR has met the infrastructure SIP requirements of section 110(a)(2)(A) for the 2012 $PM_{2.5}$ NAAQS, MEA comments that particulate and visible emissions limitations in Wisconsin Administrative Code Chapters NR 415 and NR 431 are outdated, do not reflect the current state of the art in air pollution control methods, are insufficient to ensure compliance with the $PM_{2.5}$ NAAQS, and must be supplemented to meet Federal standards. Part of this issue stems from the lack of information about $PM_{2.5}$ emission factors, control measures, and public exposure. MEA urges EPA to require WDNR to use its enforcement program to expand upon the lack of knowledge of $PM_{2.5}$ emission factors by requiring testing and monitoring in lieu of or in addition to fines when settling enforcement cases.

Response 1: Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, and other related matters. EPA has long interpreted these requirements as being due when nonattainment planning requirements are due.[2] [3] Thus, in the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for the purpose of emissions limits and control measures, which are connected with nonattainment planning requirements. Instead, EPA is only evaluating whether the state's SIP has the basic structural provisions required for the implementation of the NAAQS. As explained in the proposed rule, EPA finds that WDNR has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 $PM_{2.5}$ NAAQS.

Section 110(a)(2)(C) requires each state to provide a program for enforcement of all SIP measures. Under *Wis. Stats.* 285.13, WDNR has the authority to impose fees and penalties to ensure that required measures are ultimately implemented. *Wis. Stats.* 285.83 and *Wis. Stats.* 285.87 provide WDNR with the authority to take enforcement actions and assess penalties. While, in general, any efforts to expand upon the lack of knowledge of $PM_{2.5}$ emission factors via testing and monitoring would be extremely useful for air quality planning, MEA's suggestion goes beyond the scope of this rulemaking and the minimum requirements under the CAA. EPA finds that WDNR's enforcement program, as it currently exists, has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, in this rulemaking, EPA is not requiring WDNR to use its enforcement program to expand upon the lack of knowledge of $PM_{2.5}$ emission factors—which is suggested by MEA—in lieu of or addition to fines when settling enforcement cases.

Comment 2: With regard to EPA proposing that WDNR has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 $PM_{2.5}$ NAAQS, MEA comments that WDNR's $PM_{2.5}$ monitoring network only includes 20 monitoring sites for $PM_{2.5}$ and is insufficient to characterize public exposure to $PM_{2.5}$. EPA should expand the ambient air monitoring network for $PM_{2.5}$ by using its authority to require industrial facilities to install and operate ambient monitors where

[2] See, *e.g.*, EPA's final rule on ''National Ambient Air Quality Standards for Lead.'' 73 FR 66964 at 67034.

[3] Currently, Wisconsin has no nonattainment areas for the 2012 $PM_{2.5}$ NAAQS, and the only nonattainment area in Wisconsin for the 2006 $PM_{2.5}$ NAAQS—the Milwaukee-Racine Nonattainment Area, including Milwaukee, Racine, and Waukesha counties—has been redesignated (79 FR 22415) to a maintenance area.

members of the public are likely to be exposed to $PM_{2.5}$, especially at possible NAAQS hotspots.

Response 2: WDNR submits annual monitoring network plans to EPA. EPA approved WDNR's 2016 Annual Air Monitoring Network Plan on October 26, 2015, and EPA approved (with exceptions) [4] WDNR's 2017 Annual Air Monitoring Network Plan on October 31, 2016. EPA's review of the annual monitoring plan includes EPA's determination that the state monitors air quality at appropriate locations throughout the state in accordance with 40 CFR part 58. EPA's October 26, 2015 approval of WDNR's 2016 Annual Air Monitoring Network Plan and EPA's October 31, 2016 approval of WDNR's 2017 Annual Air Monitoring Network Plan indicates that WDNR has met the requirements of 40 CFR part 58 with respect to its 2016 and 2017 $PM_{2.5}$ monitoring networks. Therefore, EPA finds that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 $PM_{2.5}$ NAAQS. WDNR's Annual Network Plan can be found at *http://WDNR.wi.gov/topic/AirQuality/Monitor.html*.

Comment 3: MEA comments that ''Compounding the issue of insufficient monitoring is the fact that the WDNR does not require industrial facilities to provide and report their annual $PM_{2.5}$ emissions like they do for PM and PM_{10}. Each facility is in the best position to know their actual emissions from the previous year, so not requiring a report at the end of the year makes it even more difficult to identify any violations. The information needed to make that assessment would need to be sought out independently for each facility in the entire state, which requires a great deal more work than reading a report and comparing it to the limit. States such as Indiana and Iowa already have this requirement in place, so it has been successfully implemented elsewhere, and there is no reason it cannot be done in Wisconsin as well.''

Response 3: EPA will respond to this comment and address in a separate rulemaking Wisconsin's satisfaction of CAA section 110(a)(2)(F), also referred to as ''element F,'' which pertains to stationary source monitoring and reporting.

Comment 4: (Note that we have grouped the following comments from MEA and Clean Wisconsin that are similar in content into a single comment and response section entitled ''Comment 4.'') MEA is concerned that WDNR underutilizes air quality modeling as a tool for determining facility-specific $PM_{2.5}$ emissions limitations and that this may result in violations of the $PM_{2.5}$ NAAQS. MEA, in its comment letter, provides examples of WDNR permits that set $PM_{2.5}$ limits equal to PM_{10} limits without conducting $PM_{2.5}$ modeling. MEA notes that the current WDNR guideline for permit renewals suggests that if there has been no change in historical particulate emissions since the last operation permit was issued, no modeling is necessary to verify compliance with the NAAQS. MEA also notes that WDNR registration permits only require that emission stacks be built to a certain height that is taller than any surrounding building, rather than require a modeling analysis of $PM_{2.5}$ emissions.

Both MEA and Clean Wisconsin submitted comments regarding WDNR's ''Guidance for Including $PM_{2.5}$ in Air Pollution Control Permit Applications'' (Guidance). Clean Wisconsin notes the recently issued Guidance changes WDNR's methodology for calculating $PM_{2.5}$ emissions from certain sources and uses a weight-of-evidence approach rather than modeling for permits for certain sources. Thus, the Guidance will affect WDNR's ability to adequately model and track $PM_{2.5}$ emissions and compromise the quality of data and analysis in determining compliance with the $PM_{2.5}$ NAAQS. Clean Wisconsin believes the Guidance undermines WDNR's ability to provide air quality modeling data to accurately predict effects on air quality of $PM_{2.5}$ emissions as required by section 110(a)(2)(K). MEA believes the WDNR's weight-of-evidence approach will not protect WDNR residents from exposure to unhealthy concentrations of $PM_{2.5}$ and will fail to ensure that facilities are in compliance with the $PM_{2.5}$ NAAQS. Clean Wisconsin recommends, at a minimum, that WDNR conduct additional monitoring of direct $PM_{2.5}$ before it can justify changes to its methodology for estimating $PM_{2.5}$ emissions. Clean Wisconsin believes the Guidance serves to describe a general policy of the WDNR, carries the weight and effect of a rule, and impacts WDNR's implementation of the $PM_{2.5}$ NAAQS. MEA believes the Guidance is essentially a rule, as defined by administrative law, and because WDNR did not follow its rulemaking process, the Guidance is an unlawful rule. Clean Wisconsin requests that EPA require WDNR to withdraw the Guidance as a condition for approval of WDNR's 2012 $PM_{2.5}$ infrastructure SIP.

Response 4: Section 110(a)(2)(K) requires SIPs to provide for the performance of air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and the submission of such data to EPA upon request. EPA's 2013 infrastructure SIP guidance indicates that the best practice would be for an air agency to submit the statutory or regulatory provisions that provide the air agency or official with the authority to perform the following actions along with a narrative explanation of how the provisions meet the requirements of section 110(a)(2)(K): (1) Conduct air quality modeling to predict the effect on ambient air quality of any emissions of any air pollutant for which a NAAQS has been promulgated, and (2) provide such modeling data to the EPA Administrator upon request. EPA's 2013 infrastructure SIP guidance indicates EPA recognizes that some air agencies may have general authorizing provisions that do not enumerate specific activities but do implicitly authorize the air agency to perform such activities, in which case inclusion of those provisions would meet the intent of this best practice. WDNR maintains the capability and the authority to perform computer modeling of the air quality impacts of emissions of all criteria pollutants, including both source-oriented dispersion models and more regionally directed complex photochemical grid models. *Wis. Stats.* 285.11, *Wis. Stats.* 285.13, and *Wis. Stats.* 285.60–285.69 authorize WDNR to perform air quality modeling. Therefore EPA finds that WDNR has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2012 $PM_{2.5}$ NAAQS.

[4] The exceptions do not pertain to Wisconsin's $PM_{2.5}$ monitoring network. There are two exceptions to EPA's approval of Wisconsin's 2017 Annual Air Monitoring Network Plan. The first exception pertains to Wisconsin's request to shorten the ozone season which was extended with the revision of the ozone NAAQS in October 2015 (40 CFR part 58, section 4.1(i)). WDNR must plan to monitor for ozone, statewide, during the required ozone season in effect January 1, 2017. EPA's approval of Wisconsin's 2017 Annual Air Monitoring Network Plan does not constitute approval of the shortened ozone season requested by Wisconsin. The second exception pertains to a nitrogen dioxide (NO_2) monitor. Wisconsin may discontinue/shut-down the Photochemical Air Monitoring Station (PAMS) at the Southeast Regional office (SER/DNR) as per EPA's October 16, 2015 revisions to the PAMS monitoring requirements with the exception of the NO_2 monitor at this site. 40 CFR part 58, appendix D, section 4.3 requires the Milwaukee-Waukesha-West Allis metropolitan statistical area to operate two NO_2 monitoring sites. One site should be collocated with a near-road site and a second representative of area-wide NO_2 emissions. Wisconsin meets the near-road station NO_2 monitoring requirement with the College Avenue near-road station and the area-wide monitoring requirement with the NO_2 monitoring conducted at the PAMS at SER/DNR. Therefore, Wisconsin may discontinue/shut-down the PAMS at SER/DNR with the exception of the NO_2 monitor.

III. What action is EPA taking?

EPA is finalizing approval of most elements and deferring action on one element of a submittal from WDNR certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the 2012 $PM_{2.5}$ NAAQS. The proposed rulemaking associated with this final action was published on February 19, 2016 (81 FR 8460), and EPA received comments during the comment period, which ended on March 21, 2016. EPA has responded to each of the comments received in the section above with the exception of ''Comment 3,'' which we intend to respond to in a separate rulemaking. EPA is taking final action to approve, as proposed, most elements of WDNR's submittal. EPA is not taking action on several elements of WDNR's submittal that will be addressed in separate rulemakings.

EPA's actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2012 $PM_{2.5}$
(A)—Emission limits and other control measures	A
(B)—Ambient air quality monitoring/data system	A
(C)1—Program for enforcement of control measures	A
(C)2—PSD	NA
(D)1—I Prong 1: Interstate transport—significant contribution	NA
(D)2—I Prong 2: Interstate transport—interfere with maintenance	NA
(D)3—II Prong 3: Interstate transport—prevention of significant deterioration	NA
(D)4—II Prong 4: Interstate transport—protect visibility	A
(D)5—Interstate and international pollution abatement	A
(E)1—Adequate resources	A
(E)2—State board requirements	A
(F)—Stationary source monitoring and reporting	NA
(G)—Emergency power	A
(H)—Future SIP revisions	A
(I)—Nonattainment planning requirements of part D	NA
(J)1—Consultation with government officials	A
(J)2—Public notification	A
(J)3—PSD	NA
(J)4—Visibility protection	A
(K)—Air quality modeling/data	A
(L)—Permitting fees	A
(M)—Consultation and participation by affected local entities	A

In the above table, the key is as follows:

A	Approve.
NA	No Action/Separate Rulemaking.
D	Disapprove.

IV. Statutory and Executive Order Reviews.

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

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

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

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

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 13, 2016.

Robert Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2591 is amended by adding paragraph (k) to read as follows:

§ 52.2591 Section 110(a)(2) infrastructure requirements.

* * * * *

(k) Approval—In a July 13, 2015, submission, WDNR certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2012 $PM_{2.5}$ NAAQS. We are not taking action on the prevention of significant deterioration requirements related to section 110(a)(2)(C)(ii), (D)(i)(II), and (J), the transport provisions in section 110(a)(2)(D)(i)(I), and the stationary source monitoring and reporting requirements of section 110(a)(2)(F). We will address these requirements in a separate action.

[FR Doc. 2016–31017 Filed 12–23–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0478, FRL–9957–08–Region 2]

Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the New York State Implementation Plan (SIP) amending existing nonattainment New Source Review (NNSR) and attainment New Source Review (Prevention of Significant Deterioration of Air Quality, PSD) program requirements that the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA on October 12, 2011. Specifically, the SIP revision includes new requirements pertaining to the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometer ($PM_{2.5}$) and the regulation of Greenhouse Gases (GHGs) under New York's Part 231, ''New Source Review for New and Modified Facilities;'' Part 201, ''Permits and Registrations;'' and amendments to Part 200, ''General Provisions,'' of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR). The SIP revision will make the SIP consistent with existing federal requirements. The EPA is also taking final action to approve certain elements of New York SIP revisions submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 lead (Pb), 2008 ozone, and 2010 sulfur dioxide (SO_2) national ambient air quality standards (NAAQS).

DATES: This rule is effective on January 26, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID number EPA–R02–OAR–2016–0478. All documents in the docket are listed on the *http://www.regulations.gov* Web site.

FOR FURTHER INFORMATION CONTACT: Frank Jon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4085; email address: *jon.frank@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, references to ''EPA,'' ''we,'' ''us,'' or ''our,'' are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

I. What is the background for this action?
II. What sections of New York's rules are we approving in this action?
III. What are EPA's responses to comments to EPA's proposal?
IV. What action is EPA taking?
V. Incorporation By Reference.
VI. Statutory and Executive Order Reviews.

I. What is the background for this action?

On October 12, 2011, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA Region 2 a new set of revisions to the New York State Implementation Plan (SIP). This submittal consists of revisions to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 231, New Source Review for New and Modified Facilities; 6 NYCRR Part 200, General Provisions; and 6 NYCRR Part 201, Permits and Certificates. New York undertook this rulemaking to comply with EPA's May 16, 2008 NSR final rule for the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers ($PM_{2.5}$). Also, the revisions implement EPA's October 20, 2010 final rule that establishes the $PM_{2.5}$ increments, significant impact levels, and significant monitoring concentrations. New York's rulemaking implements $PM_{2.5}$ provisions that were not previously included in the November 17, 2010 EPA SIP approval of Part 231. This SIP revision also incorporates provisions that conform to EPA's June 3, 2010 final rule for Greenhouse Gases (GHGs) under its PSD and Title V programs, establishing major source applicability threshold levels for GHG emissions and other conforming changes such as the establishment of global warming potential values for calculating CO_2 equivalents under New York's PSD and Title V programs. In today's action, the EPA is taking final action to approve those revisions by issuing a full approval, as proposed (see 81 FR 63448 (September 15, 2016)).

The EPA is also taking action to approve certain elements of New York SIP revisions as meeting CAA section 110(a) requirements for the 2008 Pb, 2008 ozone, and 2010 SO_2 NAAQS. NYSDEC submitted a SIP for the 2008 Pb NAAQS on October 13, 2011, as supplemented on February 24, 2012, and for the 2008 ozone NAAQS on April

4, 2013 and the 2010 SO_2 NAAQS on October 3, 2013.

Under CAA sections 110(a)(1) and (2), states are required to submit SIPs that provide for the implementation, maintenance and enforcement of the NAAQS. The EPA refers to these types of SIP submissions as the ''infrastructure'' SIPs. States must make infrastructure SIP submissions within 3 years after the promulgation of a new or revised NAAQS. On November 12, 2008 (73 FR 66964), EPA promulgated a revised NAAQS for Pb, which is 0.15 micrograms per cubic meter of air (μg/m³) maximum not to be exceeded on a rolling 3-month average. On March 27, 2008 (73 FR 16436), EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. On June 22, 2010 (75 FR 35520), EPA promulgated a revised NAAQS for SO_2 at a level of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.

This final action pertains only to the portions of the infrastructure SIPs submitted for the 2008 Pb, 2008 ozone, and 2010 SO_2 NAAQs pertaining to CAA sections 110(a)(2)(C); 110(a)(2)(D)(i)(II) prong 3 (PSD); and 110(a)(2)(J). The reader is referred to the September 15, 2016 proposed rulemaking for a detailed discussion of New York's submittals and EPA's review and proposed actions.

II. What sections of New York's rules are we approving in this action?

With respect to 6 NYCRR Part 200, the EPA is taking final action to approve into the New York SIP revisions to Section 200.1, specifically, subparts 200.1(bj), 200.1(bl), 200.1(cj), 200.1(cu) through 200.1(cv), together with revisions to Section 200.9, Table 1, as delineated in the New York October 12, 2011 submittal to EPA.

With respect to 6 NYCRR Part 201, the EPA is taking final action to approve into the New York SIP revisions to subpart 201–2.1(b)(21) with the exception of changes to the definitions in subparts 201–2.1(b)(21)(i) and 201–2.1(b)(21)(v) which were withdrawn by the NYSDEC.

With respect to 6 NYCRR part 231, the EPA is taking final action to approve all of part 231 into the New York SIP except certain revisions to part 231 which were withdrawn by the NYSDEC. The withdrawn revisions which are not being approved into the New York SIP are, as identified in EPA's September 15, 2016 proposal, certain portions of subpart 231–5.5(b)(3) and 231–6.6(b)(3), 231–10.1(d), 231–12.7 containing the Significant Impact Levels (SILs) for $PM_{2.5}$, Section 231–13.5 Table 5 containing the GHG major source thresholds for sources that are major for GHG only and subpart 231–12.4(a)(1) containing the $PM_{2.5}$ Significant Monitoring Concentration (SMC) of 4 μg/m³. However, EPA approves New York's replacement of the SMC value with zero (0) until future regulatory changes are made.

III. What are EPA's responses to comments to EPA's proposal?

In response to EPA's September 15, 2016 (81 FR 63448) proposed approval, the EPA received no comments during the public comment period.

IV. What action is EPA taking?

The EPA is taking a final action to approve revisions of 6 NYCRR parts 200, 201, and 231 to the New York State Implementation Plan (SIP) as specified in Section II of this notice and submitted by the New York State Department of Environmental Conservation (NYSDEC) on October 12, 2011, with the exception of the NYSDEC withdrawn items listed in Section II of this notice.

EPA is also taking final action to approve New York's infrastructure SIP submittals for 2008 Pb, 2008 ozone, and 2010 SO_2 for CAA Section 110(a)(2) elements and sub-elements, as follows: 110(a)(2)(C), 110(a)(2)(D)(i)(II) prong 3, and 110(a)(2)(J).

V. Incorporation By Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of revised versions of 6 NYCRR Part 200, 6 NYCRR Part 201 and 6 NYCRR Part 231 described in the proposed amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and/or in hard copy at the appropriate EPA office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

[1] 62 FR 27968 (May 22, 1997)

VI. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175, because the SIP is not approved to apply in Indian country located in the State, and EPA

notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus Executive Order 13175 does not apply to this action.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 22, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart HH—New York

■ 2. In § 52.1670:

■ a. The table in paragraph (c) is amended by revising four entries for ''Title 6, Part 200, Subpart 200.1'', ''Title 6, Part 200, Subpart 200.9'', ''Title 6, Part 201, Subpart 201–2.1(b)(21)'', and ''Title 6, Part 231''; and

■ b. The table in paragraph (e) is amended by:

■ i. Adding another entry titled ''Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS'' at the end of the table; and

■ ii. Adding two entries titled ''Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS'' and ''Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS'' at the end of the table.

The additions read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
Title 6, Part 200, Subpart 200.1.	General Provisions, Definitions.	10/15/11	12/27/16	The word odor is removed from the Subpart 200.1(d) definition of ''air contaminant or air pollutant.'' Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC. Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation. EPA is including the definition of ''federally enforceable'' with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to ''avoid'' applicable requirements. EPA is approving incorporation by reference of those documents that are not already federally enforceable. EPA approval finalized at [Insert **Federal Register** citation].
*	*	*	*	* * *
Title 6, Part 200, Subpart 200.9.	General Provisions, Referenced Material.	10/15/11	12/27/16	EPA is approving reference documents that are not Federally enforceable. EPA approval finalized at [Insert **Federal Register** citation].

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Title 6, Part 201, Subpart 201–2.1(b)(21).	Permits and Registrations, Definitions.	10/15/11	12/27/16	EPA is including the definition of "Major stationary source or major source or major facility" with the understanding that the definition applies only to provisions of Part 231. Revisions are approved except for changes to the definitions in 201–2.1(b)(21)(i) and 201–2.1(b)(21)(v) withdrawn by NYSDEC as per July 28, 2016 letter to EPA Region 2. EPA approval finalized at [Insert **Federal Register** citation].
*	*	*	*	*
Title 6, Part 231	New Source Review for New and Modified Facilities.	10/15/11	12/27/16	Full approval except for certain revisions to 231–5.5(b)(3), 231–6.6(b)(3), 231–10.1(d), 231–12.4(a)(1), 231–12.7, and 231–13.5 Table 5 withdrawn by NYSDEC as per July 28, 2016 NYSDEC letter to EPA Region 2. The $PM_{2.5}$ Significant Monitoring Concentration (SMC) is approved as 0 μg/m3 in 231–12.4(a)(1). EPA approval finalized at [Insert **Federal Register** citation].
*	*	*	*	*

* * * * * (e) * * *

EPA-APPROVED NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS.	Statewide	04/04/2013	12/27/2016, [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(C), (D)(i)(II) prong 3, and (J).
Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS.	Statewide	10/13/11, and supplemented on 2/24/12.	12/27/2016, [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(C), (D)(i)(II) prong 3, and (J).
Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS.	Statewide	10/03/2013	12/27/2016, [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(C), (D)(i)(II) prong 3, and (J).

[FR Doc. 2016–31018 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2016–0293; FRL–9956–92–Region 6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Louisiana; Redesignation of Baton Rouge 2008 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act) the Environmental Protection Agency (EPA) is approving the State of Louisiana's request to redesignate the five-parish Baton Rouge Nonattainment Area (BRNA or Area) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or standard) to attainment. EPA is also approving a State Implementation Plan (SIP) revision containing a maintenance plan for the area, including motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the years 2022 and 2027. EPA has determined that the BRNA is continuing to attain the 2008 ozone NAAQS and has met the CAA criteria for redesignation to attainment.

DATES: This rule is effective on January 26, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2016–0293. 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: Wendy Jacques, (214) 665–7395, *jacques.wendy@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 November 4, 2016 proposal (81 FR 76891). In that document we proposed to determine that the BRNA continues to attain the 2008 ozone NAAQS; to approve into the SIP Louisiana's plan for maintaining the 2008 ozone NAAQS (maintenance plan), including the associated MVEBs; and to redesignate the BRNA to attainment for the 2008 ozone NAAQS. We did not receive any comments regarding our proposal.

II. What are the effects of EPA's final action?

Approval of Louisiana's redesignation request changes the legal designation of the BRNA as found at 40 CFR part 81, from nonattainment to attainment for the 2008 ozone NAAQS. Approval of Louisiana's associated SIP revision also incorporates a plan for maintaining the 2008 ozone NAAQS in the BRNA through 2027 into the SIP. This maintenance plan includes contingency measures to remedy any future violations of the 2008 ozone NAAQS and procedures for evaluation of potential violations. The maintenance plan also establishes NO_X and VOC MVEBs for 2022 and 2027 for the Baton Rouge Area. The MVEBs, in tons per day (tpd) are listed in Table 1.

TABLE 1—MVEBS FOR THE BATON ROUGE AREA

[tpd]

Year	NO_X	VOC
2022	14.37	13.19
2027	10.95	11.55

III. Final Action

We are approving the State of Louisiana's request to redesignate the BRNA for the 2008 8-hour ozone NAAQS to attainment; and the associated maintenance plan SIP revision for the area, including NO_X and VOC MVEBs for the years 2022 and 2027. We have determined that the BRNA is continuing to attain the 2008 ozone NAAQS and has met the CAA criteria for redesignation from nonattainment to attainment for the 2008 ozone NAAQS.

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 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, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: December 16, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart T—Louisiana

■ 2. In § 52.970(e) the second table titled ''EPA-Approved Louisiana Nonregulatory Provisions and Quasi-Regulatory Measures'' is amended by adding an entry at the end for ''2008 8-hour Ozone NAAQS Redesignation Request and Maintenance Plan'' to read as follows:

§ 52.970 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
2008 8-hour Ozone NAAQS Redesignation Request and Maintenance Plan.	Baton Rouge Area	5/2/2015	12/27/2016, [Insert **Federal Register** citation].	

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. In § 81.319, the table entitled ''Louisiana-2008 8-Hour Ozone NAAQS (Primary and secondary)'' is amended by revising the entry for ''Baton Rouge, LA'' to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge, LA [2]	12/27/2016, [Insert **Federal Register** citation].	Attainment	12/27/2016	
Ascension Parish.				
East Baton Rouge Parish.				
Iberville Parish.				
Livingston Parish.				
West Baton Rouge Parish.				
*	*	*	*	*

[1] This date is July 20, 2012, unless otherwise noted.

[2] Excludes Indian country located in each area, unless otherwise noted.

* * * * *

[FR Doc. 2016–30776 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2015–0171; FF09E40000 167 FXES11150900000]

RIN 1018–BB25

Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Candidate Conservation Agreements With Assurances

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), revise the regulations concerning enhancement-of-survival permits issued under the Endangered Species Act of 1973, as amended (ESA), associated with Candidate Conservation Agreements with Assurances. We added the term ''net conservation benefit'' to the Candidate Conservation Agreements with Assurances regulations, and eliminated references to ''other necessary properties'' to clarify the level of conservation effort we require each agreement to include in order for us to approve a Candidate Conservation Agreement with Assurances. We also made these changes to the Candidate Conservation Agreement with Assurances policy in a separate document published in today's **Federal Register**.

DATES: This rule is effective on January 26, 2017.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–HQ–ES–2015–0171. Comments and materials received, as well as supporting documentation used in the preparation of this rule, are also available at the same location on the Internet.

FOR FURTHER INFORMATION CONTACT: Jeff Newman, Chief, Division of Recovery and Restoration, U.S. Fish and Wildlife Service Headquarters, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2171.

SUPPLEMENTARY INFORMATION:

Background

Through its Candidate Conservation Program, one of the FWS's goals is to encourage the public to voluntarily develop and implement conservation plans for declining species prior to them being listed under the ESA (16 U.S.C. 1531 *et seq.*). The benefits of such conservation actions may contribute to not needing to list a species, to list a species as threatened instead of endangered, or to accelerate the species' recovery if it is listed. The FWS put in place a voluntary conservation program to provide incentives for non-Federal property owners to develop and implement conservation plans for unlisted species: Candidate Conservation Agreements with Assurances (CCAAs). On June 17, 1999, the policy for this type of agreement (64 FR 32726) and implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) (64 FR 32706) were made final. On May 3, 2004, we published a final rule (69 FR 24084) to revise the CCAA regulations to make them easier to understand and implement by, among other things, defining ''property owner'' and by clarifying several points, including the transfer of permits, permit revocation, and advanced notification of take.

To participate in a CCAA, non-Federal property owners agree to implement specific conservation actions on their land that reduce or eliminate threats to the species that are covered under the agreement. An ESA section 10(a)(1)(A) Enhancement-of-survival permit is issued to the agreement participant providing a specific level of incidental take coverage should the property owner's agreed-upon conservation actions and routine property management actions (*e.g.,* agricultural, ranching, or forestry activities) result in take of the covered species, if listed. Property owners receive assurances that they will not be required to undertake any conservation actions other than those agreed to if new information indicates that additional or revised conservation measures are needed for the species, and they will not be subject to additional resource use or land-use restrictions.

Based on our experience reviewing and approving CCAAs over the past 16 years, on May 4, 2016 (81 FR 26769), we proposed to change the regulations that clarify the level of conservation effort each agreement needs to include in order for FWS to approve an agreement and issue a permit. In addition to the clarification of the CCAA regulations, we also sought to better align the CCAA regulations with the Safe Harbor Agreement (SHA) regulations. Safe Harbor Agreements are a conservation tool for non-federal property owners that aid in recovery of listed species that are similar to CCAAs in that they also require a net conservation benefit. On May 4, 2016, we also published in the **Federal Register** a draft revised CCAA policy (86 FR 26817). We accepted public comments on the draft policy and proposed regulations until July 5, 2016. The comments we received are available at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2015–0171.

Changes From the Proposed Rule

Based on comments we received on the proposed rule and to further clarify the level of conservation effort a CCAA needs to meet, we include the following changes in this final rule:

(1) We revised the issuance criteria at 50 CFR 17.22(d)(2)(ii) and 17.32(d)(2)(ii) to include language indicating that a CCAA must provide a net conservation benefit consistent with the CCAA policy. The previous version of the regulations simply referred to compliance with the CCAA policy and did not specify that a CCAA must provide a net conservation benefit. Our intent is to be more clear and transparent about the level of conservation effort required for each CCAA to be approved; this change also better aligns the regulations with the CCAA policy. In addition, these changes help to accomplish our goal of aligning the CCAA regulations with the SHA regulations.

(2) In the draft regulations, we proposed revisions to the language on duration at 50 CFR 17.22(d)(8) and 17.32(d)(8) to include the full definition of ''net conservation benefit'' that we also included in the draft revised policy that was published in the **Federal Register** on the same date as the proposed regulations. To simplify these final regulations, we are not including the definition of net conservation benefit but state that the duration of a CCAA must be sufficient to provide a net conservation benefit to the covered species. The full definition of net conservation benefit is included in the final CCAA policy, which is published separately in today's **Federal Register**. As with the above changes to the issuance criteria, these changes to the duration section help to accomplish our goal of aligning the CCAA regulations with the SHA regulations.

(3) We have made nonsubstantive editorial changes to the rule language at 50 CFR 17.22(d) and 17.32(d) to ensure consistent terminology and ease public understanding.

Summary of Comments and Recommendations

On May 4, 2016, we published a document in the **Federal Register** (81 FR 26769) that requested written comments and information from the public on the proposed revisions to the

CCAA regulations. In that same **Federal Register**, we also published draft revisions to the CCAA policy (86 FR 26817). Since the majority of comments we received pertained to the draft policy, we have summarized the comments on both the proposed regulations and policy in the final policy document, which is published separately in today's **Federal Register**.

Purpose of Changes to Regulations at 50 CFR 17.22 and 17.32

We revised the CCAA regulations at 50 CFR 17.22(d) and 17.32(d) consistent with the revisions to the CCAA policy published separately in today's **Federal Register**. The regulation changes are to (1) include the term ''net conservation benefit'' to clarify the level of conservation effort that is necessary in order to issue a permit associated with a CCAA and (2) eliminate references to ''other necessary properties.''

Under the original policy and regulations from 1999, to approve a CCAA we had to ''determine that the benefits of the conservation measures implemented by a property owner under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species.'' This language had led some property owners to believe that the FWS expected each individual CCAA to provide enough conservation benefits to the species to remove any need to list the species. This confusion created by the hypothetical concept of conservation measures needing to be implemented on ''other necessary properties'' is why we are clarifying and revising the CCAA standard to require a net conservation benefit to the covered species specifically on the property to be enrolled and eliminating references to ''other necessary properties.'' In addition to clarifying the CCAA standard, through these changes we are also better aligning the CCAA regulations with the SHA regulations, as discussed above.

In concert with the revisions to our CCAA policy, published elsewhere in today's **Federal Register**, these changes to the regulations will help reassure landowners participating in CCAAs that additional conservation measures above and beyond those contained in the CCAA will not be required, and that additional land, water, or resource use restrictions will not be imposed upon them should a species that resides on their property become listed in the future.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget's Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is consistent with E.O. 13563, and in particular with the requirement of retrospective analysis of existing rules, designed ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or his or her designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that this rule will not have a significant economic effect on a substantial number of small entities.

The rule revises the regulations governing issuance of an enhancement-of-survival permit in conjunction with a CCAA to clarify—but not change—current practice and does not place any new requirements on any non-Federal property owner that may seek to apply for approval of a CCAA.

Paperwork Reduction Act of 1995 (PRA)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 *et seq.*). This rule will not impose new recordkeeping or reporting requirements on State, local, or tribal governments; individuals; businesses; or organizations. OMB has reviewed and approved the application form that property owners use to apply for approval of a CCAA and associated enhancement-of-survival permit (Form 3–200–54) and assigned OMB Control Number 1018–0094, which expires January 31, 2017. 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.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the *Regulatory Flexibility Act* section above, this rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the rule would not place additional requirements on any city, county, or other local municipalities.

(b) This rule would not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This rule imposes no obligations on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule would not have significant takings implications. This

rule would not pertain to ''taking'' of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this rule (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of endangered and threatened species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this rule would have significant Federalism effects and have determined that a federalism summary impact statement is not required. This rule pertains only to approving enhancement-of-survival permits in conjunction with a CCAA under the ESA, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of E.O. 12988. This rule would clarify the issuance criteria for an enhancement-of-survival permit associated with a CCAA under the ESA.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have considered possible effects on federally recognized Indian tribes and have determined that there are no potential adverse effects of issuing this rule. Our intent is to provide clarity in regard to the net conservation benefit requirements for a CCAA to be approved, including any agreements in which Tribes may choose to participate. We will continue to keep our tribal obligations in mind as we implement this rule.

National Environmental Policy Act

We analyzed the regulations in accordance with the criteria of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508), and the Department of the Interior's NEPA procedures (516 DM 2 and 8; 43 CFR part 46) and determined that the regulations are categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4 and 43 CFR 46.210(i). This categorical exclusion applies to policies, directives, regulations, and guidelines that are ''of an administrative, financial, legal, technical, or procedural nature.'' This action does not trigger an extraordinary circumstance, as outlined in 43 CFR 46.215, applicable to the categorical exclusion. Therefore, the regulations do not constitute a major Federal action significantly affecting the quality of the human environment.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.22 as follows:
■ a. In paragraph (d)(1), introductory text, at the end of the heading, add ''(CCAAs)'' before the period and, in the second full sentence, remove ''Candidate Conservation Agreement with Assurances'' and add in its place ''CCAA'';
■ b. In paragraphs (d)(1)(iii) and (d)(2)(i), remove ''Candidate Conservation Agreement'' and add in its place ''CCAA'';
■ c. Revise paragraph (d)(2)(ii) to read as set forth below;
■ d. In paragraphs (d)(2)(iv) through (vi), (d)(3)(i) and (iii), and (d)(4), remove ''Candidate Conservation Agreement'' each time it appears and add in their place ''CCAA'';
■ e. In paragraph (d)(5), introductory text, and paragraph (d)(6), remove ''Candidate Conservation with Assurances Agreement'' each time it appears and add in their place ''CCAA''; and
■ f. Revise paragraph (d)(8) to read as set forth below:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(d) * * *

(2) * * *

(ii) The implementation of the terms of the CCAA is reasonably expected to provide a net conservation benefit to the affected covered species by contributing to the conservation of the species included in the permit, and the CCAA otherwise complies with the Candidate Conservation Agreement with Assurances policy available from the Service;

* * * * *

(8) *Duration.* The duration of a CCAA covered by a permit issued under this paragraph (d) must be sufficient to achieve a net conservation benefit to the species covered by the permit and the Agreement and otherwise comply with the Candidate Conservation Agreement with Assurances policy available from the Service.

* * * * *

■ 3. Amend § 17.32 as follows:
■ a. In paragraph (d)(1), introductory text, at the end of the heading, add ''(CCAAs)'' before the period and, in the second full sentence, remove ''Candidate Conservation Agreement with Assurances'' and add in its place ''CCAA'';
■ b. In paragraphs (d)(1)(iii) and (d)(2)(i), remove ''Candidate Conservation Agreement'' and add in its place ''CCAA'';
■ c. Revise paragraph (d)(2)(ii) to read as set forth below;
■ d. In paragraphs (d)(2)(iv) through (vi), (d)(3)(i) and (iii), and (d)(4), remove ''Candidate Conservation Agreement'' each time it appears and add in their place ''CCAA'';
■ e. In paragraph (d)(5), introductory text, and paragraph (d)(6), remove ''Candidate Conservation with Assurances Agreement'' each time it

appears and add in their place ''CCAA''; and

■ f. Revise paragraph (d)(8) to read as set forth below:

§ 17.32 Permits—general.

* * * * *

(d) * * *

(2) * * *

(ii) The implementation of the terms of the CCAA is reasonably expected to provide a net conservation benefit to the affected covered species by contributing to the conservation of the species included in the permit, and the CCAA otherwise complies with the Candidate Conservation Agreement with Assurances policy available from the Service;

* * * * *

(8) *Duration.* The duration of a CCAA covered by a permit issued under this paragraph (d) must be sufficient to achieve a net conservation benefit to the species covered by the permit and the Agreement and otherwise comply with the Candidate Conservation Agreement with Assurances policy available from the Service.

Dated: December 20, 2016.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–31060 Filed 12–23–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160815740–6740–01]

RIN 0648–BG28–X

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Revision of Bycatch Reduction Device Testing Manual

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the framework procedures for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Gulf FMP), NMFS makes administrative revisions to the Bycatch Reduction Device Testing Manual (BRD Manual). The BRD Manual contains procedures for the testing and certification of BRDs for use in shrimp trawls in the exclusive economic zone (EEZ) in the Gulf of Mexico (Gulf) and South Atlantic. The changes to the BRD Manual remove outdated or obsolete data collection forms previously appended to the BRD Manual, and revise the text to make several procedural steps outlined in the BRD Manual clearer and easier to understand. The purpose of these revisions is to increase understanding of the BRD certification protocols.

DATES: This final rule is effective January 26, 2017.

ADDRESSES: For the complete BRD Manual, contact the Southeast Regional Office, Sustainable Fisheries Division at 727–824–5305, or download the BRD Manual from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/shrimp/brd/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The shrimp fishery in the Gulf EEZ is managed under the Gulf FMP. The Gulf FMP was prepared by the Gulf of Mexico Fishery Management Council (Gulf Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The shrimp fishery in the South Atlantic EEZ is managed under the FMP for the Shrimp Fishery of the South Atlantic Region (South Atlantic FMP). The South Atlantic FMP was prepared by the South Atlantic Fishery Management Council (South Atlantic Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

On September 29, 2016, NMFS published a proposed rule for the revisions to the BRD Manual and requested public comment (81 FR 66912). The proposed rule outlines the rationale for the action contained in this final rule. A summary of the BRD Manual revisions implemented by this final rule is provided below.

The BRD Manual contains procedures for the testing and certification process of BRDs required for use in shrimp trawls in the Gulf and South Atlantic EEZs. NMFS has revised some text and instructions in the BRD Manual to make the manual clearer and easier to understand. Over time, the various data collection forms used by NMFS have been revised or discarded, making many of the forms included in the appendices to BRD Manual obsolete. NMFS has removed the applicable forms and revised the text within the BRD Manual to remove references to those forms. In addition, this final rule revises the instructions to state the required information that an applicant must submit for the testing and certification process. This information was previously on the now obsolete forms. Last, NMFS has revised the BRD Manual to use consistent terms.

The changes to the BRD Manual were presented to the Gulf and South Atlantic Councils for their consideration and no substantive comments were received from either Council regarding these administrative changes.

These changes to management measures do not add to or change any existing Federal regulations. Therefore, no codified text is associated with these changes to management measures.

Comments and Responses

No comments were received on either the BRD Manual or the proposed rule.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with the Gulf and South Atlantic FMPs, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none was prepared.

■ The BRD Manual published as an appendix to a final rule published in the **Federal Register** on February 13, 2008 (73 FR 8219, February 13, 2008), is revised to read as follows.

Note: The following appendix will publish in the **Federal Register** but will not appear in the Code of Federal Regulations. See the contacts under **ADDRESSES** to obtain the complete BRD Manual.

Appendix—Bycatch Reduction Device Testing Manual

Definitions

Bycatch reduction criterion is the standard by which a BRD candidate will be evaluated. To be certified for use by the shrimp fishery in the Exclusive Economic Zone (EEZ) off the southeastern United States (North Carolina through Texas), the BRD candidate must demonstrate a successful reduction of total finfish bycatch by at least 30 percent by weight.

Bycatch reduction device (BRD) is any gear or trawl modification designed to allow finfish to escape from a shrimp trawl.

BRD candidate is a bycatch reduction device to be tested for certification for use in the commercial shrimp fishery of southeastern United States.

Certified BRD is a BRD that has been tested according to the procedure outlined herein and has been determined by the RA as having met the bycatch reduction criterion.

Control trawl means a trawl that is not equipped with a BRD during a test.

Experimental trawl means the trawl that is equipped with the BRD candidate during a test.

Evaluation and oversight personnel means scientists, observers, and other technical personnel who, by reason of their occupation or scientific expertise or training, are approved by the RA as qualified to evaluate and review the application and testing process.

Gear Test Authorization (GTA) means a document signed by the RA that specifically exempts a person/vessel from Federal regulations requiring the use of BRDs in Federal waters. This GTA must be issued prior to conducting any tests on BRD candidates in Federal waters.

Net/side bias means when the net(s) being fished on one side of the vessel demonstrate a different catch rate (fishing efficiency) than the net(s) being fished on the other side of the vessel during paired-net tests.

Observer means a person on the list maintained by the RA of individuals qualified to supervise and monitor a BRD certification test.

Paired-net test means a tow during certification trials where a control net and an experimental net are fished simultaneously, and the catches and catch rates between the nets are compared.

Provisional Certification Criterion means a secondary benchmark that would allow a BRD candidate to be used for a time-limited period in the southeastern shrimp fishery. To meet the criterion, the BRD candidate must demonstrate a successful reduction of total finfish bycatch by at least 25 percent by weight.

Provisionally certified BRD means a BRD that has been tested according to the procedure outlined herein and has been determined by the RA as having met the provisional certification criterion. A BRD meeting the provisional certification criterion would be certified by the RA for a period of 2 years.

Regional Administrator (RA) means the Southeast Regional Administrator, National Marine Fisheries Service.

Required measurements refers to the quantification of gear characteristics such as the dimensions and configuration of the trawl, the BRD candidate, the doors, or the location of the BRD in relation to other parts of the trawl gear that are used to assess the performance of the BRD candidate.

Sample size means the number of successful tows.

Shrimp trawler means any vessel that is equipped with one or more trawl nets where the on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Successful tow means that the control and experimental trawl were fished in accordance with the requirements set forth herein and the terms and conditions of the Letter of Authorization, and there is no indication problematic events occurred during the tow that would impact or influence the fishing efficiency (catch) of one or both nets.

Tow time means the total time (hours and minutes) an individual trawl was fished (*i.e.,* the time interval beginning when the winch is locked after deploying the net overboard, and ending when retrieval of the net is initiated).

Trawl means a net and associated gear and rigging used to catch shrimp. The terms trawl and net are used interchangeably throughout this manual, although in most instances, ''trawl'' is used to reflect the entire fishing rig (*e.g.,* doors, tickler chain, net, turtle excluder device, etc.), whereas a ''net'' is used to reflect a component of that fishing rig.

Try net means a separate net pulled for brief periods by a shrimp trawler to test for shrimp concentrations or determine fishing conditions (*e.g.,* presence of absence of bottom debris, jellyfish, bycatch, and seagrasses).

Tuning a net means adjusting the trawl and its components to minimize or eliminate any net/side bias that exists between the two nets that will be used as the control and experimental trawls during the certification test.

I. Introduction

This Bycatch Reduction Device Testing Manual (BRD Manual) establishes a standardized process for evaluating whether bycatch reduction device (BRD) candidates meet the established bycatch reduction criterion. BRDs that meet the criterion can be certified for use in the EEZ by the southeastern shrimp fishery. Requirements for BRDs used in shrimp trawls in the Gulf of Mexico and South Atlantic can be found in 50 CFR part 622.

The requirement to use BRDs in state waters varies by state. Persons wishing to conduct BRD candidate tests exclusively in state waters do not need to apply to the National Marine Fisheries Service (NOAA Fisheries) for authorization to conduct these tests but should contact the appropriate state officials for authorizations. However, for NOAA Fisheries to certify a BRD candidate for use in Federal waters, tests conducted in state waters must meet the criteria for the operations plan and data collection procedures established in this manual.

II. BRD Candidate Tests

A. Application

Persons interested in evaluating the effectiveness of a BRD candidate to reduce finfish from a shrimp trawl must apply for, receive, and have on board the approved vessel(s) during the test, a Gear Test Authorization (GTA) from the NOAA Fisheries Southeast Regional Office Regional Administrator (RA). To receive a GTA, the applicant must submit the following documentation to the RA: (1) Name, address, and contact information of the applicant; (2) a list of vessels to be used during the sampling program, including the vessels' U.S. Coast Guard documentation numbers or state registration numbers; (3) name, address, and contact information of the vessel owners and/or vessel operators; (4) a brief statement of the purpose and goal of the activity for which the GTA is requested; (5) an operations plan (see Section C below) describing the scope, duration, dates, and location of the test, and methods that will be used to conduct the test; (6) an 8.5 inch × 11 inch (21.6 cm × 27.9 cm) diagram drawn to scale of the BRD candidate design; (7) an 8.5 inch × 11 inch (21.6 cm × 27.9 cm) diagram drawn to scale of the BRD in the shrimp trawl; and (8) a description of the mechanism by which the BRD candidate is expected to exclude finfish.

An applicant requesting an GTA to test an unapproved turtle excluder device (TED) as a BRD (including modifications to a certified TED where the modifications would make the configuration of the TED illegal) must first apply for and obtain from the RA an experimental TED authorization pursuant to 50 CFR 223.207(e)(2). Applicants should contact the Protected Resources Division of NOAA Fisheries Southeast Regional Office for further information. The GTA applicant must include a copy of that authorization with the application.

Incomplete applications will be returned to the applicant along with a letter from the RA indicating what actions the applicant may take to make the application complete.

There is no cost to the applicant for the RA's administrative expenses such as reviewing applications, issuing GTA, evaluating test results, or certifying BRDs. However, all other costs associated with the actual testing activities are the responsibility of the applicant, or any associated sponsor.

If an application for a GTA is denied, the RA will provide a letter of explanation to the applicant, together with relevant recommendations to address the deficiencies that resulted in the denial.

B. Allowable Activities

Issuance of a GTA to test a BRD candidate in the South Atlantic or Gulf of Mexico allows the applicant to remove or disable the existing certified BRD in one outboard net (to create a control net), and to place the BRD candidate in another outboard net in lieu of a certified BRD (to create an experimental net). All other trawls under tow during the

test must have a certified BRD, unless these nets are specifically exempted in the GTA. All nets under tow during the test must have an approved TED unless operating under an authorization issued pursuant to 50 CFR 223.207(e)(2), whereby the test is being conducted on an experimental TED. The GTA, and experimental TED authorization if applicable, must be on board the vessel(s) while the test is being conducted. The term of the GTA will be 60 days; should circumstances require a longer test period, the applicant may request a 60-day extension.

C. Operations Plan

An operations plan should be submitted with the application describing a method to compare the catches of shrimp and fish in a control net (net without a BRD candidate installed) to the catches of the same species in an experimental net (a net configured identically to the control net but also equipped with the BRD candidate).

The applicant may choose to conduct a pre-certification test of a prototype BRD candidate. A pre-certification test would be conducted when the intent is to assess the preliminary effectiveness of a prototype BRD candidate under field conditions, and to make modifications to the prototype BRD candidate during the field test. For pre-certification testing, the operations plan must include only a description of the scope, duration, dates, and location of the test, along with a description of methods that will be used to conduct the test. No observer is required for a pre-certification test, but the applicant may choose to use an observer to maintain a written record of the test. The applicant will maintain a written record for both the control and experimental net during each tow. Mandatory data collection is limited to the weight of the shrimp catch and the weight of the total finfish catch in each test net during each tow. Although not required, the applicant may wish to incorporate some or all the certification test requirements listed below.

For a BRD candidate to be considered for certification, the operations plan must be more detailed and address the following topics:

- The primary assumption in assessing the bycatch reduction effectiveness of a BRD candidate during paired net tests is that the inclusion of the BRD candidate in the experimental net is the only factor causing a difference in catch from the control net. Therefore, the nets to be used in the tests must be calibrated (tuned) to minimize, to the extent practicable, any net/side bias in catch efficiency prior to beginning a test series, and tuned again after any gear modification or change. Additional information on tuning shrimp trawls to minimize bias is available from NOAA Fisheries, Harvesting Technology Branch, Mississippi Laboratories, Pascagoula Facility, 3209 Frederic Street, Pascagoula, MS 39567; phone 601–762–4591.
- A standard tow time for a proposed evaluation should be defined. Tow times must be representative of the tow times used by commercial shrimp trawlers. The applicant should indicate what alternatives will be considered should the proposed tow time need adjustment once the test begins.
- A minimum sample size of 30 successful tows using a specific BRD candidate design is required for the statistical analysis described in Section F. No alterations of the BRD candidate design are allowed during a specific test series. If the BRD candidate design is altered, a new test series must be started. If a gear change (*i.e.,* changing nets, doors, or rigging) is required, the nets should be tuned again before proceeding with further tests to complete the 30-tow series. Minor repairs to the gear (*e.g.,* sewing holes in the webbing; replacing a broken tickler chain with a new one of the same configuration) are not considered a ''gear change.''
- For tests conducted on twin-rig vessels (one net on the port side and one net on the starboard side), biases that might result from the use of a try net should be minimized. Total fishing times for a try net must be a consistent percentage of the total tow time during each tow made in the test.
- To incorporate any potential net/side bias that remains after the tuning tows (*e.g.,* the effect of a try net), or to accommodate for bias that develops between the control and experimental nets during the test, the operations plan should outline a timetable ensuring that an equal number of successful tows are made with the BRD candidate employed in both the port and starboard nets.
- Mandatory data to be collected during a test includes: (1) Detailed vessel and gear specifications and (2) pertinent information concerning the location, duration, and catch from individual tows as set forth in forms available from the Science and Research Director (SRD) of the Southeast Fisheries Science Center. Applicants should contact the NOAA Fisheries, Galveston Laboratory, 4700 Avenue U, Galveston, TX 77551; phone 409–766–3500.
- Following each paired tow, the catches from the control and experimental nets must be examined separately. This requires that the catch from each net be kept separate from each other, as well as from the catch taken in other nets fished during that tow. Mandatory data collections include recording the weight of the total catch of each test net (control and experimental nets), and the weight of the total shrimp catch (*i.e.,* brown, white, pink, rock, or other shrimp by species) in each test net.
- To determine the total finfish catch in each test net, two procedures may be used under different conditions. If the total catch in a net does not fill one standard 1-bushel (ca. 10 gal or 30 L) polyethylene shrimp basket (ca. 70 lb [31.8 kg] of catch), but the tow is otherwise considered successful, data must be collected on the entire catch of the net, and recorded as a ''select'' sample, indicating that the values represent the total catch of the particular net. If the catch in a net exceeds 70 lb (31.8 kg), a well-mixed sample consisting of one standard 1-bushel [ca. 10 gal] (30 L) polyethylene shrimp basket must be taken from the total catch of the net. The total weight of the sample must be recorded, as well as the weight (and number as applicable) of finfish in aggregate.
- The forms available from the SRD include record keeping opportunities for additional species; collection of this information is optional for certification evaluation purposes. However, applicants testing BRD candidates are encouraged to collect additional information that may be pertinent to addressing bycatch issues in their respective regions. For example, in the western Gulf of Mexico applicants are especially encouraged to collect information on the bycatch of juvenile red snapper. Such data collection would follow the same procedure as sampling the total finfish catch.

The operations plan should address what the applicant will do should it become necessary to deviate from the primary procedures outlined in the operations plan. The plan should describe in detail what will be done to continue the test in a reasonable manner that is consistent with the primary procedures. For example, it may become necessary to alter the pre-selected tow time to adapt to local fishing conditions to successfully complete the test. Prior to issuing a GTA, the RA may consult with evaluation personnel to review the acceptability of these proposed alterations.

D. Observer Requirement

It is the responsibility of the applicant to ensure that a qualified observer is on board the vessel during the certification tests. Observers may include employees or individuals acting on behalf of NOAA Fisheries, state fishery management agencies, universities, or private industry. Any change in information or testing circumstances, such as replacement of the observer, must be reported to the RA within 30 days. Under 50 CFR 600.746, when any fishing vessel is required to carry an observer as part of a mandatory observer program under the Magnuson Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*), the owner or operator of the vessel must comply with guidelines, regulations, and conditions to ensure their vessel is adequate and safe to carry an observer, and to allow normal observer functions to collect information as described in this Manual. A vessel owner is deemed to meet this requirement if the vessel displays one of the following: (1) A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR, chapter I, and 46 CFR, chapter I; (2) a certificate of compliance issued pursuant to 46 CFR 28.710; or (3) a valid certificate of inspection pursuant to 46 U.S.C. 3311. The observer has the right to check for major safety items, and if those items are absent or unserviceable, the observer may choose not to sail with the vessel until those deficiencies are corrected.

E. Reports

A report on the BRD candidate test results must be submitted by the applicant or associated sponsor before the RA will consider the BRD for certification. The report must contain a comprehensive description of the test, copies of all completed data forms used during the test, and photographs, drawings, and similar material describing the BRD. The report must include a description and explanation of any unanticipated deviations from the operations plan that

occurred during the test. These deviations must be described in sufficient detail to allow evaluation and oversight personnel selected by NOAA Fisheries to determine if the tests were continued in a reasonable manner consistent with the approved operations plan procedures. Applicants must provide information on the cost of materials, labor, and installation of the BRD candidate. In addition, any unique or special circumstances of the tests, such as special operational characteristics or fishing techniques, which enhance the BRD's performance, should be described and documented as appropriate.

F. Certification

The RA will determine whether the required reports and supporting materials are sufficient to evaluate the BRD candidate's effectiveness. The determination of sufficiency would be based on whether the applicant adhered to the prescribed testing procedure or provided adequate justification for any deviations from the procedure during the test. If the RA determines that the data are sufficient for evaluation, the BRD candidate will be evaluated to determine if it meets the bycatch reduction criterion. In making a decision, the RA may consult with evaluation and oversight personnel. Based on the data submitted for review, the RA will determine the effectiveness of the BRD candidate, using appropriate statistical procedures such as Bayesian analyses, to determine if the BRD candidate meets the following conditions:

(1) There is at least a 50-percent probability that the true reduction rate of the BRD candidate meets the bycatch reduction criterion (*i.e.,* the BRD candidate demonstrates a best point estimate [sample mean] that meets the certification criterion); and

(2) There is no more than a 10-percent probability that the true reduction rate of the BRD candidate is more than 5 percentage points less than the bycatch reduction criterion.

To be certified for use in the fishery, the BRD candidate will have to satisfy both conditions. The first condition ensures that the observed reduction rate of the BRD candidate has an acceptable level of certainty that it meets the bycatch reduction criterion. The second condition ensures the BRD candidate demonstrates a reasonable degree of certainty the observed reduction rate represents the true reduction rate of the BRD candidate. This determination ensures the operational use of the BRD candidate in the shrimp fishery will, on average, provide a level of bycatch reduction that meets the established bycatch reduction criterion. Interested parties may obtain details regarding the hypothesis testing procedure to be used by contacting NOAA Fisheries, Harvesting Technology Branch, Mississippi Laboratories, Pascagoula Facility, 3209 Frederic Street, Pascagoula, MS 39567; phone 228–762–4591. Following a favorable determination of the certification analysis, the RA will certify the BRD (with any appropriate conditions as indicated by test results) and publish the notice of certification in the **Federal Register**.

In addition, based on the data provided, if the BRD candidate does not meet the bycatch reduction certification criterion in accordance with the conditions outlined above, the RA may provisionally certify a BRD candidate based on the following condition:

There is at least a 50-percent probability that the true reduction rate of the BRD candidate is no more than 5 percentage points less than the bycatch reduction criterion (*i.e.,* the BRD candidate demonstrates a best point estimate [sample mean] within 5 percentage points of the certification criterion).

A provisional certification will be effective for 2 years from the date of publication of a notice in the **Federal Register** announcing this provisional certification. This time period will allow additional wide-scale industry evaluation of the BRD candidate, during which additional effort would be made to improve the efficiency of the BRD to meet the certification criterion.

III. BRDs Not Certified and Resubmission Procedures

The RA will advise the applicant, in writing, if a BRD is not certified. This notification will explain why the BRD was not certified and what the applicant may do to either modify the BRD or the testing procedures to improve the chances of having the BRD certified in the future. If certification was denied because of insufficient information, the RA will explain what information is lacking. The applicant must provide the additional information within 60 days from receipt of such notification. If the RA subsequently certifies the BRD, the RA will announce the certification in the **Federal Register**.

IV. Decertification of BRDs

The RA will decertify a BRD whenever NOAA Fisheries determines a BRD no longer satisfies the bycatch reduction criterion. Before determining whether to decertify a BRD, the RA will notify the appropriate Fishery Management Council(s) in writing, and the public will be provided an opportunity to comment on any proposed decertification through a publication of a proposed rule in the **Federal Register** with a comment period of not less than 15 days. The RA will consider any comments from the affected Council(s) and public, and if the RA elects to proceed with decertification of the BRD, the RA will publish a final rule in the **Federal Register**, which would remove the BRD from the certified list of BRDs.

V. Interactions With Sea Turtles

The following section is provided for informational purposes. Sea turtles are listed under the Endangered Species Act as either endangered or threatened. The following procedures apply to incidental take of sea turtles under 50 CFR 223.206(d)(1):

Any sea turtles taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are actively moving or determined to be dead (as described in paragraph (B)(4) below) must be released over the stern of the boat. In addition, they must be released only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive by:

(1) Placing the turtle on its bottom shell (plastron) so that the turtle is right side up and elevating its hindquarters at least 6 inches (15.2 cm) for a period of 4 to 24 hours. The amount of elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Periodically, rock the turtle gently left to right and right to left by holding the outer edge of the shell (carapace) and lifting one side about 3 inches (7.6 cm) then alternate to the other side. Gently touch the eye and pinch the tail (reflex test) periodically to see if there is a response.

(2) Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance be placed into a container holding water. A water-soaked towel placed over the head, carapace, and flippers is the most effective method in keeping a turtle moist.

(3) Sea turtles that revive and become active must be released over the stern of the boat only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Sea turtles that fail to respond to the reflex test or fail to move within 4 hours (up to 24, if possible) must be returned to the water in the same manner as that for actively moving turtles.

(4) A turtle is determined to be dead if the muscles are stiff (rigor mortis) and/or the flesh has begun to rot; otherwise, the turtle is determined to be comatose or inactive and resuscitation attempts are necessary.

Any sea turtle so taken must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 19, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–31067 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150903814–5999–02]

RIN 0648–XF096

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the State of Connecticut

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2016 summer flounder commercial quota allocated to the State of Connecticut has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Connecticut for the remainder of calendar year 2016. Regulations governing the summer flounder fishery require publication of this notification to advise Connecticut that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing summer flounder in Connecticut.

DATES: Effective 0001 hours, December 22, 2016, through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, (978) 281–9180, or *Cynthia.Hanson@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The initial commercial quota for summer flounder for the 2016 calendar year was set equal to 8,124,035 lb (3,684,997 kg) (80 FR 80689, December 28, 2015). The percent allocated to vessels landing summer flounder in Connecticut is 2.25708 percent, resulting in a commercial quota of 183,366 lb (83,173 kg). This allocation was adjusted to 187,166 lb (84,897 kg) to account for quota transfers from other states.

The NMFS Administrator for the Greater Atlantic Region (Regional Administrator), monitors the state commercial landings and determines when a state's commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the 2016 Connecticut commercial summer flounder quota will be harvested by December 22, 2016.

Section 648.4(b) provides that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 22, 2016, landings of summer flounder in Connecticut by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2016 calendar year. Effective 0001 hours, December 22, 2016, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Connecticut for the remainder of the calendar year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the summer flounder fishery for Connecticut until January 1, 2017, under current regulations. The regulations at § 648.103(b) require such action to ensure that summer flounder vessels do not exceed quotas allocated to the states. If implementation of this closure was delayed to solicit prior public comment, the quota for this fishing year will be exceeded, thereby undermining the conservation objectives of the Summer Flounder Fishery Management Plan. The Assistant Administrator further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reason stated above.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–31194 Filed 12–21–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160816746–6999–02]

RIN 0648–XE819

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; 2017–2018 Fishing Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements status quo commercial quotas for the Atlantic surfclam and ocean quahog fisheries for 2017, suspends the minimum shell size for Atlantic surfclams for 2017, and provides projected status quo quotas for 2018. This action is necessary to establish allowable harvest levels of Atlantic surfclams and ocean quahogs that will prevent overfishing and allow harvesting of optimum yield.

DATES: This rule is effective January 1, 2017, through December 31, 2017.

ADDRESSES: Copies of the Environmental Assessment (EA), Supplemental Information Report (SIR), and other supporting documents for these specifications are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The EA and SIR are also accessible via the internet at: *www.greateratlantic.fisheries.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION: The Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) requires that NMFS, in consultation with the Mid-Atlantic Council, specify quotas for surfclam and ocean quahog for up to a 3-year period, with annual reviews if multiple year quotas are established. It is the policy of the Council that the catch limits selected allow sustainable fishing to continue at that level for at least 10 years for surfclams, and 30 years for ocean

quahogs. In addition to this, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481; May 19, 1998) added Maine ocean quahogs (locally known as Maine mahogany quahogs) to the management unit, and provided for a small artisanal fishery for ocean quahogs in the waters north of 43°50′ N. lat., with an annual quota within a range of 17,000 to 100,000 Maine bu (0.6 to 3.524 million L). As specified in Amendment 10, the Maine ocean quahog quota is allocated separately from the ocean quahog individual transferable quota (ITQ) fishery quota. Regulations implementing Amendment 13 to the FMP (68 FR 69970; December 16, 2003) established the ability to set multi-year quotas with an annual quota review to be conducted by the Council to determine if the multi-year quota specifications remain appropriate for each year. NMFS then publishes the annual final quotas in the **Federal Register**. The fishing quotas must ensure overfishing will not occur. In recommending these quotas, the Council considered the most recent stock assessments and other relevant scientific information.

In June 2016, the Council voted to recommend maintaining the status quo quota levels of 5.33 million bu (284 million L) for the ocean quahog fishery, 3.40 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (3.52 million L) for the Maine ocean quahog fishery for 2017 and projected status quo quotas would be maintained in 2018. On November 23, 2016, we published a proposed rule (81 FR 84544), with a public comment period through December 8, 2016. Eight comments were received and are discussed below.

2017 and Projected 2018 Specifications

Tables 1 and 2 show quotas for the 2017 Atlantic surfclam and ocean quahog fishery along with projected quotas for 2018. By providing projected quotas for 2018, NMFS hopes to assist fishery participants in planning ahead. NMFS and the Council will reassess the status of the Atlantic surfclam and ocean quahog fishery in 2017, including the results of new stock assessments for both species. Final 2018 quotas will be published in the **Federal Register** before the start of the 2018 fishing year (January 1, 2018) based on the 2017 review.

TABLE 1—2017 AND PROJECTED 2018 ATLANTIC SURFCLAM MEASURES

Year	Acceptable biological catch (ABC)	Annual catch limit (ACL)	Annual catch target (ACT)	Commercial quota
2017	44,469 mt	44,469 mt	29,364 mt	3.40 million bu (181 million L).
2018	45,524 mt	45,524 mt	29,364 mt	3.4 million bu (181 million L).

TABLE 2—2017 AND PROJECTED 2018 OCEAN QUAHOG MEASURES

Year	ABC	ACL	ACT	Commercial quota
2017	26,100 mt	26,100 mt	26,035 mt	Non-Maine Quota: 5.33 million bu (284 million L). Maine ACT: 100,000 Maine bu (3.52 million L).
Projected 2018	26,100 mt	26,100 mt	26,035 mt	Non-Maine Quota: 5.33 million bu (284 million L). Maine ACT: 100,000 Maine bu (3.52 million L).

The Atlantic surfclam and ocean quahog quotas are specified in ''industry'' bushels of 1.88 ft^3 (53.24 L) per bushel, while the Maine ocean quahog quota is specified in Maine bushels of 1.24 ft^3 (35.24 L) per bushel.

Results of a new stock assessment for the Atlantic surfclam stock were released in November 2016, and a new assessment of the ocean quahog stock will be completed in early 2017. It is expected that the Council will use these assessment results to update the 2018 specifications as needed and recommend specifications for both fisheries through 2020. We anticipate rulemaking for 2018 specifications, with projections for 2019–2020, in the fall of 2017.

Surfclam Minimum Size Suspension

Commercial surfclam data for 2016 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 14.4 percent of the overall commercial landings were composed of surfclams that were less than the 4.75-in (120-mm) default minimum size. This percentage of small clams is higher than in most previous years; however, it is still below the 30-percent trigger specified in regulation. Based on the information available, the Regional Administrator suspends the minimum size limit for Atlantic surfclams for the 2017 fishing year (January 1 through December 31, 2017). A determination on the 2018 minimum size suspension will be made in the fall of 2017 and announced in the **Federal Register**.

Comments

We received eight comments on the proposed rule; six from representatives of Atlantic surfclam and ocean quahog commercial fishing and processing companies and two from the general public. One comment from the general public was critical of NMFS management of the fishery, suggesting quotas be reduced to zero, but offered no supporting information. All other comments strongly supported the status quo quotas and continuing to suspend the surfclam minimum size limit. This final rule maintains status quo quotas and the minimum surfclam size is suspended for 2017, as outlined in the preamble.

Changes From Proposed Rule to Final Rule

There are no changes from the proposed to final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the Atlantic Surfclam and Ocean Quahog FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds good cause to waive the 30-day delay in effectiveness period for this action under the Administrative Procedure Act (5 U.S.C. 553(d)(3)).

First, if this action is not effective on January 1, 2017, the current suspension of the surfclam minimum size limit would expire. Timely publication of the 2017 minimum size suspension for the January 1 start of the fishing year relieves this restriction, thus exempting the minimum size suspension under this rule from the requirement for a 30-day delay in effectiveness (5 U.S.C. 553(d)(1)). There is also good cause to waive the 30-day delay because, until the new suspension is effective, fishing vessels would be subject to the size limit and would incur additional expense and lost fishing time to have crew members sort the catch to comply with the default minimum surfclam length of 4.75 inches (12.065 cm). The minimum surfclam size has routinely been suspended each year for over a decade. If the minimum size were again in effect without prior warning, it would cause significant confusion for industry members and disruption to normal fishing operations. Vessels operating unaware of the reinstatement of the minimum size may also violate the applicable regulation.

Second, a delay in the effective date of this final rule may also cause substantial confusion. The regulations at 50 CFR 648.72(c) state that ''annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section,'' and requires NMFS to publish ''notification in the **Federal Register** if the previous year's specifications will not be changed.'' Members of the fishing industry may not be aware that quotas remain effective without the timely publication of a notice to inform them that specifications are not being changed. As a result, fishermen could be hesitant to fish or transfer cage tags if they think there are no quotas or that the associated cage tags may not be valid.

Delaying the effectiveness of this rule past January 1, 2017, would provide no benefit to the public or the fishing industry. On the contrary, there could potentially be significant disruption and cost to the fishery if the minimum size suspension is not in place on January 1. Therefore, there is good cause to waive the 30-day delay in effectiveness, as not doing so would be contrary to the public's interest.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This final rule does not duplicate, overlap, or conflict with other Federal rules.

This final rule is exempt from the requirements of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 19, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–31077 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XF109

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using pot gear to catcher/processors (C/Ps) using hook-and-line gear in the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to allow the 2016 total allowable catch of Pacific cod to be harvested.

DATES: Effective December 21, 2016 through 2400 hours, Alaska local time (A.l.t.), December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 Pacific cod TAC specified for catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI is 14,598 mt as established by the final 2016 and 2017 harvest specifications for groundfish of the BSAI (81 FR 14773, March 18, 2016) and reallocations (81 FR 69445, October 6, 2016; and 81 FR 80006, November 15, 2016). The Regional Administrator has determined that catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear will not be able to harvest 2,500 mt of the remaining 2016 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*5*).

Therefore, in accordance with § 679.20(a)(7)(iii), taking into account the capabilities of the sectors to harvest reallocated amounts of Pacific cod, and following the hierarchies set forth in § 679.20(a)(7)(iii)(A) and (B), NMFS reallocates 2,500 mt of Pacific cod to C/Ps using hook-and-line gear in the Bering Sea and Aleutian Islands management area.

The harvest specifications for Pacific cod included in the final 2016 and 2017 harvest specifications for groundfish of the BSAI (81 FR 14773, March 18, 2016; 81 FR 57491, August 23, 2016; 81 FR 61143, September 6, 2016; 81 FR 69445, October 6, 2016; 81 FR 76530, November 3, 2016; 81 FR 80006, November 15, 2016) are revised as follows: 12,098 for catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, and 114,283 for C/Ps using hook-and-line gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear to C/Ps using hook-and-line gear in the Bering Sea and Aleutian Islands management area. Since these fisheries are currently open, it is important to immediately inform the industry as to the revised allocations.

Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 20, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–31151 Filed 12–21–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XF103

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using trawl gear to vessels using pot gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to allow the 2016 total allowable catch of Pacific cod in the Central Regulatory Area of the GOA to be harvested.

DATES: Effective December 21, 2016 through 2400 hours, Alaska local time (A.l.t.), December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 Pacific cod total allowable catch (TAC) specified for catcher vessels using trawl gear in the Central Regulatory Area of the GOA is 15,226 metric tons (mt), as established by the final 2016 and 2017 harvest specifications for groundfish in the GOA (81 FR 14740, March 18, 2016). The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that catcher vessels using trawl gear in the Central Regulatory Area of the GOA will not be able to harvest 1,000 mt of the 2016 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(B).

In accordance with § 679.20(a)(12)(ii)(B), the Regional Administrator has also determined that vessels using pot gear in the Central Regulatory Area of the GOA currently have the capacity to harvest this excess allocation and reallocates 1,000 mt to vessels using pot gear.

The harvest specifications for Pacific cod included in the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016) and one reallocation (81 FR 15650, March 24, 2016) are revised as follows: 14,226 mt to the annual amount for catcher vessels using trawl gear and 12,680 mt for vessels using pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from catcher vessels using trawl gear to vessels using pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 21, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–31155 Filed 12–21–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XF104

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2017 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2017 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) pollock and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the GOA pollock and Pacific cod TACs are the appropriate amounts based on the best available scientific information for pollock and Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), December 27, 2016, until the effective date of the final 2017

and 2018 harvest specifications for GOA groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 11, 2017.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2015–0110 by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=* NOAA-NMFS-2015-0110, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2016 and 2017 harvest specifications for groundfish in the GOA (81 FR 14740, March 18, 2016) set the 2017 pollock TAC at 254,200 metric tons (mt) and the 2017 Pacific cod TAC at 62,150 mt in the GOA. In December 2016, the North Pacific Fishery Management Council (Council) recommended a 2017 pollock TAC of 208,595 mt for the GOA, which is less than the 254,200 mt established by the final 2016 and 2017 harvest specifications for groundfish in the GOA. The Council also recommended a 2017 Pacific cod TAC of 64,442 mt for the GOA, which is more than the 62,150 mt established by the final 2016 and 2017 harvest specifications for groundfish in the GOA. The Council's recommended 2017 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2016, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock and Pacific cod are a principal prey species for Steller sea lions in the GOA. The seasonal apportionment of pollock and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(iv) specify how the pollock TAC will be apportioned. The regulations at § 679.20(a)(6)(ii) and § 679.20(a)(12)(i) specify how the Pacific cod TAC will be apportioned.

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv) the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2016 SAFE report for this fishery, the current GOA pollock and Pacific cod TACs are incorrectly specified. Consequently, pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2017 GOA pollock TAC to 208,595 mt and the 2017 GOA Pacific cod TAC to 64,442 mt. Therefore, Table 2 of the final 2016 and 2017 harvest specifications for groundfish in the GOA (81 FR 14740, March 18, 2016) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(iv), Table 4 of the final 2016 and 2017 harvest specifications for groundfish in the GOA (81 FR 14740, March 18, 2016) is revised for the 2017 TACs of pollock in the Central and Western Regulatory Area of the GOA.

TABLE 4—FINAL 2017 DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01.]

Season [1]	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total [2]
		%		%		%	
A (Jan 20–Mar 10)	2,232	4.67	34,549	72.29	11,014	23.04	47,796
B (Mar 10–May 31)	2,232	4.67	39,420	82.48	6,143	12.85	47,796
C (Aug 25–Oct 1)	19,569	40.94	12,341	25.82	15,886	33.24	47,796
D (Oct 1–Nov 1)	19,569	40.94	12,341	25.82	15,886	33.24	47,796
Annual Total	43,602		98,652		48,929		191,183

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Pursuant to § 679.20(a)(6)(ii) and § 679.20(a)(12)(i), Table 6 of the final 2016 and 2017 harvest specifications for groundfish in the GOA (81 FR 14740, March 18, 2016) is revised for the 2017 seasonal apportionments and allocation of Pacific cod TAC in the GOA consistent with this adjustment.

TABLE 6—FINAL 2016 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH AMOUNTS IN THE GOA; ALLOCATIONS FOR THE WESTERN GOA AND CENTRAL GOA SECTORS AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (3.5% of TAC)	889	N/A	533	N/A	356
Hook-and-line CV	343	0.70	172	0.70	172
Hook-and-line C/P	4,854	10.90	2,672	8.90	2,182
Trawl CV	9,414	27.70	6,791	10.70	2,623
Trawl C/P	588	0.90	221	1.50	368
All Pot CV and Pot C/P	9,316	19.80	4,854	18.20	4,462
Total	25,404	60.00	15,242	40.00	10,161
Central GOA:					
Jig (1.0% of TAC)	331	N/A	199	N/A	133
Hook-and-line <50 CV	4,790	9.32	3,056	5.29	1,734
Hook-and-line ≥50 CV	2,200	5.61	1,840	1.10	360
Hook-and-line C/P	1,674	4.11	1,347	1.00	327
Trawl CV [1]	13,641	21.14	6,933	20.45	6,708
Trawl C/P	1,377	2.00	657	2.19	720
All Pot CV and Pot C/P	9,121	17.83	5,849	9.97	3,272
Total	33,135	60.00	19,881	40.00	13,254
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	5,903	5,313		590	

Note: Seasonal apportionments may not total precisely due to due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for Pacific cod based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 20, 2016, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 11, 2017.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–31163 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 248
Tuesday, December 27, 2016

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5443; Directorate Identifier 2016–SW–021–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. This proposed AD would require installing an engine flame detector bracket assembly and harness assembly. This proposed AD is prompted by reports of false fire warnings. The proposed actions are intended to prevent the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 27, 2017.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5443; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email *wcs_cust_service_eng.gr-sik@lmco.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Kristopher Greer, Aerospace Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7799; email *kristopher.greer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We propose to adopt a new AD for Sikorsky Model S–92A helicopters with serial numbers 920006 through 920298. This proposed AD would require installing a No. 2 engine outboard flame detector bracket assembly (bracket) and a No. 2 engine flame detector harness assembly (harness), if not already installed or if the bracket was not installed before the harness. This proposed AD is prompted by reports received by Sikorsky of false fire indications from the No. 2 engine outboard flame detectors. Sikorsky attributed the root cause of the false fire warnings to micro pin fretting at the bayonet connection between the sensor and wire harness. Sikorsky consequently developed a new harness to increase stability and reduce the component wear. The proposed actions are intended to prevent a false fire indication, which could lead to an unnecessary emergency landing or ditching.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Related Service Information Under 1 CFR Part 51

We reviewed Sikorsky S–92 Customer Service Notice 92–094, Revision B, dated June 14, 2016, which provides procedures for installing harness part number (P/N) 92310–04201–041.

We also reviewed Sikorsky Special Service Instructions No. 92–107, Revision G, dated February 25, 2016, (SSI No. 92–107) which specifies installing new brackets, P/N 92070–30033–011, 92070–30033–014, and 92070–30033–015, to increase the stability of the No. 2 engine outboard flame detector.

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

Other Related Service Information

We reviewed Sikorsky S–92 Alert Service Bulletin (ASB) 92–26–006, Basic Issue, dated February 25, 2016. This service information provides instructions for installing a new bracket by complying with SSI No. 92–107.

We also reviewed S–92 ASB 92–26–007, Basic Issue, dated June 14, 2016. This service information specifies installing harness P/N 92310–04201–041 after or concurrently with the new bracket.

Proposed AD Requirements

This proposed AD would require installing a bracket and a harness, if not already installed or if the bracket was not installed before the harness, in accordance with Sikorsky service information.

Costs of Compliance

We estimate that this proposed AD would affect 50 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect that installing a new bracket and harness would require 15.25 work hours for a labor cost of about $1,296. Parts would cost $100 for a total cost of about $1,396 per helicopter and $69,800 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sikorsky Aircraft Corporation: Docket No. FAA–2016–5443; Directorate Identifier 2016–SW–021–AD.

(a) Applicability

This AD applies to Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters, serial numbers 920006 through 920298, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a false fire warning. This condition could result in an unnecessary emergency landing or ditching.

(c) Comments Due Date

We must receive comments by February 27, 2017.

(d) Compliance

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

(e) Required Actions

Within 180 hours time-in-service:

(1) For helicopters with a No. 2 engine outboard flame detector bracket assembly (bracket) (either part number (P/N) 92070–30033–014, or both P/N 92070–30033–011 and 92070–30033–015) installed, and with a No. 2 engine flame detector harness assembly (harness) P/N 92310–04201–041 installed: If the harness was installed before the bracket, replace the harness.

(2) For helicopters with a bracket (either P/N 92070–30033–014, or both P/N 92070–30033–011 and 92070–30033–015) installed, and without a harness P/N 92310–04201–041 installed: remove the harness and install harness P/N 92310–04201–041 by following the Accomplishment Instructions, section 3.C.1, of Sikorsky S–92 Customer Service Notice 92–094, Revision B, dated June 14, 2016 (CSN 92–094).

(3) For helicopters without a bracket (either P/N 92070–30033–014, or both P/N 92070–30033–011 and 92070–30033–015) installed, and with a harness P/N 92310–04201–041 installed:

(i) Install a bracket P/N 92070–30033–014 by following the Instructions, paragraph D, of Sikorsky Special Service Instructions No. 92–107, Revision G, dated February 25, 2016 (SSI 92–107).

(ii) Replace the harness.

(4) For helicopters without a bracket (either P/N 92070–30033–014, or both P/N 92070–30033–011 and 92070–30033–015) installed, and without a harness P/N 92310–04201–041 installed:

(i) Install a bracket P/N 92070–30033–014 by following the Instructions, paragraph D, of SSI 92–107.

(ii) Remove the harness and install harness P/N 92310–04201–041 by following the Accomplishment Instructions, section 3.C.1, of CSN 92–094.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Kristopher Greer, Aerospace Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7799; email *kristopher.greer@faa.gov.*

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

(g) Additional Information

Sikorsky S–92 Alert Service Bulletin 92–26–006, Basic Issue, dated February 25, 2016, and Sikorsky S–92 Alert Service Bulletin 92–26–007, Basic Issue, dated June 14, 2016, which are not incorporated by reference, contain additional information about the subject of this proposed rule. For service information identified in this proposed rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–

Winged–S or 203–416–4299; email *wcs_cust_service_eng.gr-sik@lmco.com.* You may review a copy of information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2612, Fire Detection.

Issued in Fort Worth, Texas, on December 7, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–30051 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–13–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); Revised 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 revised draft guidance for industry entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition): Guidance for Industry.'' The revised draft guidance supersedes the version of the food facility registration draft guidance that we announced on November 8, 2016. When finalized, this guidance is 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 revised draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments on the revised draft guidance by March 27, 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 revised 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 revised draft guidance for industry entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition): Guidance for Industry.'' The revised draft guidance supersedes the version of the food facility registration draft guidance that we announced on November 8, 2016 (81 FR 78526). We are issuing the revised draft guidance consistent with our good guidance practices regulation (21 CFR

10.115). The revised draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an 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 (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 revised 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 (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 (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.

This edition of the 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 since the sixth edition are identified as such in the body of the guidance.

On November 8, 2016, we announced the availability of a draft guidance entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition): Guidance for Industry.'' The draft guidance contained 15 sections of a multi-section guidance intended to provide updated information relating to the food facility registration requirements of section 415 of the FD&C Act. We reserved two sections in the draft guidance and stated that we would issue a revised draft guidance at a later date that would include those reserved sections.

This revised draft guidance supersedes the food facility registration draft guidance that we issued in November 2016. In the revised draft guidance, we are including the 15 sections that were announced in the **Federal Register** on November 8, 2016, as well as including the two sections we reserved, ''Who is Exempt from Registration?'' and ''Definitions,'' from the draft guidance. The revised draft guidance also includes an additional question and answer related to mobile facilities in the section entitled ''What Information is Required in the Registration?''

We are inviting comments on the revised draft guidance as a whole. As FDA considers the development of the final guidance, we will review comments received on the revised draft guidance, as well as the comments received on the food facility registration draft guidance we announced on November 8, 2016.

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: December 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31193 Filed 12–23–16; 8:45 am]

BILLING CODE 4164–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3004

[Docket No. RM2017–2; Order No. 3671]

Changes to Procedures for the Freedom of Information Act

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is initiating a proceeding to revise its rules governing requests for agency records made under the Freedom of Information Act (FOIA), in accordance in with the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: Comments are due on or before January 26, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Background
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I. Introduction

The Postal Regulatory Commission (the Commission) proposes to revise its rules governing requests for agency records made under the Freedom of Information Act (FOIA), 5 U.S.C. 552, in accordance with the FOIA Improvement Act of 2016 (the Act), Public Law 114–185, 130 Stat. 538. Pursuant to section 3(a) of the Act, the head of each agency ''shall review the regulations of such agency and shall issue regulations on procedures for the disclosure of records under [FOIA]'' to implement the Act within 180 days of its enactment date. The Commission hereby provides this notice, in conformance with the Act's deadline, describing its proposed changes and eliciting public comment.

II. Background

The Act was signed into law on June 30, 2016, and mandates that federal agencies review and revise their regulations by December 27, 2016. Among other things, the Act expands the dispute resolution process available to requesters, limits the use of FOIA exemptions, and codifies the so-called ''Rule of 3'' for frequently requested records. In order to implement the Act, the Commission must modify its FOIA regulations, which are set out in 39 CFR part 3004. The proposed modifications are set forth below, along with a brief description of the included changes.

III. Proposed Rules

The rules requiring changes in this notice of proposed rulemaking, pursuant to the Act, are §§ 3004.2, 3004.9, 3004.11, 3004.13, 3004.43, and 3004.52.

Proposed § 3004.2 adds the duty to identify and post frequently requested records. Additionally, the modified rule limits the Commission's use of FOIA exemptions. Under the revised section, the Commission will only withhold information if it ''reasonably foresees'' that disclosure will harm an interest protected by an exemption or disclosure is otherwise prohibited by law.

Proposed § 3004.9 describes how to file a FOIA request. This section is a summary of basic information, added for clarity purposes.

Proposed § 3004.11 applies a 25-year sunset provision to the deliberative process privilege, which exempts certain inter-agency and intra-agency memoranda and letters from FOIA. Under the new rule, the deliberative process privilege does not apply to records created 25 years or more before a records request.

Proposed § 3004.13 specifies that frequently requested records will be posted on the Commission's Web site.

Proposed § 3004.43 states that the Commission will offer the services of its FOIA Public Liaison to assist the requester and to provide dispute resolution services if necessary.

Proposed § 3004.52 revises the Commission's rules for collecting fees when the Commission cannot issue its response during the initial 20-day response period.

IV. Comments Requested

Interested persons are invited to provide written comments concerning the proposed rule. Comments are due no later than 30 days after the date of publication of this notice in the **Federal Register**. All comments and suggestions received will be available for review on the Commission's Web site, *http://www.prc.gov.*

Pursuant to 39 U.S.C. 505, Laura Zuber is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

V. Ordering Paragraphs

It is ordered:

1. Docket No. RM2017–2 is established for the purpose of amending the Commission's rules governing the Freedom of Information Act.

2. Pursuant to 39 U.S.C. 505, Laura Zuber is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Interested persons may submit initial comments no later than 30 days from the date of publication of this notice in the **Federal Register**.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

List of Subjects in 39 CFR Part 3004

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3004—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 3004 continues to read as follows:

Authority: 5 U.S.C. 552; 39 U.S.C. 503.

■ 2. Revise § 3004.2 to read as follows:

§ 3004.2 Presumption of openness.

(a) The Commission shall be proactive and timely in identifying and posting public records and other frequently requested records to its Web site.

(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness. The Commission will only withhold information only if it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption, as enumerated in § 3004.11, or disclosure is otherwise prohibited by law.

■ 3. Add § 3004.9 to read as follows:

§ 3004.9 How to make a request.

(a) To request Commission records, please contact the Secretary of the Commission via letter, telephone, or use the online request form provided on the Commission's Web site at *http://www.prc.gov/foia/.*

(b) Requests must describe the records sought in sufficient detail to enable the Commission to locate them with a reasonable amount of effort. To the extent possible, please provide any specific information that might assist the Commission in responding to the request.

(c) Requesters must provide contact information to assist the Commission in communicating with them and providing Commission records.

■ 4. Amend § 3004.11 by revising paragraph (f) to read as follows:

§ 3004.11 Use of exemptions.

* * * * *

(f) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records

created 25 years or more before the date on which the records were requested.

* * * * *

■ 5. Amend § 3004.13 by revising paragraph (a) to read as follows:

§ 3004.13 Notice and publication of public information.

(a) Decisions, advisory opinions, orders, public reports, and frequently requested agency records will be made available to the public by posting on the Commission's Web site at *http://www.prc.gov.*

* * * * *

■ 6. Amend § 3004.43 by revising paragraph (a) and adding paragraph (d)(4) to read as follows:

§ 3004.43 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays and legal holidays) after receipt of a request for a Commission record, the Secretary or Assistant Secretary will notify the requester of its determination to grant or deny the request and the right to seek assistance from the Commission's FOIA Public Liaison.

* * * * *

(d) * * *

(4) The right to seek dispute resolution services from the Commission's FOIA Public Liaison or the Office of Government Information Services.

* * * * *

■ 7. Revise § 3004.45 to read as follows:

§ 3004.45 Extension of response time limit.

(a) The Commission may extend the time limit for a response to a request or appeal for up to 10 business days due to unusual circumstances, as specified in 5 U.S.C. 552(a)(6)(B)(iii). In such a case, the Commission will notify the requester in writing of the unusual circumstance causing the extension and the date by which the Commission estimates that the request can be processed.

(b) If an extension will exceed 10 business days, the Commission will:

(1) Provide the requester with an opportunity to limit the scope of the request or to arrange an alternative timeframe for processing the request or a modified request. The applicable time limits are not tolled while the Commission waits for a response from the requester under this subsection; and

(2) Make its FOIA Public Liaison available to the requester and apprise the requester of their right to seek dispute resolution services from the Office of Government Information Services.

■ 8. Amend § 3004.52 by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 3004.52 Fees—general provisions.

* * * * *

(e) No requester will be charged a fee after any search or response which occurs after the applicable time limits as described in §§ 3004.43 and 3004.44, unless:

(1) The Commission extends the time limit for its response due to unusual circumstances, pursuant to § 3004.45(a), and the Commission completes its response within the extension of time provided under that section; or

(2) The Commission extends the time limit for its response due to unusual circumstances, pursuant to § 3004.45(a), and more than 5,000 pages are necessary to respond to the request and the Commission has discussed with the requester how they could effectively limit the scope of the request or made at least three good faith attempts to do so; or

(3) A court has determined that exceptional circumstances exist and excused the Commission from responding by court order.

(f) The Commission may, however, charge fees for a partial grant of a request while it reviews records that may be exempt and may be responsive to the request, if it is made within the applicable time limits.

[FR Doc. 2016–30905 Filed 12–23–16; 8:45 am]

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POSTAL REGULATORY COMMISSION

39 CFR Part 3622

[Docket No. RM2017–3; Order No. 3673]

Statutory Review of the System for Regulating Market Dominant Rates and Classifications

AGENCY: Postal Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is initiating a review to determine whether the current system of regulating rates and classes for market dominant products is achieving the objectives, taking into account the factors, established by Congress under the Postal Accountability and Enhancement Act of 2006. This advance notice informs the public of the docket's initiation, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 20, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On December 20, 2006, the Postal Accountability and Enhancement Act (PAEA) was signed into law.[1] The PAEA required that the Commission establish a modern system of regulating rates and classes for market dominant products.[2] The PAEA also mandated that the Commission review this system 10 years later to determine if it is achieving the objectives, taking into account the factors, established by Congress.[3] If the Commission determines that the system is not achieving the objectives, taking into account the factors, the Commission may, by regulation, make modifications or adopt an alternative system as necessary to achieve the objectives. *Id.*

In accordance with 39 U.S.C. 3622, this Notice and Order establishes the beginning of the Commission's statutory review of the ratemaking system. Based on the Commission's analysis and relevant information obtained through this proceeding, the Commission will determine if the objectives, taking into account the factors, are being achieved by the current system. If the Commission finds that the objectives, taking into account the factors, are not being achieved, the Commission may propose modifications to the system or propose to adopt an alternative system as necessary to achieve the objectives.

II. Scope of the Review[4]

The Commission intends to examine all aspects of the ratemaking system

[1] Pub. L. 109–435, 120 Stat. 3198 (2006).

[2] 39 U.S.C. 3622(a).

[3] 39 U.S.C. 3622(d)(3).

[4] The Postal Service previously petitioned the Commission to initiate a proceeding to clarify the scope of the statutory review. *See* Docket No. RM2016–9, Petition of the United States Postal

Continued

provided within section 3622, including the annual limitation on the percentage changes in rates,[5] the schedule for rate changes,[6] the 45-day notice before the implementation of rate adjustments,[7] expedited rate changes due to extraordinary or exceptional circumstances,[8] class level application of the annual limitation,[9] the rounding of rates and fees,[10] the use of unused rate authority,[11] and workshare discounts.[12]

III. Review Framework

To assist commenters, the Commission presents preliminary definitions for the objectives as well as potential methods that may be used to evaluate whether the objectives, taking into account the factors, are being achieved. Proposed definitions and potential evaluation methods for each objective are discussed in section IV. After the Commission receives comments and conducts its analysis, the Commission will determine if the current system is achieving the objectives while taking into account the factors listed in 39 U.S.C. 3622(c). If the Commission finds the system is not achieving these objectives, taking into account the factors, it may propose rules that modify the system or adopt an alternative system to achieve the objectives.

IV. Objectives

Based on research of legislative history, Commission precedent, stakeholder comments in various past dockets, and other sources, the Commission presents preliminary definitions for each objective. In addition, the Commission suggests measurable key concepts within each objective. These key concepts could be measured quantitatively and/or qualitatively to determine if each objective as a whole has been achieved. Because the statute does not require that factors be independently achieved, the Commission is not proposing definitions or measurement methods for the factors. However, over the course of the review, the factors will be taken into account for each objective, as required by the statute.

A. *Objective 1:* To maximize incentives to reduce costs and increase efficiency.[13]

Preliminary definition. A system achieving Objective 1 uses available mechanisms, such as flexibility under the price cap, pricing differentials, and workshare discounts, to the fullest extent possible to incentivize the reduction of costs and increases in operational and pricing efficiency.

Potential measurement. There are three measurable key concepts within this objective: (1) Maximize incentives, (2) reduce costs, and (3) increase efficiency.

First, ''maximize incentives'' could be measured by determining if the maximum benefit was provided by each incentive mechanism (*e.g.,* price cap, price differentials, and workshare discounts), taking into account associated statutory constraints. For example, a review of whether workshare discounts provided the maximum incentives possible would take into account the constraints set forth in 39 U.S.C. 3622(e).

Second, measuring ''reduce costs'' could include an evaluation of the costs, including unit operating costs and controllable costs, before and after the PAEA was implemented.

Third, ''increase efficiency'' could include a review of operational and pricing efficiency. Measuring operational efficiency could involve reviewing trend analyses of total factor productivity, real unit operating costs, productivity data, and workhours. To measure pricing efficiency,[14] a comparison of actual prices and prices that adhere to principles of efficient component pricing could be conducted.

B. *Objective 2:* To create predictability and stability in rates.[15]

Preliminary definition. A system achieving Objective 2 fosters rates, including prices for all market dominant products and promotions, that are capable of being consistently forecast with regard to timing and magnitude and that do not include sudden or extreme fluctuations.

Potential measurement. There are two measurable key concepts within this objective: (1) Predictability, and (2) stability.

Potential approaches for measuring predictability include measuring the time between notices of market dominant price adjustments, or the amount of time between a notice of market dominant price adjustment and the effective date of those prices. The outcomes of these measurements could be compared to price adjustments prior to the passage of the PAEA, or other relevant benchmarks to measure the predictability of the current system.

One potential method for measuring stability is to measure average price increases over time and compare them to objective measures, such as the Consumer Price Index for All Urban Consumers (CPI–U). Another method may be to evaluate the number of price categories that deviate significantly from percentage changes in objective measures, such as the CPI–U or the average price adjustment for the class or product.

C. *Objective 3:* To maintain high quality service standards established under section 3691.[16]

Preliminary definition. A system achieving Objective 3 is designed for the Postal Service to consistently achieve, for each class of mail, stated days to delivery at a desired target rate.

Potential measurement. The key measurable concept within this objective is ''high quality service standards.''

Potential approaches for the measurement of ''high quality service standards'' include measuring the Postal Service's performance, both for discrete time periods and since the passage of the PAEA. Some of these measurements are already conducted in the Commission's Annual Compliance Determination (ACD) Reports.[17] For example, the Commission typically details the number of percentage points a class or product is above or below its service performance target.[18] In addition, measurement of this objective could include analysis of changes in service standards over time, analysis of service performance results over time, and determining how satisfied mail users are with service standards.

D. *Objective 4:* To allow the Postal Service pricing flexibility.[19]

Preliminary definition. A system achieving Objective 4 allows for the Postal Service to exercise its discretion

Service for the Initiation of a Proceeding to Clarify the Scope of the Review of the System for Regulating Market-Dominant Rates and Classes, April 7, 2016. In Order No. 3237, the Commission found the petition premature and held the petition in abeyance pending the start of the review. *See* Docket No. RM2016–9, Order No. 3237, Order Holding Petition in Abeyance, April 12, 2016. The Commission defines the scope of the review at this time.

[5] 39 U.S.C. 3622(d)(1)(A); *see also* 39 U.S.C. 3622(d)(1)(D).

[6] 39 U.S.C. 3622(d)(1)(B).

[7] 39 U.S.C. 3622(d)(1)(C).

[8] 39 U.S.C. 3622(d)(1)(E).

[9] 39 U.S.C. 3622(d)(2)(A).

[10] 39 U.S.C. 3622(d)(2)(B).

[11] 39 U.S.C. 3622(d)(2)(C).

[12] 39 U.S.C. 3622(e).

[13] 39 U.S.C. 3622(b)(1).

[14] Pricing can promote allocative efficiency by setting prices at marginal costs or by applying second-best pricing. Pricing can also promote productive efficiency by application of the Efficient Component Pricing Rule.

[15] 39 U.S.C. 3622(b)(2).

[16] 39 U.S.C. 3622(b)(3).

[17] *See, e.g.,* Docket No. ACR2015, Annual Compliance Determination, March 28, 2016, Chapter 5 (FY 2015 ACD).

[18] *See, e.g.,* FY 2015 ACD at 123.

[19] 39 U.S.C. 3622(b)(4).

to set prices, the price structure, and the price schedule for market dominant products, subject to other requirements under the law.

Potential measurement. The key measurable concept within this objective is ''pricing flexibility.''

Potential measurement methods for this term include comparisons to other systems, such as the pricing flexibility afforded to and/or exercised by foreign posts, utilities, the Postal Service pre-PAEA, and private carriers. Measurement of ''pricing flexibility'' could also include a review of price adjustment proceedings and Annual Compliance Report (ACR) dockets, which highlight the pricing flexibility exercised by the Postal Service. Analysis of the time it takes for the approval of a price adjustment, the number of price categories approved without material alteration, and reviewing discussions of pricing flexibility in other Commission proceedings could also be conducted to determine if this objective is being achieved.

E. *Objective 5:* To assure adequate revenues, including retained earnings, to maintain financial stability.[20]

Preliminary definition. In a system achieving Objective 5, the Postal Service is financially solvent while able to respond to changes in its environment (*e.g.,* volume erosion, legal or regulatory framework, demographic trends) and meet its statutory obligations (*e.g.,* pricing and universal service).

Potential measurement. The key measurable concept within this objective is ''financial stability,'' which incorporates adequate revenues and retained earnings.

''Financial stability'' could be measured by reviewing short-term, medium-term, and long-term financial stability of the Postal Service. Short-term financial stability could be measured by the Postal Service's operating profit (*i.e.,* operational revenue—operational expenses). Medium-term financial stability could be measured by economic profit (*i.e.,* total revenue − [variable cost + fixed cost]). Long-term financial stability could be measured by solvency (*i.e.,* total assets/total liabilities).

The Commission has analyzed these concepts in its recent financial reports and could potentially use those analyses to determine if this objective is being achieved.[21] For example, in Chapter 4 of its FY 2015 Financial Report, the Commission included an analysis of the Sustainability, Liquidity, Activity, and Financial Solvency of the Postal Service's financial status.[22]

F. *Objective 6:* To reduce the administrative burden and increase the transparency of the ratemaking process.[23]

Preliminary definition. A system achieving Objective 6 balances the (sometimes competing) concepts of reducing the costs imposed by rate proceedings or regulatory requirements generated by those proceedings, and the availability of comprehensive understandable material relating to each rate proceeding.

Potential measurement. There are two measurable key concepts within this objective: (1) Reduce the administrative burden, and (2) increase the transparency. In order to achieve this objective, the ratemaking system must balance reducing administrative burden with increasing transparency.

''Reducing the administrative burden'' of the ratemaking process could be measured by evaluating the complexity of rate adjustment filings and proceedings and/or quantifying the length, number of information requests and/or staff hours required to review the price adjustment proposal, ACRs, complaints, or dockets related to price setting.

''Increasing transparency'' could be measured in several ways. An analysis of the necessary interaction between stakeholders and the Postal Service and/or Commission could be conducted. Another option could be to analyze the amount and type of information filed under seal compared to publicly available information. These features could also be compared to levels of transparency and administrative burden present prior to the passage of the PAEA.

G. *Objective 7:* To enhance mail security and deter terrorism.[24]

Preliminary definition. A system achieving Objective 7 encourages methods of safeguarding the mail system from illegal or dangerous use, or terrorism.

Potential measurement. There are two measurable key concepts within this objective: (1) Enhance mail security, and (2) deter terrorism. Possible metrics to determine if Objective 7 is being achieved include a review of available safeguards (and associated available funds) that are intended to enhance security and deter terrorism, and a review of the availability of an exigent-like provision to ensure funds are available to respond to specific threats.

H. *Objective 8:* To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.[25]

Preliminary definition. A system achieving Objective 8 requires that rates and classifications are linked to distinct cost or market characteristics, and the amount charged for each service is neither excessive to the mailer nor threatens the financial integrity of the Postal Service.

Potential measurement. There are two measurable key concepts within this objective: (1) Just, and (2) reasonable. These two concepts are associated with both the schedule of rates and the schedule of classifications.

To determine whether the schedule of rates and classifications is ''just,'' a review of instances of excessive price increases could be conducted, including a review of classification changes. A review of price and cost relationships could also be conducted to ensure that customers are protected from misuse of the Postal Service's monopoly power. Additionally, a review of the cost or market characteristics that define a price category, product, or service could be conducted.

To determine whether the schedule of rates and classifications is ''reasonable,'' an examination of the relationship between price and cost could be conducted to ensure prices and classifications do not threaten the Postal Service's financial integrity. Another option to measure the concept ''reasonable'' could be an examination of the total compensation provided by products/services, classes, and all market dominant classes.

I. *Objective 9:* To allocate the total institutional costs of the Postal Service appropriately between market dominant and competitive products.[26]

Preliminary definition. A system achieving Objective 9 has a mechanism to appropriately divide total institutional costs between market dominant and competitive products in a manner reflecting the relevant statutory considerations.

Potential measurement. The key measurable concept within this objective is ''allocate the total institutional costs appropriately.'' This objective is related to sections 3633(a)(3) and 3633(b). The measurement of

[20] 39 U.S.C. 3622(b)(5).

[21] *See, e.g.,* FY 2015 Financial Analysis of United States Postal Service Financial Results and 10–K Statement, March 29, 2016 (FY 2015 Financial Report).

[22] *See* FY 2015 Financial Report at 75–86.

[23] 39 U.S.C. 3622(b)(6).

[24] 39 U.S.C. 3622(b)(7).

[25] 39 U.S.C. 3622(b)(8).

[26] 39 U.S.C. 3622(b)(9).

Objective 9 could rely on a historical review of the allocation of institutional costs between market dominant and competitive products. The measurement of this objective could also include a review of any action the Commission takes to analyze the competitive products' minimum contribution to institutional costs.

V. Notice of Commission Action

Using this framework of potential definitions and measurement methods, the Commission establishes Docket No. RM2017–3 to begin its review of the market dominant ratemaking system. The Commission invites comments from interested persons regarding the process and structure of the review, as well as whether the current system is achieving the objectives, taking into account the factors. In particular, the Commission invites comments in response to the following questions:

1. Is the framework proposed by the Commission appropriate for the review?

a. For each objective, is the preliminary definition reasonable? If not, please suggest alternative definitions.

b. For each objective, are the potential metrics for measuring the achievement of the objective reasonable? If not, please suggest alternative metrics for measuring whether the objective is being achieved.

2. If the proposed framework is not appropriate for the review, please identify the framework that should be used for the review and describe how to measure the achievement of the objectives in that alternative framework.

3. Based on the Commission's proposed framework or an alternative framework provided in response to question 2, is the current system achieving each objective, while taking into account the factors? Please note that review of the system shall be limited to section 3622 as discussed in section II above.

4. If the system is not achieving the objectives, while taking into account the factors, what modifications to the system should be made, or what alternative system should be adopted, to achieve the objectives?

Comments are due no later than March 20, 2017. No reply comments will be accepted. Commission regulations require that comments be filed online according to the process outlined at 39 CFR 3001.9(a). Additional information regarding how to submit comments online can be found at: *http://www.prc.gov/how-to-participate.* However, given the unique nature of this docket, the Commission will waive these requirements for filers who mail their comments.[27] All information and comments provided, whether filed through the Commission's filing system or sent by mail, will be made available on the Commission's Web site (*http://www.prc.gov*).

Pursuant to 39 U.S.C. 505, the Commission appoints Richard A. Oliver to represent the interests of the general public (Public Representative) in this proceeding.

VI. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2017–3 to initiate the review of the market dominant ratemaking system as required by 39 U.S.C. 3622.

2. Comments regarding the process and structure of the review, as well as whether the current system is achieving the objectives, while taking into account the factors, and if not, whether and what modifications to the system or an alternative system should be adopted as necessary to achieve the objectives, are due no later than March 20, 2017.

3. Pursuant to 39 U.S.C. 505, Richard A. Oliver is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–31052 Filed 12–23–16; 8:45 am]

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[27] Filers who choose to mail in their comments should be mindful of possible delays given the irradiation process for mail delivered to the Commission.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0726; FRL–9957–12–Region 9]

Approval and Limited Approval and Limited Disapproval of Air Quality Implementation Plans; California; Mendocino County Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on four permitting rules submitted as a revision to the Mendocino County Air Quality Management District (''MCAQMD'' or ''the District'') portion of the applicable state implementation plan (SIP) for the State of California pursuant to requirements under the Clean Air Act (CAA or Act). We are proposing a limited approval and limited disapproval of one rule and we are proposing to approve the remaining three permitting rules. The submitted revisions include amended rules governing the issuance of permits for stationary sources, including review and permitting of minor sources, and major sources and major modifications under part C of title I of the Act. The intended effect of these proposed actions is to update the applicable SIP with current MCAQMD permitting rules and to set the stage for remedying certain deficiencies in these rules. If finalized as proposed, the limited disapproval actions would trigger an obligation for EPA to promulgate a Federal Implementation Plan (FIP) for the specific New Source Review (NSR) program deficiencies unless California submits and we approve SIP revisions that correct the deficiencies within two years of the final action.

DATES: Any comments must arrive by January 26, 2017.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–OAR–2016–0726 at *http://www.regulations.gov,* or via email to *r9airpermits@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, by phone: (415) 972–3534 or by email at *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

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I. The State's Submittal

A. Which rules did the State submit?

On November 15, 2016, California submitted amended regulations to EPA for approval as revisions to the MCAQMD portion of the California SIP under the Clean Air Act. Collectively, the submitted regulations comprise the District's current program for preconstruction review and permitting of new or modified stationary sources. This SIP revision submittal, referred to herein as the ''SIP submittal'' or ''submitted rules,'' represents a significant update to the District's preconstruction review and permitting program and is intended to satisfy the requirements under part C (prevention of significant deterioration) (PSD) of title I of the Act as well as the general preconstruction review requirements for minor sources under section 110(a)(2)(C) of the Act (minor NSR).

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the District and submitted to the EPA by the California Air Resources Board, which is the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED NSR RULES

Rule No.	Rule title	Amended	Submitted
1–130	Definitions	9/20/16	11/15/16
1–200	Permit Requirements	9/20/16	11/15/16
1–220	New Source Review Standards (Including PSD Evaluations)	9/20/16	11/15/16
1–230	Action on Applications	9/20/16	11/15/16

The rule submittals were determined to meet the completeness criteria 40 CFR part 51, appendix V on December 5, 2016. A completeness finding must be made before formal EPA review. Each of these submittals includes evidence of public notice and adoption of the regulation. Our technical support document (TSD) provides additional background information on each of the submitted rules.

B. What are the existing MCAQMD rules governing stationary source permits in the California SIP?

Table 2 lists the rules that make up the existing SIP-approved rules for new or modified stationary sources in MCAQMD. All of these rules would be replaced or deleted from the SIP if EPA takes final action on the proposed approval of the submitted set of rules listed in Table 1.

TABLE 2—EXISTING SIP RULES

Rule No.	Rule title	SIP Approval date	**Federal Register** citation
130	Definitions	5/6/11	76 FR 26192.
200	Permit Requirements	4/12/89	54 FR 14650.
220	New Source Review Standards	7/31/85	50 FR 30942.
230	Action on Applications	7/31/85	50 FR 30942.

C. What is the purpose of this proposed rule?

The purpose of this proposed rule is to present our evaluation under the CAA and the EPA's regulations of the submitted rules adopted by the District as identified in Table 1. We provide our reasoning in general terms below but provide more detailed analysis in our TSD, which is available in the docket for this proposed rulemaking.

II. EPA's Evaluation

A. How is EPA evaluating the rules?

EPA has reviewed the rules submitted by MCAQMD governing PSD and minor NSR for stationary sources for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for stationary source permitting programs in 40 CFR part 51, sections 51.160 through 51.164 and 51.166, and the CAA requirements for SIP revisions in CAA section 110(l).[1] As described below, EPA is proposing a combination of actions consisting of limited approval and limited disapproval of Rule 220 (New Source Review); full approval of Rules 130 (Definitions), 200 (Permit Requirements), and 230 (Action on Applications).

B. Do the rules meet the evaluation criteria?

With respect to procedures, CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. Based on our review of the public process documentation included in the various submittals, we find that MCAQMD has provided sufficient evidence of public notice and opportunity for comment and public

[1] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

hearings prior to adoption and submittal of these rules to EPA.

With respect to substantive requirements, we have evaluated each submitted rule in accordance with the CAA and regulatory requirements that apply to: (1) General preconstruction review programs for minor sources under section 110(a)(2)(C) of the Act and 40 CFR 51.160–164, and (2) PSD permit programs under part C of title I of the Act and 40 CFR 51.166. For the most part, the submitted rules satisfy the applicable requirements for these permit programs and would strengthen the applicable SIP by updating the regulations and adding requirements to address new or revised PSD permitting requirements promulgated by EPA in the last several years; however, the submitted rules also contain specific deficiencies which prevent full approval of Rule 220. Below, we discuss generally our evaluation of MCAQMD's submitted rules and the deficiencies that are the basis for our proposed action on these rules. Our TSD contains a more detailed evaluation and recommendations for program improvements.

1. Minor Source Permits

Section 110(a)(2)(C) of the Act requires that each SIP include a program to provide for ''regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D'' of title I of the Act. Thus, in addition to the permit programs required in parts C and D of title I of the Act, which apply to new or modified ''major'' stationary sources of pollutants, each SIP must include a program to provide for the regulation of the construction and modification of any stationary source within the areas covered by the plan as necessary to assure that the national ambient air quality standards (NAAQS) are achieved. These general pre-construction requirements are commonly referred to as ''minor'' or ''general'' NSR and are subject to EPA's implementing regulations in 40 CFR 51.160–51.164.

Rules 130—*Definitions,* 200—*Permit Requirements,* 220—*New Source Review Standards,* and 230—*Action on Applications,* contain the requirements for review and permitting of individual minor stationary sources in MCAQMD. These rules satisfy the statutory and regulatory requirements for minor NSR programs. The changes the District made to the rules listed above as they pertain to the minor source program were largely administrative in nature and provide additional clarity to the rules.

2. Prevention of Significant Deterioration

Part C of title I of the Act contains the provisions for the prevention of significant deterioration of air quality in areas designated ''attainment'' or ''unclassifiable'' for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such areas. EPA's regulations for PSD permit programs are found in 40 CFR 51.166. MCAQMD is currently designated as ''attainment'' or ''unclassifiable/attainment'' for all NAAQS pollutants.

The submitted rules contain the requirements for review and permitting of minor and PSD sources in MCAQMD. The rules satisfy most of the statutory and regulatory requirements for PSD permit programs, but Rule 220 also contains some minor deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, Rule 220 does not contain any provisions specifying that required air quality modeling shall be based on the applicable models, databases, and other requirements specified in Part 51 Appendix W, as required by 40 CFR 51.160(f) and 51.166(f). Provisions pertaining to modeling requirements must also specify the requirements for using any alternative models. To correct the deficiency, the District should add the required modeling provisions to Rule 220.

Second, Rule 220 does not contain any provisions to satisfy the requirements of 40 CFR 51.166(r)(2) that require permit programs to include specific language providing that if ''. . . a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements . . . '' of the PSD program shall apply to the source or modification as though construction had not yet commenced on the source or modification. This deficiency can be corrected by adding the language found in 40 CFR 51.166(r)(2).

Compared to the existing SIP approved PSD program in Rule 220 (approved July 31, 1985), however, submitted Rule 220 represents an overall strengthening of the District's PSD program, in large part because the rule includes updated PSD provisions to regulate new or modified major stationary sources of $PM_{2.5}$ emissions, which are unregulated under the existing SIP PSD program. Because submitted Rule 220 strengthens the SIP, we are proposing a limited approval and limited disapproval based on the deficiencies listed above.

3. Nonattainment New Source Review

The CAA defines ''nonattainment areas'' as air quality planning areas that exceed the primary or secondary NAAQS for the given criteria pollutant. The MCAQMD is not designated nonattainment for any NAAQS. Because the MCAQMD is not currently classified nonattainment for any NAAQS, we are not evaluating the submitted rules for approval under 40 CFR 51.165, which contains the requirements for nonattainment NSR programs.

4. Section 110(l) of the Act

Section 110(l) prohibits EPA from approving a revision of a plan if the revision would ''interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the Act].''

MCAQMD is currently designated attainment or unclassifiable/attainment for all NAAQS pollutants. We are unaware of any reliance by the District on the continuation of any aspect of the permit-related rules in the MCAQMD portion of the California SIP for the purpose of continued attainment or maintenance of the NAAQS. Our approval of the MCAQMD SIP submittal would strengthen the applicable SIP. Therefore, we find that this SIP revision represents a strengthening of MCAQMD's minor NSR and PSD programs compared to the existing SIP rules that we previously approved, and that our approval of the SIP submittal would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

Given all these considerations and in light of the air quality improvements in MCAQMD, we propose that our approval of these updated NSR regulations into the California SIP would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

5. Conclusion

For the reasons stated above and explained further in our TSD, we find that the submitted rules satisfy most of the applicable CAA and regulatory

requirements for the District's minor NSR and PSD permit programs under CAA section 110(a)(2)(C) and part C of title I of the Act. However, Rule 220 contains certain deficiencies that prevent us from proposing a full approval and we are proposing a limited approval and limited disapproval of this rule. We do so based on our finding that, while these rules do not meet all of the applicable requirements, the rules represent an overall strengthening of the SIP by clarifying and enhancing the permitting requirements for major and minor stationary sources in MCAQMD. We are proposing a full approval of Rules 130, 200, and 230.

Our TSD, which is available in the docket for today's action, contains additional information on this rulemaking.

III. Proposed Action and Public Comment

Pursuant to section 110(k) of the CAA and for the reasons provided above, EPA is proposing a limited approval and limited disapproval of Rule 220, and approval of the remaining revisions to the MCAQMD portion of the California SIP that governs the issuance of permits for stationary sources under the jurisdiction of MCAQMD, including review and permitting of major sources and major modifications under part C of title I of the CAA. Specifically, EPA is proposing an action on MCAQMD rules listed in Table 1, above, as a revision to the MCAQMD portion of the California SIP.

EPA is proposing this action because, although we find that the new and amended rules meet most of the applicable requirements for such permit programs and that the SIP revisions improve the existing SIP, we have found certain deficiencies that prevent full approval of Rule 220, as explained further in this preamble and in the TSD for this rulemaking. The intended effect of the proposed approval and limited approval and limited disapproval portions of this action is to update the applicable SIP with current MCAQMD permitting regulations [2] and to set the stage for remedying deficiencies in these regulations.

In addition, on April 1, 2016 (81 FR 18766), EPA partially disapproved California's 110(a)(2) ''Infrastructure'' SIP Submittal for multiple NAAQS, including the 2008 ozone, 1997 and 2006 $PM_{2.5}$ standards with respect to Mendocino County AQMD because it did not include requirements for a baseline date for PSD increments for $PM_{2.5}$. If we finalize our proposed action, this SIP deficiency pertaining to the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II) and (J) will be remedied, resulting in fully approved infrastructure SIPs for those NAAQS with respect to Mendocino County AQMD.

If finalized as proposed, the limited disapproval of Rule 220 would trigger an obligation for EPA to promulgate a Federal Implementation Plan unless the State of California corrects the deficiencies, and EPA approves the related plan revisions, within two years of the final action.

We will accept comments from the public on both the proposed full approval and the proposed limited approval and limited disapproval for the next 30 days.

IV. 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 MCAQMD rules as described in Table 1 of this notice. The EPA has made, and will continue to make, this document available electronically through *www.regulations.gov* and in hard copy at U.S. Environmental Protection Agency Region IX (Air–3), 75 Hawthorne Street, San Francisco, CA 94105–3901.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because 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, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

[2] Final approval of the rules in Table 1 would supersede all of the rules in the existing California SIP as listed in Table 2.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 9, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–31028 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0562; FRL–9957–25–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 2016 Nitrogen Oxides Averaging Plan Consent Agreement With Raven Power

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Maryland state implementation plan (SIP). Maryland has submitted for inclusion in the SIP a Consent Agreement between Maryland and Raven Power concerning an inter-facility averaging plan for emissions of nitrogen oxides (NO_X) at facilities located in Maryland and owned by Raven Power. The Consent Agreement allows Raven Power to use system-wide emissions averaging to comply with the applicable NO_X emission limits for six units located at two electric generating facilities, Brandon Shores and H.A. Wagner, owned by Raven Power. EPA is proposing to approve this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before January 26, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0562 at *http://www.regulations.gov,* or via email to *pino.maria@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Maryland's COMAR 26.11.09.08—Control of NO_X Emissions for Major Stationary Sources—was approved into Maryland's SIP pursuant to section 182 of the CAA. This regulation established NO_X emission limits for the 1-hour ozone national ambient air quality standard (NAAQS) for specific types of boilers and other fuel-burning equipment. Specifically, COMAR 26.11.09.08.C(2) established maximum NO_X emission rates as pounds (lbs) of NO_X per million British thermal units (MMBtu) per hour, ranging from 0.45 lbs/MMBtu to 0.80 lbs/MMBtu, depending on the type of combustion unit. COMAR 26.11.09.08 also contains a provision that allows an owner or operator of more than one unit to demonstrate compliance with system-wide emissions standards through the use of an averaging plan.

II. Summary of SIP Revision

On July 28, 2016, the State of Maryland through the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision submittal consisting of a Consent Agreement between MDE and Raven Power establishing an inter-facility averaging plan for NO_X emissions at two electric generating facilities, Brandon Shores and H.A. Wagner, collectively called Fort Smallwood. Both facilities are owned by Raven Power. MDE requests that this new Consent Agreement and NO_X averaging plan replace the Consent Order and NO_X averaging plan previously approved into the Maryland SIP on February 27, 2002 (67 FR 8897).

The Consent Agreement between MDE and Raven Power allows Raven Power to use system-wide emissions averaging to comply with the applicable NO_X limits for six boiler units (Brandon Shores units 1 and 2 and H.A. Wagner units 1 through 4) subject to COMAR 26.11.09.08. Pursuant to the new Consent Agreement, Raven Power is required to calculate mass emissions from the affected units on a daily basis, determine compliance with the averaging plan using continuous emissions monitors (CEMs), and to submit quarterly reports to both MDE and EPA. In the Consent Agreement, Raven Power agreed that if it fails to comply with the NO_X averaging plan, all sources at Brandon Shores and Wagner remain subject to the unit-specific emission limits of COMAR 26.11.09.08.C (shown in Table 1) and must demonstrate compliance through the requirements found in COMAR 26.11.09.08.B(2). The aggregate mass emissions from all units at Brandon Shores and Wagner, under the NO_X averaging plan, must be less than the mass emissions that would otherwise occur if each unit were subject to the applicable NO_X emissions limit of COMAR 26.11.09.08.C.

TABLE 1—NO_X EMISSION LIMITS FOR FORT SMALLWOOD

[as per COMAR 26.11.09.08.C]

Facility	Unit	Limit (lbs/MMBtu)
Brandon Shores	1	0.5
	2	0.5
H.A. Wagner	1	0.3
	2	0.5
	3	0.5
	4	0.3

Additionally, according to the Consent Agreement, Raven Power must submit a written report and certify annually that the annual NO_X mass emissions for all six affected units are at least twenty percent less than otherwise allowed from the affected units by the applicable NO_X emission limits of COMAR 26.11.09.08. A more detailed description of the NO_X averaging plan can be found in the technical support document (TSD) on *www.regulations.gov* under Docket ID No. EPA–R03–OAR–2016–0562. In addition, in the July 28, 2016 SIP submittal, Maryland seeks to remove from the Maryland SIP the April 2001 Consent Order between Maryland and Constellation Power Source Generation (Constellation) which functioned as a NO_X averaging plan for compliance with COMAR 26.11.09.08 for ten units at five facilities—Brandon Shores units 1 and 2; C.P. Crane units 1 and 2; H.A. Wagner units 1 through 4; Gould Street unit 3; and Riverside unit 4. EPA had approved the April 2001 Consent Order between Maryland and Constellation into the Maryland SIP on February 27, 2002 (67 FR 8897). The 2001 NO_X averaging plan is no longer effective for compliance with COMAR 26.11.09.08 as Constellation is not the owner of all of these units and COMAR 26.11.09.08 permitted system-wide averaging only when the same person owned or operated all affected units. COMAR 26.11.09.08.B(4)(a).

III. Proposed Action

EPA has evaluated Maryland's SIP revision submittal and believes Raven Power's NO_X emissions averaging plan meets all the applicable requirements of the SIP-approved COMAR 26.11.09.08, particularly subsection .08B(4) for emissions averaging. The Consent Agreement also includes appropriate provisions for monitoring, recordkeeping, and reporting as well as assuring compliance and enforceability. As discussed in the TSD in more detail, EPA expects the Consent Agreement will strengthen the Maryland SIP and lead to additional NO_X emission reductions. Thus, the SIP is approvable under CAA section 110.

In addition, EPA finds that this SIP revision submittal meets the requirements of CAA section 110(l) as it will not interfere with attainment and maintenance of any NAAQS, reasonable further progress, or any other applicable CAA requirement, because the NO_X averaging plan requires that annual system-wide NO_X mass emissions from Brandon Shores and Wagner be at least twenty percent less than otherwise allowed from these affected units by the applicable NO_X emission limits of COMAR 26.11.09.08 and because the prior NO_X emissions averaging plan that included Brandon Shores, Wagner, and other unrelated units is no longer effective, since the owners have changed. The previously approved April 2001 Constellation NO_X averaging plan required that annual system-wide NO_X mass emissions be at least five percent less than otherwise allowed by the applicable NO_X emission limits of COMAR 26.11.09.08. The system-wide averaging from the new NO_X averaging plan which requires at least a twenty percent reduction compared to rates applicable to individual emitting units should provide additional NO_X emission reductions. EPA believes the emission reductions from this NO_X averaging plan will be beneficial to both Maryland and the ozone transport region (OTR). Therefore, EPA is proposing to approve this SIP revision in accordance with requirements in CAA section 110. EPA is soliciting public comments on the issues discussed in this document and these comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Maryland's Consent Agreement with Raven Power concerning a NO_X averaging plan discussed in section II of this document as well as in the TSD supporting this rulemaking action. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule concerning Maryland's NO_X averaging plan Consent Agreement with Raven Power does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: December 12, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–31025 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0328 FRL–9957–17–Region 5]

Air Plan Approval; Indiana; Emissions Statements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the emissions statements rule in the Indiana State Implementation Plan (SIP). These revisions, if approved, would extend Indiana's emissions statements regulations to Lawrenceburg Township, Dearborn County in order to be consistent with Clean Air Act (CAA) requirements for the 2008 ozone National Ambient Air Quality Standards (NAAQS). These revisions also include minor formatting changes. The Indiana Department of Environmental Management (IDEM) submitted these revisions to EPA on November 18, 2016.

DATES: Comments must be received on or before January 26, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0328 at *http://www.regulations.gov,* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. Background
II. Indiana's Submittal
III. EPA's Analysis of Indiana's Submittal
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background

Section 182(a)(3)(B) of the CAA mandates that each state to submit a revision to its SIP to require that the owner or operator of each applicable stationary source of nitrogen oxides (NO_X) or volatile organic compounds (VOCs) provide annual emissions statements to the state showing the actual emissions of these pollutants from that source. This requirement applies in all ozone nonattainment areas to any source emitting at least 25 tons per year of VOCs or NO_X.

As EPA has promulgated more stringent NAAQS for ozone, additional areas in Indiana have been designated as nonattainment. Subsequently, some of these areas later demonstrated attainment and EPA redesignated them accordingly. Indiana has historically satisfied Section 182(a)(3)(B) requirements by submitting SIP revision requests that apply the emissions statements rule to contemporaneous ozone nonattainment areas.

On June 10, 1994 (59 FR 29953), EPA determined that Indiana regulation 326 IAC 2–6 (''Emission Reporting'') satisfied the requirements of CAA Section 182(a)(3)(B) for nonattainment areas under the 1979 ozone NAAQS, and approved it into Indiana's SIP. On October 29, 2004 (69 FR 63069), EPA approved into Indiana's SIP a revised version of the applicability section at 326 IAC 2–6–1, which limited the emissions statements rule to only Lake and Porter counties. On March 29, 2007 (72 FR 14681), EPA approved into Indiana's SIP a revised version of 326 IAC 2–6 that extended the emissions statements rule to LaPorte County, which had been designated nonattainment under the 1997 ozone NAAQS.

On May 21, 2012, EPA published designations under the 2008 ozone NAAQS for most areas in the United States (77 FR 30088). In Indiana, only the portion of Dearborn County that is within Lawrenceburg Township was designated nonattainment. On June 11, 2012, EPA published designations under the 2008 ozone NAAQS for the remaining areas in the United States (77 FR 34221). In Indiana, Lake and Porter counties were added to the list of Indiana designated nonattainment areas. Lake and Porter counties have been subject to federally-enforceable emissions statements requirements since EPA approved the original version of 326 IAC 2–6 into Indiana's SIP in 1994; therefore, Indiana's only remaining obligation under Section 182(a)(3)(B) with regard to the 2008 ozone NAAQS is to submit a SIP revision applying emissions statements requirements to Lawrenceburg Township in Dearborn County.

II. Indiana's Submittal

On November 18, 2016, IDEM submitted to EPA revisions to 326 IAC 2–6–1, and requested that EPA approve these revisions into Indiana's SIP. IDEM opened a public comment period lasting from April 27, 2016, to May 27, 2016, and held a public hearing on August 10, 2016; no comments were received. Also on August 10, 2016, the revisions were approved by Indiana's Air Pollution Control Board. The revisions were filed with the Indiana Register on October 21, 2016, and published in the Indiana Register on November 16, 2016.

In its submittal, Indiana is revising and submitting only three changes to 326 IAC 2–6–1. First, Indiana is making a minor formatting change that more clearly references part 70 (title V of the CAA) permitting rules under 326 IAC 2–7. Second, Indiana is adding Lawrenceburg Township, Dearborn County to the applicability section. Third, Indiana is making another minor formatting change that more clearly references additional information requests under 326 IAC 2–6–5. The remaining portions of 326 IAC 2–6, versions of which were last approved into Indiana's SIP in 2004 or 2006, are unchanged in this revision.

III. EPA's Analysis of Indiana's Submittal

Indiana's revised version of 326 IAC 2–6–1 appropriately extends the emissions statements rule to Lawrenceburg Township, Dearborn County. This change is consistent with EPA's Section 182(a)(3)(B) requirements. The revised rule also contains minor formatting changes that clarify references to related rules.

IV. What action is EPA taking?

EPA is proposing to approve the revisions to 326 IAC 2–6–1 into Indiana's SIP.

V. Incorporation by Reference

In this rulemaking, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the revised IDEM rule at 326 IAC 2–6–1 filed with the Indiana Register on October 21, 2016, regarding the emissions statements rule and discussed in section II of this rulemaking. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: December 12, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–31045 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2016–0135; FRL–9957–18–Region 5]

Air Plan Approval; Indiana; Redesignation of the Indiana Portion of the Cincinnati, Ohio-Kentucky-Indiana Area to Attainment of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Cincinnati, Ohio-Kentucky-Indiana area is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) and to approve a request from the Indiana Department of Environmental Management (IDEM) to redesignate the Indiana portion of the Cincinnati area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA or Act). The Cincinnati area includes Lawrenceburg Township in Dearborn County, Indiana; Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio; and, Boone, Campbell, and Kenton Counties in Kentucky. IDEM submitted this request on February 23, 2016, and supplemented that submittal with a revised emissions inventory on May 4, 2016. EPA is also proposing to approve, as a revision to the Indiana State Implementation Plan (SIP), the state's plan for maintaining the 2008 ozone standard through 2030 in the Cincinnati area. Additionally, EPA finds adequate and is proposing to approve the state's 2020 and 2030 volatile organic compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the Indiana and Ohio portion of the Cincinnati area. Finally, EPA is proposing to approve the 2011 base year emissions inventory submitted by IDEM as meeting the base year emissions inventory requirement of the CAA for the Indiana portion of the Cincinnati area.

DATES: Comments must be received on or before January 26, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0135 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What are the actions EPA is proposing?
II. What is the background for these actions?
III. What are the criteria for redesignation?
IV. What is EPA's analysis of Indiana's redesignation request?
A. Has the Cincinnati area attained the 2008 ozone NAAQS?
B. Has Indiana met all applicable requirements of section 110 and part D of the CAA for the Cincinnati area, and does the Indiana portion of the area have a fully approved SIP under section 110(k) of the CAA?
1. Indiana Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Indiana Portion of the Cincinnati Area for Purposes of Redesignation
2. The Indiana Portion of the Cincinnati Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA
C. Are the air quality improvements in the Cincinnati area due to permanent and enforceable emission reductions?
1. Permanent and Enforceable Emission Controls Implemented
2. Emission Reductions
3. Meteorology
D. Does Indiana have a fully approvable ozone maintenance plan for the Cincinnati area?
1. Attainment Inventory
2. Has the state documented maintenance of the ozone standard in the Cincinnati area?
3. Continued Air Quality Monitoring
4. Verification of Continued Attainment
5. What is the contingency plan for the Cincinnati area?
V. Has the state adopted approvable motor vehicle emission budgets?
A. Motor Vehicle Emission Budgets
B. What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Cincinnati area?
C. What is a safety margin?
VI. Has the state submitted approvable emission inventories?
A. The 2008 Ozone NAAQS and Emission Inventory Requirements
B. Indiana's Emission Inventories
C. EPA's Evaluation
1. Did the state adequately document the derivation of the emission estimates?
2. Did the state quality assure the emission estimates?
3. Did the state provide for public review of the requested SIP revision?
VII. Proposed Actions
VIII. Statutory and Executive Order Reviews

I. What are the actions EPA is proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Cincinnati nonattainment area is attaining the 2008 ozone standard, based on quality-assured and certified monitoring data for 2013–2015 and that the Indiana portion of this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve IDEM's request to change the legal designation of the Indiana portion of the Cincinnati area from nonattainment to attainment for the 2008 ozone standard. EPA is also proposing to approve, as a revision to the Indiana SIP, the state's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the Cincinnati area in attainment of the 2008 ozone NAAQS through 2030. Finally, EPA finds adequate and is proposing to approve the newly-established 2020 and 2030 MVEBs for the Indiana and Ohio portion of the Cincinnati area. The adequacy comment period for the MVEBs began on July 22, 2016, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on August 22, 2016. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In a letter dated August 23, 2016, EPA informed IDEM that we found the 2020 and 2030 MVEBs to be adequate for use in transportation conformity analyses. On September 27, 2016 (81 FR 66271), EPA published a notice of adequacy announcing this same finding. Please see section V.B. of this preamble, ''What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Indiana portion of the Cincinnati area,'' for further explanation of this process. Therefore, we find adequate, and are proposing to approve, the States' 2020 and 2030 MVEBs for transportation conformity purposes.

On June 1, 2016, Indiana submitted a separate SIP revision to address emissions statements requirements, as discussed in section IV.B.1. of this preamble. EPA is taking action on the emissions statements SIP revision in a separate rulemaking. EPA will not finalize this redesignation rulemaking without an earlier or simultaneous final approval of the separate emissions statements rulemaking.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On March 12, 2008, EPA promulgated a revised ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained in an area when the three-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. *See* 40 CFR 50.15 and appendix P to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality-assured ozone monitoring data. The Cincinnati area was designated as a marginal nonattainment area for the 2008 ozone NAAQS on May 21, 2012 (77 FR 30088) (effective July 20, 2012).

In a final implementation rule for the 2008 ozone NAAQS (SIP Requirements Rule),[1] EPA established ozone standard attainment dates based on table 1 of section 181(a) of the CAA. This established an attainment date three years after the July 20, 2012, effective designation date for areas classified as marginal nonattainment for the 2008 ozone NAAQS. Therefore, the attainment date for the Cincinnati area was July 20, 2015. On May 4, 2016 (81 FR 26697), in accordance with section 181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), EPA made a determination that the Cincinnati area attained the standard by its July 20, 2015, attainment date for the 2008 ozone NAAQS. EPA's determination was based upon three years of complete,

[1] This rule, titled ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' and published at 80 FR 12264 (March 6, 2015), addresses nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), new source review (NSR), emission inventories, and the timing requirements for SIP submissions and compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that apply when the 1997 ozone NAAQS is revoked.

quality-assured and certified data for the 2012–2014 period.

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton. Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of Indiana's redesignation request?

A. Has the Cincinnati area attained the 2008 ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the three-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons,[2] on average, for the three-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the three-year period. *See* section 2.3 of appendix P to 40 CFR part 50.

On May 4, 2016, in accordance with section 181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), EPA made a determination that the Cincinnati area attained the standard by its July 20, 2015, attainment date for the 2008 ozone NAAQS. This determination was based upon three years of complete, quality-assured and certified data for the 2012–2014 period. In addition, EPA has reviewed the available ozone monitoring data from monitoring sites in the Cincinnati area for the 2013–2015 period. These data have been quality-assured, are recorded in the AQS, and have been certified. These data demonstrate that the Cincinnati area is attaining the 2008 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the three-year average of these concentrations (monitoring site ozone design values) for each monitoring site are summarized in Table 1.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND THREE-YEAR AVERAGE OF THE 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE CINCINNATI AREA

State	County	Monitor	2013 4th high (ppm)	2014 4th high (ppm)	2015 4th high (ppm)	2013–2015 average (ppm)
Ohio	Butler	39–017–0004	0.068	0.070	0.070	0.069
		39–017–0018	0.068	0.069	0.070	0.069
		39–017–9991	0.069	0.069	0.068	0.068
	Clermont	39–025–0022	0.066	0.068	0.070	0.068

[2] The ozone season is defined by state in 40 CFR 58 appendix D. For the 2012–2014 and 2013–2015 periods, the ozone seasons for Ohio, Indiana, and Kentucky were April–October, April–September, and March–October, respectively. Beginning in 2016, the ozone seasons for Ohio, Indiana and Kentucky are March–October. See, 80 FR 65292, 65466–67 (October 26, 2015).

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND THREE-YEAR AVERAGE OF THE 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE CINCINNATI AREA—Continued

State	County	Monitor	2013 4th high (ppm)	2014 4th high (ppm)	2015 4th high (ppm)	2013–2015 average (ppm)
	Clinton	39–027–1002	0.064	0.070	0.070	0.068
		39–061–0006	0.069	0.070	0.072	0.070
	Hamilton	39–061–0010	0.064	0.073	0.070	0.069
		39–061–0040	0.069	0.069	0.071	0.069
	Warren	39–165–0007	0.067	0.071	0.071	0.069
Kentucky	Boone	21–015–0003	0.059	0.062	0.062	0.061
	Campbell	21–037–3002	0.072	0.071	0.071	0.071

The three-year ozone design value for 2013–2015 is 0.071 ppm,[3] which meets the 2008 ozone NAAQS. Therefore, in this action, EPA proposes to determine that the Cincinnati area is attaining the 2008 ozone NAAQS.

EPA will not take final action to determine that the Cincinnati area is attaining the NAAQS nor to approve the redesignation of this area if the design value of a monitoring site in the area exceeds the NAAQS after proposal but prior to final approval of the redesignation. Preliminary 2016 data indicate that this area continues to attain the 2008 ozone NAAQS. As discussed in section IV.D.3. of this preamble, IDEM has committed to continue monitoring ozone in this area to verify maintenance of the ozone standard.

B. Has Indiana met all applicable requirements of section 110 and part D of the CAA for the Cincinnati area, and does the Indiana portion of the area have a fully approved SIP under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). We are proposing to determine that Indiana has met all currently applicable SIP requirements for purposes of redesignation of the Cincinnati area to attainment of the 2008 ozone standard under section 110 and part D of the CAA, in accordance with section 107(d)(3)(E)(v). We are also proposing to determine that the Indiana SIP, with the exception of the comprehensive emissions inventory and emissions statements rules, is fully approved with respect to all applicable requirements for purposes of redesignation to attainment of the 2008 ozone standard, in accordance with section 107(d)(3)(E)(ii) of the CAA. As discussed below, in this action EPA is proposing to approve Indiana's 2011 comprehensive emissions inventory as meeting the comprehensive emissions inventory requirement of section 182(a)(1) for the area. EPA is taking action on the Indiana emissions statements rules required by section 182(a)(3)(B) in a separate rule.

Recognizing that the comprehensive emissions inventory and emissions statements rules must be approved on or before the date we complete final rulemaking approving the redesignation requests, we determine here that, assuming that this occurs, Indiana will have met all applicable section 110 and part D SIP requirements of the CAA for purposes of approval of Indiana's ozone redesignation request for the Cincinnati area and will have a fully approved SIP under section 110(k) of the CAA. In making these proposed determinations, EPA ascertained which CAA requirements are applicable to the Cincinnati area and the Indiana SIP and, if applicable, whether the required Indiana SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. Indiana Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Indiana Portion of the Cincinnati Area for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality

[3] The monitor ozone design value for the monitor with the highest three-year averaged concentration.

modeling; and (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.,* NO_X SIP call.[4] However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 19, 2000), 68 FR 25418, 25426–27 (May 12, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2008 ozone NAAQS. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Indiana's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation. On April 29, 2015 (80 FR 23713), EPA approved elements of the SIP submitted by Indiana to meet the requirements of section 110 for the 2008 ozone standard. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the ozone nonattainment status of the Cincinnati area. Therefore, EPA concludes that these infrastructure requirements are not applicable requirements for purposes of review of the state's ozone redesignation request.

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Cincinnati area was classified as marginal under subpart 2 for the 2008 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in section 182(a) (marginal nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements

As provided in subpart 2, for marginal ozone nonattainment areas such as the Cincinnati area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9). 42 U.S.C. 7511a(a).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement is superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Indiana's NSR program on October 7, 1994 (59 FR 51108), and approved revisions to Indiana's NSR program on June 18, 2007 (72 FR 33395), July 8, 2011 (76 FR 40242), and July 2, 2014 (79 FR 37646). Nonetheless, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Indiana has demonstrated that the Cincinnati area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Indiana's PSD program will become effective in the Cincinnati area upon redesignation to attainment. EPA conditionally approved Indiana's PSD program on March 3, 2003 (68 FR 9892), fully approved Indiana's PSD program on May 20, 2004 (69 FR 29071), and approved revisions to Indiana's PSD program on July 8, 2011 (76 FR 40242), September 28, 2011 (76 FR 59899), and July 2, 2014 (79 FR 37646).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached,

[4] On October 27, 1992 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP call, Indiana developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers and turbines, and major cement kilns. EPA approved Indiana's rules as fulfilling Phase I of the NO_X SIP Call on November 8, 2001 (66 FR 56465), and as meeting Phase II of the NO_X SIP Call on October 1, 2007 (72 FR 55664).

no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Indiana SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements [5] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Indiana has an approved conformity SIP for the Cincinnati area. *See* 80 FR 11133 (March 2, 2015).

iii. Section 182(a) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the ozone nonattainment area. As part of Indiana's redesignation request for the Cincinnati area, the state submitted a 2011 base year emissions inventory. As discussed in section VI. of this preamble, EPA is proposing to approve the 2011 base year inventory that Indiana submitted with the redesignation request as meeting the section 182(a)(1) emissions inventory requirement.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Indiana portion of the Cincinnati area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2008 ozone NAAQS because it was not subject to RACT prior to the enactment of the 1990 CAA amendments.

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2008 ozone standard and the consideration of Indiana's redesignation request for this standard, the Indiana portion of the Cincinnati area is not subject to the section 182(a)(2)(B) requirement because it was not designated as nonattainment for any ozone standard prior to the enactment of the 1990 CAA amendments and did not have an I/M program before 1990.

Regarding the source permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Indiana currently has a fully-approved part D NSR program in place. EPA conditionally approved Indiana's PSD program on March 3, 2003 (68 FR 9892), fully approved Indiana's PSD program on May 20, 2004 (69 FR 29071), and approved revisions to Indiana's PSD program on July 8, 2011 (76 FR 40242), September 28, 2011 (76 FR 59899), and July 2, 2014 (79 FR 37646). As discussed above, Indiana has demonstrated that the Cincinnati area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Cincinnati area upon redesignation to attainment.

Section 182(a)(3)(A) requires states to submit periodic emission inventories and section 182(a)(3)(B) requires states to submit a revision to the SIP to require the owners or operators of stationary sources to annually submit emissions statements documenting actual VOC and NO_X emissions. As discussed in section IV.D.4. of this preamble, Indiana will continue to update its emissions inventory at least once every three years. With regard to stationary source emissions statements, Indiana submitted a SIP revision to address these requirements on June 1, 2016. EPA is taking action on this revision in a separate rulemaking action. Full approval of Indiana's emissions statements rules is a prerequisite for approval of the redesignation of the Cincinnati area to attainment.

Upon approval of Indiana's emissions inventory and emissions statements rules, the Indiana portion of the Cincinnati area will have satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Indiana Portion of the Cincinnati Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

Indiana has adopted and submitted and EPA has approved at various times, provisions addressing the various SIP elements applicable for the ozone NAAQS. In this action, EPA is proposing to approve Indiana's 2011 comprehensive emissions inventory for the Cincinnati area as meeting the requirement of section 182(a)(1) of the CAA. In a separate rule, EPA will take action on the Indiana emissions statements rules submittal. As discussed above, if EPA issues a final approval of the comprehensive emissions inventory and Indiana's emissions statements rules submittals, EPA will have fully approved the Indiana SIP for the Cincinnati area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*see* the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Cincinnati area due to permanent and enforceable emission reductions?

To support the redesignation of an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable

[5] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of Motor Vehicle Emission Budgets (MVEBs), such as control strategy SIPs and maintenance plans.

reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and other permanent and enforceable emission reductions. EPA has determined that Indiana has demonstrated that that the observed ozone air quality improvement in the Cincinnati area is due to permanent and enforceable reductions in VOC and NO_X emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the state has calculated the change in emissions between 2011 and 2014. The reduction in emissions and the corresponding improvement in air quality over this period can be attributed to a number of regulatory control measures that the Cincinnati area and upwind areas have implemented in recent years. In addition, IDEM provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, Indiana has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_X Controls

Clean Air Interstate Rule (CAIR)/Cross State Air Pollution Rule (CSAPR). CAIR created regional cap-and-trade programs to reduce sulfur dioxide (SO_2) and NO_X emissions in 27 eastern states, including Indiana, that contributed to downwind nonattainment and maintenance of the 1997 ozone NAAQS and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. *See* 70 FR 25162 (May 12, 2005). EPA approved Indiana's CAIR regulations into the Indiana SIP on October 22, 2007 (72 FR 59480) and November 29, 2010 (75 FR 72956). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and thus to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS. CSAPR requires substantial reductions of SO_2 and NO_X emissions from electric generating units (EGUs) in 28 states in the Eastern United States.

The D.C. Circuit's initial vacatur of CSAPR [6] was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). This litigation ultimately delayed implementation of CSAPR for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. Thus, the rule's Phase 2 budgets were originally promulgated to begin on January 1, 2014, and are now scheduled to begin on January 1, 2017. On October 26, 2016 (81 FR 74504), EPA published the CSAPR Update for the 2008 ozone NAAQS, which resolves the invalidation of Phase 2 budgets by the D.C. Circuit. That action promulgates new NO_X ozone season budgets addressing interstate transport with respect to the 2008 ozone NAAQS that take effect in 2017. The reduction in NO_X emissions from the implementation of CSAPR will result in lower concentrations of transported ozone entering the Cincinnati area throughout the maintenance period.

b. Federal Emission Control Measures

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimates that, when fully implemented, this rule will cut NO_X and VOC emissions from light-duty vehicles and light-duty trucks by approximately 76% and 28%, respectively. NO_X and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program are estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. In addition, EPA estimates that beginning in 2007, a reduction of 30,000 tons per year of NO_X will result from the benefits of sulfur control on heavy-duty gasoline vehicles. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule will be phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_X and for particulate matter. The VOC and NO_X tailpipe standards for light-duty vehicles represent approximately an 80% reduction from today's fleet average and a 70% reduction in per-vehicle particulate matter (PM) standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and NO_X and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50% reduction from current standards and apply to all light-duty and onroad gasoline-powered heavy-duty vehicles. Finally, the rule lowers the sulfur content of gasoline to an annual average of 10 ppm by January 2017. While these reductions did not aid the area in attaining the standard, emission reductions will occur during the maintenance period.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-highway heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_X, VOC and PM were phased in between model years 2007

[6] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).

and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion NO_X and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rulemaking. Nationally, EPA estimated that 2015 NO_X and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimated that 2030 NO_X and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the onroad emission modeling for the Cincinnati area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Nonroad Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for nonroad diesel engines and sulfur reductions in nonroad diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards are phased in for 2008 through 2015 model years based on engine size. The SO_2 limits for nonroad diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented, compliance with this rule will cut NO_X emissions from these nonroad diesel engines by approximately 90%. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Nonroad Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards are phased in from model year 2004 through 2012. When fully implemented, EPA estimates an overall 72% reduction in VOC emissions from these engines and an 80% reduction in NO_X emissions. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines. On March 3, 2010 (75 FR 9648), EPA issued a rule to reduce hazardous air pollutants from existing diesel powered stationary reciprocating internal combustion engines, also known as compression ignition engines. Amendments to this rule were finalized on January 14, 2013 (78 FR 6674). EPA estimated that when this rule is fully implemented in 2013, NO_X and VOC emissions from these engines will be reduced by approximately 9,600 and 36,000 tons per year, respectively.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896) EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards apply beginning in 2011, and are expected to result in a 15% to 25% reduction in NO_X emissions from these engines. Final Tier 3 emission standards apply beginning in 2016 and are expected to result in approximately an 80% reduction in NO_X from these engines. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

c. Control Measures Specific to the Cincinnati Area

Changes at several EGUs have resulted in reductions in NO_X emissions. Tanner's Creek Generating Station in Dearborn County, Indiana permanently shut down in May 2015. Prior to the shutdown, NO_X emissions had dropped from 15.08 tons per summer day (TPSD) in 2011 to 10.6 TPSD in 2014. The Walter C. Beckjord facility in Clermont County, Ohio permanently shut down in October of 2014. Prior to the shutdown, NO_X emissions from EGUs in Clermont County dropped from 43.41 TPSD in 2011 to 41.17 TPSD in 2014, partly attributable to the Walter C. Beckjord facility. Finally, Unit 3 (163 megawatts) of the Miami Fort facility in Hamilton County, Ohio permanently shut down in June of 2015. Prior to shutdown, NO_X emissions from EGUs in Hamilton County dropped from 17.72 TPSD in 2011 to 17.46 TPSD in 2014, partly attributable to reductions at unit 3 at Miami Fort.

2. Emission Reductions

Indiana is using a 2011 inventory as the nonattainment base year. Area, nonroad mobile, airport related emissions (AIR), and point source emissions (EGUs and non-EGUs) were collected from the Ozone NAAQS Implementation Modeling platform (2011v6.1). For 2011, this represents actual data reported to EPA by the states for the 2011 National Emissions inventory (NEI). Because emissions from state inventory databases, the NEI, and the Ozone NAAQS Emissions Modeling platform are annual totals, tons per summer day were derived according to EPA's guidance document ''Temporal Allocation of Annual Emissions Using EMCH Temporal Profiles'' dated April 29 2002, using the temporal allocation references accompanying the 2011v6.1 modeling inventory files. Onroad mobile source emissions were developed in conjunction with the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) and were calculated from emission factors produced by EPA's 2014 Motor Vehicle Emission Simulator (MOVES) model and data extracted from the region's travel-demand model.

For the attainment inventory, Indiana is using 2014, one of the years the Cincinnati area monitored attainment of the 2008 ozone standard. Because the 2014 NEI inventory was not available at the time IDEM was compiling the redesignation request, the state was unable to use the 2014 NEI inventory directly. For area, nonroad mobile, and AIR, 2014 emissions were derived by interpolating between 2011 and 2018 Ozone NAAQS Emissions Modeling platform inventories. The point source sector for the 2014 inventory was developed using actual 2014 point source emissions reported to the state databases, which serve as the basis for the point source emissions reported to EPA for the NEI. Summer day inventories were derived for these sectors using the methodology described above. Finally, onroad mobile source emissions were developed in conjunction with OKI using the same methodology described above for the 2011 inventory.

Using the inventories described above, Indiana's submittal documents changes in VOC and NO_X emissions from 2011 to 2014 for the Cincinnati area. Emissions data are shown in Tables 2 through 7.

TABLE 2—CINCINNATI AREA NO_X EMISSIONS FOR NONATTAINMENT YEAR 2011

[TPSD]

County	Point	AIR	Nonroad	Area	Onroad	Total
Indiana:						
Dearborn	17.79	0.00	0.53	0.47	1.89	20.68
Ohio:						
Butler	10.67	0.02	4.27	4.78	12.24	31.98
Clermont	43.55	0.00	2.27	1.14	7.52	54.48
Clinton	0.00	0.00	1.15	0.52	4.53	6.20
Hamilton	26.29	0.02	8.56	10.09	33.69	78.65
Warren	1.55	0.00	3.24	1.66	9.84	16.29
Kentucky:						
Boone	7.19	2.03	1.06	0.43	6.90	17.61
Campbell	0.17	0.00	0.38	0.49	4.30	5.34
Kenton	0.01	0.00	0.77	1.02	6.53	8.33
Area Totals	107.22	2.07	22.23	20.60	87.44	239.56

TABLE 3—CINCINNATI AREA VOC EMISSIONS FOR NONATTAINMENT YEAR 2011

[TPSD]

County	Point	AIR	Nonroad	Area	Onroad	Total
Indiana:						
Dearborn	4.28	0.00	0.42	1.75	1.33	7.78
Ohio:						
Butler	3.09	0.03	2.93	9.59	10.21	25.85
Clermont	0.49	0.01	1.95	5.41	6.27	14.13
Clinton	0.00	0.01	0.84	2.49	2.27	5.61
Hamilton	2.62	0.04	7.44	21.88	28.09	60.07
Warren	0.62	0.01	2.12	5.71	8.21	16.67
Kentucky:						
Boone	1.73	0.42	1.49	2.66	3.30	9.60
Campbell	0.22	0.00	0.40	1.29	2.05	3.96
Kenton	0.51	0.00	0.62	2.51	3.12	6.76
Area Totals	13.56	0.52	18.21	53.29	64.85	150.43

TABLE 4—CINCINNATI AREA NO_X EMISSIONS FOR ATTAINMENT YEAR 2014

[TPSD]

County	Point	AIR	Nonroad	Area	Onroad	Total
Indiana:						
Dearborn	11.74	0.00	0.44	0.47	1.37	14.02
Ohio:						
Butler	12.70	0.02	3.39	4.78	8.85	29.74
Clermont	41.20	0.00	1.81	1.14	5.44	49.59
Clinton	0.00	0.00	0.96	0.52	3.51	4.99
Hamilton	21.65	0.02	6.76	10.08	24.37	62.88
Warren	0.96	0.00	2.55	1.66	7.12	12.29
Kentucky:						
Boone	7.37	2.07	0.88	0.43	5.46	16.21
Campbell	0.17	0.00	0.32	0.49	3.41	4.39
Kenton	0.01	0.00	0.64	1.02	5.17	6.84
Area Totals	95.80	2.11	17.75	20.59	64.70	200.95

TABLE 5—CINCINNATI AREA VOC EMISSIONS FOR ATTAINMENT YEAR 2014

[TPSD]

County	Point	AIR	Nonroad	Area	Onroad	Total
Indiana:						
Dearborn	5.54	0.00	0.36	1.75	0.99	8.64
Ohio:						
Butler	2.96	0.03	2.61	9.51	7.59	22.70
Clermont	0.63	0.01	1.73	5.36	4.66	12.39
Clinton	0.01	0.01	0.71	2.51	1.53	4.77
Hamilton	2.73	0.04	6.54	21.66	20.88	51.85

TABLE 5—CINCINNATI AREA VOC EMISSIONS FOR ATTAINMENT YEAR 2014—Continued

[TPSD]

County	Point	AIR	Nonroad	Area	Onroad	Total
Warren	0.51	0.01	1.93	5.66	6.10	14.21
Kentucky:						
Boone	1.73	0.42	1.30	2.56	2.53	8.54
Campbell	0.22	0.00	0.34	1.26	1.58	3.40
Kenton	0.51	0.00	0.55	2.43	2.39	5.88
Area Totals	14.84	0.52	16.07	52.70	48.25	132.38

TABLE 6—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2011 AND 2014 FOR THE INDIANA PORTION OF THE CINCINNATI AREA

[TPSD]

	NO_X			VOC		
	2011	2014	Net change (2011–2014)	2011	2014	Net change (2011–2014)
Point	17.79	11.74	−6.05	4.28	5.54	1.26
AIR	0.00	0.00	0.00	0.00	0.00	0.00
Nonroad	0.53	0.44	−0.09	0.42	0.36	−0.06
Area	0.47	0.47	0.00	1.75	1.75	0.00
Onroad	1.89	1.37	−0.52	1.33	0.99	−0.34
Total	20.68	14.02	−6.66	7.78	8.64	0.86

TABLE 7—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2011 AND 2014 FOR THE ENTIRE CINCINNATI AREA

[TPSD]

	NO_X			VOC		
	2011	2014	Net change (2011–2014)	2011	2014	Net change (2011–2014)
Point	107.22	95.80	−11.42	13.56	14.84	1.28
AIR	2.07	2.11	0.04	0.52	0.52	0.00
Nonroad	22.23	17.75	−4.48	18.21	16.07	−2.14
Area	20.60	20.59	−0.01	53.29	52.70	−0.59
Onroad	87.44	64.70	−22.74	64.85	48.25	−16.60
Total	239.56	200.95	−38.61	150.43	132.38	−18.05

Table 7 shows that the Cincinnati area reduced NO_X and VOC emissions by 38.61 TPSD and 18.05 TPSD, respectively, between 2011 and 2014. As shown in Table 6, the Indiana portion of the Cincinnati area alone reduced NO_X emissions by 6.66 TPSD, but VOC emissions increased slightly by 0.86 TPSD, between 2011 and 2014. However, overall there was a substantial decrease in both NO_X and VOC emissions for the entire Cincinnati area.

3. Meteorology.

To further support IDEM's demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved, is due to permanent and enforceable emission reductions and not on favorable meteorology, an analysis was performed by the Lake Michigan Air Directors Consortium (LADCO). A classification and regression tree (CART) analysis was conducted with 2000 through 2014 data from three Cincinnati area ozone sites. The goal of the analysis was to determine the meteorological and air quality conditions associated with ozone episodes, and construct trends for the days identified as sharing similar meteorological conditions.

Regression trees were developed for the three monitors to classify each summer day by its ozone concentration and associated meteorological conditions. By grouping days with similar meteorology, the influence of meteorological variability on the underlying trend in ozone concentrations is partially removed and the remaining trend is presumed to be due to trends in precursor emissions or other non-meteorological influences. The CART analysis showed that, reducing the impact of meteorology, the resulting trends in ozone concentrations declined over the period examined, supporting the conclusion that the improvement in air quality was not due to unusually favorable meteorology.

D. Does Indiana have a fully approvable ozone maintenance plan for the Cincinnati area?

As one of the criteria for redesignation to attainment section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator

approves a redsignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Indiana portion of the Cincinnati area to attainment for the 2008 ozone standard, IDEM submitted a SIP revision to provide for maintenance of the 2008 ozone standard through 2030, more than 10 years after the expected effective date of the redesignation to attainment. As is discussed more fully below, EPA proposes to find that Indiana's ozone maintenance plan includes the necessary components and is proposing to approve the maintenance plan as a revision of the Indiana SIP.

1. Attainment Inventory

EPA is proposing to determine that the Cincinnati area has attained the 2008 ozone NAAQS based on monitoring data for the period of 2013–2015. IDEM selected 2014 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_X. The attainment emissions inventory identifies the levels of emissions in the Cincinnati area that are sufficient to attain the 2008 ozone NAAQS. The derivation of the attainment year emissions was discussed above in section IV.C.2. of this premble. The attainment level emissions, by source category, are summarized in Tables 4 and 5 above.

2. Has the state documented maintenance of the ozone standard in the Cincinnati area?

Indiana has demonstrated maintenance of the 2008 ozone standard through 2030 by assuring that current and future emissions of VOC and NO_X for the Cincinnati area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Indiana is using emissions inventories for the years 2020 and 2030 to demonstrate maintenance. 2030 is more than 10 years after the expected effective date of the redesignation to attainment and 2020 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

To develop the 2020 and 2030 inventories, the state collected data from the Ozone NAAQS Emissions Modeling platform (2011v6.1) inventories for years 2011, 2018 and 2025. 2020 emissions for area, nonroad mobile, AIR, and point source sectors were derived by interpolating between 2018 and 2025. 2030 emissions for area, nonroad mobile, AIR, and point source sectors were derived using the TREND function in Excel. If the trend function resulted in a negative value the emissions were assumed not to change. Summer day inventories were derived for these sectors using the methodology described in section IV.C.2. above. Finally, onroad mobile source emissions were developed in conjunction with OKI using the same methodology described in section IV.C.2. above for the 2011 inventory. Emissions data are shown in Tables 8 through 13 below.

TABLE 8—CINCINNATI AREA NO_X EMISSIONS FOR INTERIM MAINTENANCE YEAR 2020

[TPSD]

County	Point	AIR	Nonroad	Area	Onroad	Total
Indiana:						
Dearborn	2.96	0.00	0.30	0.48	0.74	4.48
Ohio:						
Butler	9.77	0.02	2.03	4.78	4.74	21.34
Clermont	31.32	0.00	1.11	1.14	2.91	36.48
Clinton	0.00	0.00	0.64	0.52	1.86	3.02
Hamilton	18.73	0.02	4.06	10.08	13.05	45.94
Warren	1.54	0.00	1.50	1.66	3.81	8.51
Kentucky:						
Boone	7.86	2.29	0.60	0.43	2.41	13.59
Campbell	0.17	0.00	0.23	0.49	1.50	2.39
Kenton	0.01	0.00	0.43	1.02	2.28	3.74
Area Totals	72.36	2.33	10.90	20.60	33.30	139.49

TABLE 9—CINCINNATI AREA VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2020

[TPSD]

County	Point	AIR	Nonroad	Area	Onroad	Total
Indiana:						
Dearborn	4.06	0.00	0.29	1.77	0.62	6.74
Ohio:						
Butler	2.98	0.03	2.23	9.38	4.79	19.41
Clermont	0.51	0.01	1.43	5.28	2.94	10.17
Clinton	0.00	0.01	0.51	2.54	0.93	3.99
Hamilton	2.54	0.04	5.42	21.30	13.18	42.48

TABLE 9—CINCINNATI AREA VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2020—Continued

[TPSD]

County	Point	AIR	Nonroad	Area	Onroad	Total
Warren	0.60	0.01	1.54	5.59	3.85	11.59
Kentucky:						
Boone	1.73	0.45	1.03	2.41	1.38	7.00
Campbell	0.22	0.00	0.25	1.22	0.86	2.55
Kenton	0.49	0.00	0.47	2.31	1.30	4.57
Area Totals	13.13	0.55	13.17	51.80	29.85	108.50

TABLE 10—CINCINNATI AREA NO_X EMISSIONS FOR MAINTENANCE YEAR 2030

[TPSD]

County	Point	AIR	Nonroad	Area	Onroad	Total
Indiana:						
Dearborn	2.96	0.00	0.18	0.48	0.39	4.01
Ohio:						
Butler	9.83	0.00	1.16	4.79	2.44	18.22
Clermont	31.32	0.00	0.63	1.15	1.50	34.60
Clinton	0.00	0.00	0.29	0.53	1.28	2.10
Hamilton	18.75	0.00	2.59	10.10	6.71	38.15
Warren	1.54	0.00	0.78	1.67	1.96	5.95
Kentucky:						
Boone	8.51	0.29	0.38	0.44	1.05	10.67
Campbell	0.17	0.00	0.15	0.49	0.65	1.46
Kenton	0.01	0.00	0.27	1.02	0.99	2.29
Area Totals	73.09	0.29	6.43	20.67	16.97	117.45

TABLE 11—CINCINNATI AREA VOC EMISSIONS FOR MAINTENANCE YEAR 2030

[TPSD]

County	Point	AIR	Nonroad	Area	Onroad	Total
Indiana:						
Dearborn	4.06	0.00	0.27	1.85	0.38	6.56
Ohio:						
Butler	3.00	0.01	2.43	9.31	2.88	17.63
Clermont	0.64	0.00	1.46	5.20	1.77	9.07
Clinton	0.01	0.00	0.42	2.61	0.71	3.75
Hamilton	2.62	0.00	5.87	21.01	7.92	37.42
Warren	0.58	0.00	1.51	5.52	2.32	9.93
Kentucky:						
Boone	1.73	0.06	0.92	2.36	0.77	5.84
Campbell	0.21	0.00	0.22	1.19	0.48	2.10
Kenton	0.47	0.00	0.50	2.25	0.73	3.95
Area Totals	13.32	0.07	13.60	51.30	17.96	96.25

TABLE 12—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2014 AND 2030 FOR THE INDIANA PORTION OF THE CINCINNATI AREA

[TPSD]

	NO_X				VOC			
	2014	2020	2030	Net change (2014–2030)	2014	2020	2030	Net change (2014–2030)
Point	11.74	2.96	2.96	−8.78	5.54	4.06	4.06	−1.48
AIR	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Nonroad	0.44	0.30	0.18	−0.26	0.36	0.29	0.27	−0.09
Area	0.47	0.48	0.48	0.01	1.75	1.77	1.85	0.10
Onroad	1.37	0.74	0.39	−0.98	0.99	0.62	0.38	−0.61
Total	14.02	4.48	4.01	−10.01	8.64	6.74	6.56	−2.08

TABLE 13—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2014 AND 2030 FOR THE ENTIRE CINCINNATI AREA

[TPSD]

	NO_X				VOC			
	2014	2020	2030	Net change (2014–2030)	2014	2020	2030	Net change (2014–2030)
Point	95.80	72.36	73.09	−22.71	14.84	13.13	13.32	−1.52
AIR	2.11	2.33	0.29	−1.82	0.52	0.55	0.07	−0.45
Nonroad	17.75	10.90	6.43	−11.32	16.07	13.17	13.60	−2.47
Area	20.59	20.60	20.67	0.08	52.70	51.80	51.30	−1.40
Onroad	64.70	33.30	16.97	−47.73	48.25	29.85	17.96	−30.29
Total	200.95	139.49	117.45	−83.50	132.38	108.50	96.25	−36.13

In summary, the maintenance demonstration for the Cincinnati area shows maintenance of the 2008 ozone standard by providing emissions information to support the demonstration that future emissions of NO_X and VOC will remain at or below 2014 emission levels when taking into account both future source growth and implementation of future controls. Table 13 shows NO_X and VOC emissions in the Cincinnati area are projected to decrease by 83.50 TPSD and 36.13 TPSD, respectively, between 2014 and 2030. As shown in Table 12, NO_X and VOC emissions in the Indiana portion of the Cincinnati area alone are projected to decrease by 10.01 TPSD and 2.08 TPSD, respectively, between 2014 and 2030.

3. Continued Air Quality Monitoring

IDEM has committed to continue to operate the ozone monitors listed in Table 1 above. IDEM has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. Indiana remains obligated to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the Air Quality System (AQS) in accordance with Federal guidelines.

4. Verification of Continued Attainment

The State of Indiana has the legal authority to enforce and implement the requirements of the maintenance plan for the Indiana portion of the Cincinnati area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. IDEM will continue to operate the current ozone monitors located in the Indiana portion of the Cincinnati area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by the EPA.

In addition, to track future levels of emissions, IDEM will continue to develop and submit to EPA updated emission inventories for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Indiana was compiled for 2014. Point source facilities covered by Indiana's emissions statements rule, which was submitted separately by IDEM for inclusion in Indiana's SIP and is being considered by EPA in a separate rule, will submit VOC and NO_X emissions on an annual basis.

5. What is the contingency plan for the Cincinnati area?

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and, a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the relevant pollutants that were in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted a contingency plan for the Cincinnati area to address possible future ozone air quality problems. The contingency plan adopted by Indiana has two levels of response, a warning level response and an action level response.

In Indiana's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.079 ppm or higher is monitored within the maintenance area. A warning level response will consist of IDEM conducting a study to determine whether the ozone value indicates a trend toward higher ozone values and/or whether emissions appear to be increasing. The studies will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The studies will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In Indiana's plan, an action level response is triggered when a two-year average fourth high value of 0.076 ppm or greater is monitored within the maintenance area. A violation of the standard within the maintenance area also triggers an action level response. When an action level response is triggered, IDEM will determine what additional control measures are needed to assure future attainment of the ozone standard, and will adopt these measures through the necessary administrative and legal process, including the opportunity for a public hearing. Control measures selected will be

adopted and implemented within 18 months from the close of the ozone season that prompted the action level. IDEM may also consider if a new measure or control is already promulgated and scheduled to be implemented at the federal or state level and would thus constitute an adequate contingency measure response.

IDEM included the following list of potential contingency measures in its maintenance plan:

1. Installation of a vehicle emissions testing program
2. Asphalt paving (lower VOC formulation)
3. Diesel exhaust retrofits
4. Traffic flow improvements
5. Idle reduction programs
6. Portable fuel container regulation (statewide)
7. Park and ride facilities
8. Rideshare/carpool program
9. VOC cap/trade program for major stationary sources
10. NO_X Reasonably Available Control Technology

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, IDEM has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Indiana portion of the Cincinnati area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA proposes to find that the maintenance plan SIP revision submitted by IDEM for the Indiana portion of the Cincinnati area meets the requirements of section 175A of the CAA.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP requirements for the 2008 ozone standard in EPA's March 6, 2015 implementation rule (80 FR 12264). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_X for ozone) to address pollution from onroad transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. *See* 40 CFR 93.101.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

B. What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Cincinnati area?

When reviewing submitted control strategy SIPs or maintenance plans containing MVEBs, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the 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 Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule titled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Indiana's maintenance plan includes NO_X and VOC MVEBs for the Cincinnati area for 2030 and 2020, the last year of the maintenance period and an interim year. EPA reviewed the VOC and NO_X MVEBs through the adequacy process. Indiana's February 23, 2016, maintenance plan SIP submission, including the VOC and NO_X MVEBs for the Indiana and Ohio portion of the Cincinnati area, was open for public comment on EPA's adequacy Web site on July 22, 2016, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2020 and 2030 MVEBs for the Indiana and Ohio portion of the Cincinnati area closed on August 22, 2016. No comments on the submittal were received during the adequacy comment period. The submitted maintenance plan, which included the MVEBs, was endorsed by the Governor (or his or her designee) and was subject to a state public hearing. The MVEBs were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBs were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2008 ozone standard.

TABLE 14—MVEBS FOR THE INDIANA AND OHIO PORTION OF THE CINCINNATI AREA, TPSD

	Attainment year 2014 onroad emissions	2020 Estimated onroad emissions	2020 Mobile safety margin allocation	2020 MVEBs	2030 Estimated onroad emissions	2030 Mobile safety margin allocation	2030 MVEBs
VOC	41.75	26.31	3.71	30.02	15.98	2.24	18.22
NO_X	50.66	27.11	3.68	30.79	14.28	1.94	16.22

As shown in Table 14, the 2020 and 2030 MVEBs are greater than the estimated 2020 and 2030 onroad sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, IDEM allocated a portion of the safety margin (described further below) to the mobile sector. Indiana has demonstrated that the Cincinnati area can maintain the 2008 ozone NAAQS with mobile source emissions in the Indiana and Ohio portion of the area of 30.02 TPSD and 18.22 TPSD of VOC in 2020 and 2030, respectively, and 30.79 TPSD and 16.22 TPSD of NO_X in 2020 and 2030, respectively, since despite partial allocation of the safety margin, emissions will remain under attainment year emission levels. EPA has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Indiana and Ohio portion of the Cincinnati area, because EPA has determined that the area can maintain attainment of the 2008 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs.

C. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As shown in Table 15 below, the emissions in the Indiana and Ohio portion of the Cincinnati area, excluding the Kentucky portion of the area, are projected to have safety margins of 70.48 TPSD for NO_X and 30.20 TPSD for VOC in 2030 (the difference between the attainment year, 2014, emissions and the projected 2030 emissions for all sources in just the Indiana and Ohio portion of the Cincinnati area). Similarly, there is a safety margin of 53.74 TPSD for NO_X and 20.18 TPSD for VOC in 2020.

TABLE 15—SAFETY MARGIN FOR THE INDIANA AND OHIO PORTION OF THE CINCINNATI AREA, TPSD

	Attainment year 2014 emissions from all sources	2020 Estimated emissions from all sources	2020 Safety margin allocation	2030 Estimated emissions from all sources	2030 Safety margin allocation
VOC	114.56	94.38	20.18	84.36	30.20
NO_X	173.51	119.77	53.74	103.03	70.48

Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 14 above, a portion of the safety margin for the Indiana and Ohio portion of the Cincinnati area is allocated to the mobile source sector. Specifically, in 2020, 3.71 TPSD and 3.68 TPSD of the VOC and NO_X safety margins, respectively, are allocated to the mobile source sector. In 2030, 2.24 TPSD and 1.94 TPSD of the VOC and NO_X safety margins, respectively, are allocated to the mobile source sector. The requested amount allocated to the MVEBs represents only a small portion of the 2020 and 2030 safety margins. Therefore, even though the requested MVEBs are greater than the projected onroad mobile source emissions for 2020 and 2030 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

VI. Has the state submitted approvable emission inventories?

A. The 2008 Ozone NAAQS and Emission Inventory Requirements

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, emission inventories for all areas designated as nonattainment for any NAAQS, including the 2008 ozone NAAQS. An emission inventory for ozone is an estimation of actual emissions of air pollutants that contribute to the formation of ozone in an area. Therefore, an emission inventory for ozone focuses on the emissions of VOC and NO_X. VOC is emitted by many types of pollution sources, including power plants, industrial sources, onroad and nonroad mobile sources, smaller stationary sources, collectively referred to as area sources, and biogenic sources.[7] NO_X is primarily emitted by combustion sources, both stationary and mobile.

Emission inventories provide emissions data for a variety of air quality planning tasks, including establishing baseline emission levels (anthropogenic [manmade] emissions associated with ozone standard violations), calculating emission reduction targets needed to attain the NAAQS and to achieve reasonable further progress toward attainment of the ozone standard (not required in the area considered here), determining emission inputs for ozone air quality modeling analyses, and tracking emissions over time to determine progress toward achieving air quality and emission reduction goals. As stated above, the CAA requires the states to submit emission inventories for areas designated as nonattainment for ozone.

[7] Biogenic emissions are produced by living organisms and are typically not included in the base year emission inventories, but are considered in ozone modeling analyses, which must consider all emissions in a modeled area.

For the 2008 ozone NAAQS, EPA has recommended that states submit typical summer day emission estimates for 2011 (78 FR 34178, 34190, June 6, 2013). States are required to submit estimates of VOC and NO_X emissions for four general classes of anthropogenic sources: Stationary point sources; area sources; onroad mobile sources; and nonroad mobile sources.

B. Indiana's Emission Inventories

Indiana's February 23, 2016 submission includes a SIP revision addressing the VOC and NO_X emission inventory requirement for the Indiana portion of the Cincinnati area. Table 16 summarizes the 2011 VOC and NO_X emissions for the Indiana portion of the Cincinnati area for a typical summer day (reflective of the summer period, when the highest ozone concentrations are expected in the nonattainment area).

TABLE 16—INDIANA PORTION OF CINCINNATI AREA 2011 EMISSION INVENTORY

[tons per day]

Source type	VOC	NO_X
Non-EGU Point	4.01	2.71
EGU Point	0.27	15.08
Area	1.75	0.47
Onroad Mobile	1.33	1.89
Nonroad Mobile	0.42	0.53
Totals	7.78	20.68

IDEM estimated VOC and NO_X emissions for the Indiana portion of the Cincinnati area by totaling emissions within each source category. To develop the VOC and NO_X emission inventories, IDEM used the procedures summarized below.

The primary source of emissions data for non-EGU point sources was source-reported 2011 Emission Inventory System (EIS) data. IDEM requires certain regulated stationary sources in the ozone nonattainment areas to submit EISs annually. An EIS contains detailed source type-specific or source unit-specific annual and seasonal actual emissions for all source units in a facility. The EIS data for all applicable facilities were used to calculate annual and summer day county-specific point source emissions. Because they are determinative, only the summer day emissions are summarized here.

EGU point source emissions data were obtained from EPA's Clean Air Markets Division (CAMD). CAMD collects and processes EGU emissions nationally.

For all point sources, IDEM has provided a detailed list of major point source facilities and their associated summer day VOC and NO_X emissions within appendix H of its February 23, 2016, submittal.

Nonroad mobile source emissions were estimated using EPA's National Mobile Inventory Model (NMIM). The emission estimates were processed through the Consolidated Community Emissions Processing Tool (CONCEPT) to spatially allocate the emissions to the county levels.

As described earlier, area, nonroad mobile, and point source emissions (EGUs and non-EGUs) were collected from the Ozone NAAQS Implementation Modeling platform (2011v6.1). For 2011, this represents actual data reported to EPA by the states for the 2011 NEI. Because emissions data from state inventory databases, the NEI, and the Ozone NAAQS Emissions Modeling platform are annual totals, tons per summer day were derived according to EPA's guidance document ''Temporal Allocation of Annual Emissions Using EMCH Temporal Profiles'' dated April 29 2002, using the temporal allocation references accompanying the 2011v6.1 modeling inventory files.

Onroad mobile source emissions were developed in conjunction with the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) and were calculated from emission factors produced by EPA's 2014 Motor Vehicle Emission Simulator (MOVES) model and data extracted from the region's travel-demand model.

IDEM applied standardized, EPA-recommended procedures and data completeness checks to quality assure (QA) (to assure data accuracy) and quality check (QC) (to assure data completeness) the emission calculations.

C. EPA's Evaluation

EPA has reviewed Indiana's February 23, 2016, submittal for consistency with CAA and EPA emission inventory requirements. In particular, EPA has reviewed the techniques used by IDEM to derive and quality assure the emission estimates. EPA has also determined that Indiana has provided the public with the opportunity to review and comment on the development of the emission estimates and that the state has addressed all public comments.

1. Did the state adequately document the derivation of the emission estimates?

IDEM documented the procedures used to estimate the emissions for each of the major source types. The documentation of the emission estimation procedures is thorough and is adequate for us to determine that IDEM followed acceptable procedures to estimate the emissions.

2. Did the state quality assure the emission estimates?

IDEM developed a quality assurance plan and followed this plan during the various phases of the emissions estimation and documentation process to QA and QC the emissions for completeness and accuracy. These quality assurance procedures were summarized in the documentation describing how the emissions totals were developed. EPA has determined that the quality assurance procedures are adequate and acceptable. We conclude that Indiana has developed inventories of VOC and NO_X emissions that are comprehensive and complete.

3. Did the state provide for public review of the requested SIP revision?

IDEM notified the public of the opportunity for comment, and opened a comment period to solicit comments relevant to the emission inventory and the entire submittal. IDEM has reported that no comments were received.

VII. Proposed Actions

EPA is proposing to determine that the Cincinnati nonattainment area is attaining the 2008 ozone standard, based on quality-assured and certified monitoring data for 2013–2015 and that the Indiana portion of this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve IDEM's request to change the legal designation of the Indiana portion of the Cincinnati area from nonattainment to attainment for the 2008 ozone standard. EPA is also proposing to approve, as a revision to the Indiana SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Cincinnati area in attainment of the 2008 ozone NAAQS through 2030. Additionally, EPA finds adequate and is proposing to approve the newly-established 2020 and 2030 MVEBs for the Indiana and Ohio portion of the Cincinnati area. Finally, EPA is proposing to approve the 2011 base year emissions inventory submitted by IDEM as meeting the base year emissions inventory requirement of the CAA for the Indiana portion of the Cincinnati area.

VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a

maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: December 12, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–31044 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 79 and 80

[EPA–HQ–OAR–2016–0041; FRL–9957–45–OAR]

RIN 2060–AS66

Renewables Enhancement and Growth Support Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On November 16, 2016, the Environmental Protection Agency (EPA) proposed the Renewables Enhancement and Growth Support (REGS) rule. The proposal specified that the public comment period would end on January 17, 2017, 60 days after publication in the **Federal Register**. On December 9, 2016, the EPA received a joint request for an extension of the comment period from the following parties: American Soybean Association, Corn Refiners Association, Global Renewable Strategies and Consulting, LLC, Growth Energy, Iowa Biodiesel Board, Iowa Renewable Fuels Association, National Biodiesel Board, National Renderers Association, Renewable Fuels Association, and U.S. Canola Association. The petitioners requested an extension in order to have more time to evaluate the implications of the REGS rule. In light of the large number of revisions proposed in this action, the EPA is extending the deadline for written comments on the proposal by 30 days to February 16, 2017.

DATES: Comments must be received on or before February 16, 2017.

ADDRESSES: Submit your comments on the proposed REGS rule, identified by Docket ID No. EPA–HQ–OAR–2016–0041, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn 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: Julia MacAllister, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4131; email address: *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA proposed rule was published on November 16, 2016, at 81 FR 80828. For the reasons stated, the public comment period will now end on February 16, 2017.

Dated: December 20, 2016.

Christopher Grundler,

Director, Office of Transportation and Air Quality.

[FR Doc. 2016–31263 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 81, No. 248

Tuesday, December 27, 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

Food Safety and Inspection Service

[Docket No. FSIS–2016–0038]

Notice of Request for Revision of an Approved Information Collection (Sanitation SOPs and Pathogen Reduction/HACCP)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a revision of the approved information collection regarding Sanitation Standard Operating Procedures (Sanitation SOPs), pathogen testing and Hazard Analysis and Critical Control Point (HACCP) Systems requirements because the OMB approval will expire on April 30, 2017. FSIS has increased its total annual burden estimate by 781,956 hours as a result of new available data.

DATES: Comments on this notice must be received on or before February 27, 2017.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2016–0038. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Sanitation SOPs and Pathogen Reduction/HACCP Systems.

OMB Number: 0583–0103.

Expiration Date of Approval: 4/30/2017.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and properly labeled and packaged.

FSIS is requesting a revision of the approved information collection regarding Sanitation Standard Operating Procedures (Sanitation SOPs), pathogen testing and Hazard Analysis and Critical Control Point (HACCP) Systems requirements because the OMB approval will expire on April 30, 2017. FSIS has increased its total annual burden estimate by 781,956 hours as a result of new available data.

FSIS has established requirements applicable to meat and poultry establishments designed to reduce the occurrence and numbers of pathogenic microorganisms on meat and poultry products, reduce the incidence of foodborne illness associated with the consumption of those products, and provide a framework for modernization of the meat and poultry inspection system. The regulations (1) require that each establishment develop, implement, and revise, as needed, written Sanitation SOPs (9 CFR part 416); (2) require regular microbial testing for generic *E. coli* by livestock establishments to verify the adequacy of the establishment's process controls for the prevention and removal of fecal contamination and associated bacteria (9 CFR 310.25(a); and (3) require that all meat and poultry establishments develop and implement a system of preventive controls designed to improve the safety of their products, known as HACCP (9 CFR part 417).

Establishments may have programs that are prerequisite to HACCP that are designed to provide the basic environmental and operating conditions necessary for the production of safe, wholesome food. Because of its prerequisite programs an establishment may decide that a food safety hazard is not reasonably likely to occur in its operations. The establishment would need to document this determination in its Hazard Analysis and include the procedures it employs to ensure that the program is working and that the hazard is not likely to occur (9 CFR 417.5 (a)(1)).

FSIS has made the estimates below based upon an information collection assessment.

Estimate of Burden: FSIS estimates that it will take respondents an average of 1,157 hours each year to comply with the information request associated with this collection.

Respondents: Meat and poultry establishments.

Estimated Number of Respondents: 6,087.

Estimated Number of Annual Responses per Respondent: 6,087.

Estimated Total Annual Burden on Respondents: 7,045,303 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence SW., Room 6077, South Building, Washington, DC 20250, (202) 690–6510.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, *Fax:* (202) 690–7442, *Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on December 21, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016–31246 Filed 12–23–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2016–0039]

Notice of Request for Revision of an Approved Information Collection (Procedures for the Notification of New Technology and Requests for Waivers)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a revision of the approved information collection regarding the procedures for notifying the Agency about new technology and requests for waivers because the OMB approval will expire on April 30, 2017. Based on the latest available data, FSIS has increased its total annual burden estimate by 9,184 hours to account for in-plant trials, and monthly data collection and recordkeeping for establishments operating under a waiver.

DATES: Submit comments on or before February 27, 2017.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2016–0028. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Procedures for the Notification of New Technology and Requests for Waivers.

OMB Number: 0583–0127.

Expiration Date of Approval: 4/30/2017.

Type of Request: Revision of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et*

seq.), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and properly labeled and packaged.

FSIS is requesting a revision of the approved information collection regarding the procedures for notifying the Agency about new technology and requests for waivers because the OMB approval will expire on April 30, 2017. Based on the latest available data, FSIS has increased its total annual burden estimate by 9,184 hours to account for in-plant trials, and monthly data collection and recordkeeping for establishments operating under a waiver.

FSIS has established procedures for notifying the Agency of any new technology intended for use in official meat and poultry establishments and egg products plants (68 FR 6873). To follow the procedures, establishments, plants, and firms that manufacture and sell technology to official establishments and plants notify the Agency by submitting documents describing the operation and purpose of the new technology. The documents should explain why the new technology will not (1) adversely affect the safety of the product, (2) jeopardize the safety of Federal inspection personnel, (3) interfere with inspection procedures, or (4) require a waiver of any Agency regulation. If use of the new technology will require a waiver of any Agency regulation, the notice should identify the regulation and explain why a waiver would be appropriate (9 CFR 303.2). If the new technology could affect FSIS regulations, product safety, inspection procedures, or the safety of inspection program personnel, the establishment or plant would need to submit a written protocol for an in-plant trial as part of a pre-use review. The submitter of a written protocol should provide data to the Agency throughout the duration of the in-plant trial.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 8 hours to complete a notification of intent to use new technology if no in-plant trial is necessary. If an in-plant trial is necessary, FSIS estimates that it will take an average of 80 hours to develop a protocol and an average of 80 additional hours to collect data and keep records during the in-plant trial. FSIS estimates it will take respondents an average of 120 hours to collect data and conduct recordkeeping under a waiver.

Respondents: Official meat and poultry establishments and egg product plants; firms that manufacture or sell technology to official establishments and plants.

Estimated Number of Respondents: 75 respondents will submit notifications of intent to use new technology. 50 respondents will develop a protocol for and conduct an in-plant trial. 50 respondents will collect data and conduct recordkeeping for the duration of the in-plant trial. 35 respondents will collect data and conduct recordkeeping under the waiver.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,800 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence SW., 6065, South Building, Washington, DC 20250; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, *Fax:* (202) 690–7442, *Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on December 21, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016–31252 Filed 12–23–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed collection; Comment Request—Study of Non-Response to the School Meals Application Verification Process

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for the Study of Non-Response to the School Meals Application Verification Process.

DATES: Written comments must be received on or before February 27, 2017.

ADDRESSES: Comments may be sent to: Courtney Paolicelli, Food and Nutrition Service, U.S. Department of Agriculture, Office of Policy Support, Special Nutrition Evaluation Branch, 3101 Park Center Drive, 10th Floor, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Courtney Paolicelli at 703–305–2576 or via email to *courtney.paolicelli@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, 10th Floor, Room 1014, Alexandria, Virginia 22302. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Courtney Paolicelli at 703–605–4370 or *courtney.paolicelli@fns.usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Study of Non-Response to the School Meals Application Verification Process.

Form Number: N/A.

OMB Number: Not yet assigned.

Expiration Date: Not yet determined.

Type of Request: New information collection.

Abstract: The National School Lunch Program (NSLP) and the School Breakfast Program (SBP) provide subsidized lunches and breakfasts to millions of students each school day. Students are certified eligible to receive free or reduced-price (F/RP) meals through application or direct certification. When eligibility is determined using an application process, school districts must annually verify eligibility of children from a sample of household applications for that school year, unless the State agency assumes responsibility for verification.

This study will examine the accuracy of district verification procedures using a case study approach similar to a previous study conducted for FNS, the Case Study of National School Lunch Program Verification Outcomes in Large Metropolitan School Districts (published by FNS in 2004) (Office of Management and Budget number 0584–0516 Evaluation of the NSLP Application and Verification and Pilot Program, expiration date 10/31/2003). Consistent with the previous study, the study team will purposively select 20 participating school districts for a case study, describe the districts' verification outcomes, and independently verify eligibility for two samples of households approved by application on the basis of income and selected for verification by the district. These two household samples include: (1) Households that did not respond to the school meals application verification requests, and (2) households that responded to verification requests and experienced no change in school meals benefits. The 2004 study will be expanded by: (1) Including at least one rural district in the case study, (2) interviewing school district officials about processes for selecting applications for cause, (3) analyzing verification outcomes for applications selected for cause, (4) analyzing households' reasons for not responding to district verification requests, and (5) redesigning the 2004 analyses to reflect policy changes enacted since 2004.

Affected Public: Affected public include: individuals/households, and state, local, and tribal government. Specifically, participants from districts selected to participate in the study are: (1) Households that did not respond to school meals application verification requests, (2) households that responded to verification requests and experienced no change in school meals benefits, and (3) School Food Authority (SFA) Directors and/or designees.

Estimated Number of Respondents: The total estimated number of respondents is 2,075. This includes 2,055 households and 20 SFA Directors or designees. Across 20 school districts, household sampling will yield: (1) Up to 1,235 households in the nonresponding group (42 completed surveys per district × 20 districts = 840 households, plus 395 households who do not consent to participate) and (2) up to 820 households in the unchanged benefits group (32 completes per district × 20 districts = 640 households, plus 180 households who do not consent to participate). Of these 2,055 households, 1,480 respondents and 575 non-respondents are anticipated. Twenty (20) SFA Directors or designees will be sampled and these individuals will: (a) Help facilitate study logistics, (b) coordinate data requests and household sampling in fall 2017, (c) complete a 15-minute phone interview, and (d) provide an updated list of household reapplications and their results in spring 2018.

Estimated Number of Responses per Respondent: The estimated number of responses across the entire collection is 1.03. The study asks each selected household respondent to participate in one in-person survey. The study also asks each SFA Director or designee to respond to four study-related requests: (1) Helping the study team's participation coordinator with study logistics, (2) helping coordinate data requests and household sampling in fall 2017, (3) helping coordinate data requests in spring 2018, and (4) completing a 15-minute phone interview.

Estimated Total Annual Responses: 2,135.

Estimated Time per Response: The average estimated time per response across the entire collection is 34 minutes (0.57 hours). The estimated time of response varies from 5 minutes to 1.5 hours, as shown in the table below. These estimates include a 45-minute (0.75 hour) computer-assisted personal interviewing (CAPI) survey of each household respondent, and a

combined 3.25 hours of response time for each SFA Director or designee. For the SFA Directors, the 3.25 hours includes the time it will take them to respond to all 4 study-related requests.

Estimated Total Annual Burden on Respondents: 73,363.8 minutes (1,222.73 hours). See the table below for estimated total annual burden for each type of respondent.

Respondent	Data collection activity	Estimated number of respondents	Responses annually per respondent	Total annual responses	Estimated average number of hours per response	Estimated total hours
Reporting Burden						
Household survey participants.	CAPI interview (Respondents) (Includes advance letters and follow-up communications).	1,480	1	1,480	0.75	1,110.00
	CAPI interview (Non-Respondents) (Includes advance letters).	575	1	575	0.083	47.73
SFA Directors or designees	Logistics (Includes advance letters and follow-up communications).	20	1	20	1	20
	Fall 2017 data request	20	1	20	1.5	30
	Telephone interview	20	1	20	0.25	5
	Spring 2018 data request ..	20	1	20	0.5	10
Total Reporting Burden	.....	2,075	1.03	2,135	0.57	1,222.73

Dated: December 13, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–31181 Filed 12–23–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Special Use Administration.

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection, Special Use Administration.

DATES: Comments must be received in writing on or before February 27, 2017 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Volunteers & Service Program Manager, USDA Forest Service, Attn: Lands, 1400 Independence Ave. SW., Mailstop Code: 1124, Washington, DC 20250–1124. Comments also may be submitted via facsimile to 202–644–4700 or by email to: *reply_lands@fs.fed.us*.

The public may inspect comments received at the Office of the Director, Lands, 1st Floor South East, Sidney R. Yates Federal Building, 201 14th Street SW., Washington, DC, during normal business hours. Visitors are encouraged to call ahead to 202–205–3563 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Mark Chandler, Lands, at 202–205–1117. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Special Use Administration.

OMB Number: 0596–0082.

Expiration Date of Approval: January 31, 2017.

Type of Request: Extension with revision.

Abstract: The information collection requirements are necessary for the Forest Service to issue and administer special use authorizations that allow the public to use and occupy National Forest System (NFS) lands under these authorities. The information collected is used by Forest Service officials (unless otherwise noted) to ensure that uses of NFS lands are authorized, in the public interest, and compatible with the Agency's mission; and/or record authorization of use granted by appropriate Forest Service officials.

In addition, the Department of the Interior (DOI) statutes for the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), National Park Service (NPS), and Bureau of Reclamation (BOR) along with the statute for the U.S. Army Corp of Engineers (USACE) authorize its collection of information and will utilize form SF–299 ''Application for Transportation and Utility Systems and Facilities on Federal Lands.''

Several statutes authorize the Forest Service to issue and administer authorizations for use and occupancy of NFS lands and collect information from the public for those purposes. The laws authorizing the collection of this information include the Organic Administration Act of 1897 (16 U.S.C. 551); Title V of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1761–1771); Act of March 4, 1915 (16 U.S.C. 497); Alaska Term Permit Act of March 30, 1948 (48 U.S.C. 341); Act of September 3, 1954 (68 Stat. 1146; 43 U.S.C. 931c, 931d); National Forest Ski Area Permit Act (16 U.S.C. 497b); section 28 of the Mineral Leasing Act (30 U.S.C. 185); National Forest Roads and Trails Act (FRTA, 16 U.S.C. 532–538); section 7 of the Granger-Thye Act (16 U.S.C. 480d); Act of May 26, 2000 (16 U.S.C. 460l–6d); Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814); Archeological Resource Protection Act of October 31, 1979 (16 U.S.C. 1996); and the Rural Electrification Act of 1936, as amended.

Forest Service regulations implementing these authorities, found at 36 CFR part 251, subpart B, contain information collection requirements, including submission of applications, execution of forms, and imposition of terms and conditions that entail information collection requirements, such as the requirement to submit annual financial information, to prepare and update an operating plan; to

prepare and update a maintenance plan, and to submit compliance reports and information updates.

The information helps the Forest Service identify the environmental and social impacts of special uses for purposes of compliance with the National Environmental Policy Act and program administration. In addition, the Forest Service uses the information to ascertain whether the land use fee(s) charged for special use authorizations are based on market value.

Information collection occurs via application forms, as well as terms and conditions in special use authorizations and operating plans. There are six categories of information collected:

(1) Information required from proponents and applicants to evaluate proposals and applications to use or occupy NFS lands,

(2) Information required from applicants to complete special use authorizations,

(3) Annual financial information required from holders to determine land use fees,

(4) Information required from holders to prepare and update operating plans,

(5) Information required from holders to prepare and update maintenance plans, and

(6) Information required from holders to complete compliance reports and informational updates.

The six categories cover all information collection requirements involved in administration of the Special Uses program, including application and reporting forms; authorization forms; supplemental special use authorization clauses in Forest Service Handbook 2709.11, chapter 50; and information collection requirements not associated with an approved standard form.

These six categories demonstrate the complexity of the special uses program and the importance of standard forms in administration of the program. Special use authorizations encompass a variety of activities ranging from individual private uses to large-scale commercial facilities and public services. Examples of authorized special uses include public and private road rights-of-way, apiaries, domestic water supply conveyance systems, telephone and electric service rights-of-way, oil and gas pipeline rights-of-way, communications facilities, hydroelectric power-generating facilities, ski areas, resorts, marinas, municipal sewage treatment plants, and public parks and playgrounds.

Category 1: The Application Process

1. SF–299, *Application for Transportation and Utility Systems and Facilities on Federal Lands,* is used to evaluate the applicant's technical and financial capability, nature of the proposed operations, and anticipated environmental impacts and proposed mitigation of those impacts. This form is used for most non-recreational NFS lands use requests. This form will also be used by the Department of the Interior's BLM, FWS, NPS, BOR, and the U.S. Army Corp of Engineers to grant, issue, or renew rights-of-way (ROW) to use a specific piece of public land for a certain project. Some examples of land uses which require a ROW grant include: transmission lines, communication sites, roads, highways, trails, telephone lines, canals, flumes, pipelines, reservoirs, and so forth.

2. IRS form W–9, *Request for Taxpayer Identification Number and Certification,* is used to certify permit holder federal tax classification as part of the permit authorization and administration process.

3. FS–2300–43, *Special Use Application and Permit for Government-Owned Buildings,* is the form used by the Forest Service to collect information and to issue permits for use of government-owned facilities on NFS lands.

4. FS–2700–3a, *Holder-Initiated Revocation of Existing Authorization and Request for a Special Use Permit,* is used to facilitate issuance of a new authorization when there is a change in ownership of authorized improvements or a change in control of the holder of a special use authorization.

5. FS–2700–3b, *Special Use Application and Permit for Noncommercial Group Use,* provides information used to evaluate requests to use NFS lands for noncommercial gatherings involving 75 or more people, such as a wedding or an activity involving the exercise of First Amendment rights, and to authorize such requests.

6. FS–2700–3c, *Special Use Application and Permit for Recreation Events,* is used to collect information needed to evaluate requests to use NFS lands for events involving an entry or participation fee, such as an endurance ride, and to authorize such requests.

7. FS–2700–3f, *Special Use Application and Permit, Temporary Permit for Outfitting and Guiding,* is the form used by the Forest Service to collect information and to issue temporary permits to use NFS lands for Outfitting and Guiding services.

8. FS–2700–10, *Technical Data for Communications Uses,* is the form used by the Forest Service to collect information and to evaluate the compatibility of communications equipment at a communications site to minimize frequency interference and other compatibility problems.

9. FS–2700–11, *Agreement Concerning a Small Business Administration Loan for a Holder of a Special Use Permit,* is the form used by the Forest Service to collect information and to enter into agreement with a holder, a lender, and the U.S. Small Business Administration (SBA) regarding a loan guaranteed by the SBA.

10. FS–2700–12, *Agreement Concerning a Loan for a Holder of a Special Use Permit,* is the form used by the Forest Service to collect information and to enter into an agreement with a holder and a lender regarding a loan not guaranteed by the SBA.

11. FS–2700–30, *Application for Permit for Archaeological Investigations,* is the form used by the Forest Service to collect information and to evaluate the financial capability and qualifications of an applicant to undertake archaeological investigations on NFS lands.

12. FS–2700–33, *Additional Insured Endorsement for a Special Use Authorization,* is the form used by the Forest Service to collect information and to name the United States as an additional insured in an insurance policy issued to the holder of a special use authorization.

13. FS–2700–34, *Prospectus for Campground and Related Granger-Thye Concessions,* is used to select the most qualified applicant to operate a concession campground in a competitive process.

14. FS–2800–22A, *Application for Authorization for Paleontological Resources Research or Collection, ((re-numbered from and separated from FS–2700–36)),* is the form used by the Forest Service to collect information required to evaluate an applicant's proposal for paleontological research or collection to ensure compliance with statutory and regulatory requirements established for such activities.

15. FS–2800–22B, *Authorization to Conduct Paleontological Resources Research or Collection, ((re-numbered from and separated from FS–2700–36)),* is the form used by the Forest Service to establish stipulations for the performance of authorized activities related to paleontological research or collection.

16. FS–2800–22C, *Paleontological Investigation Report Form, ((re-numbered from and separated from FS–2700–36)),* is the form used by the Forest Service to collect information necessary

to evaluate a permit holder's compliance with requirements established under an authorization to conduct paleontological research or collection, and to collect information used in the monitoring of paleontological resources.

17. FS–2800–22D, *Paleontological Specimen Data Form, ((re-numbered from and separated from FS–2700–36)),* is the form used by the Forest Service to provide information regarding specimens collected under authorization, which remain Federal property, and which must be deposited in an approved repository institution.

18. FS–6500–24, *Financial Statement,* provides information used by the authorized Forest Service officer or financial analyst to evaluate the financial capability of an applicant to undertake the requested use and to comply with the terms and conditions of an authorization. This form is used primarily for requests to operate ski areas, resorts, and government-owned campgrounds on NFS lands.

19. 16. FS–6500–25, *Request for Verification,* is the form used by an authorized Forest Service officer or financial analyst to: (1) Obtain a release of information from a financial institution to verify the financial capability of an applicant to undertake the requested use, and (2) to comply with the terms and conditions of an authorization. This form is used primarily for requests to operate ski areas, resorts, and government-owned campgrounds on NFS lands.

20. *Response to a Prospectus* (no designated form). When the Forest Service offers a new business opportunity that requires a Special Use authorization, for which there is competitive interest, it is necessary to issue a prospectus. Information provided by applicants in response to a prospectus is used to select the most qualified applicant.

21. Stanislaus FS–2300–1A Tuolumne Wild and Scenic River Permit (NEW) is the form used by the Forest Service to collect information and to issue temporary permits to use NFS lands for river permit.

22. Stanislaus FS–2300–1B Cherry Creek Self-Registration Permit (NEW) is the form used by the Forest Service to collect information and to issue temporary permits to use NFS lands for river permit.

Category 2: Special Use Authorizations

1. FS–2700–4, *Special Use Permit,* is the form used by the Forest Service to collect information and to authorize a variety of uses on NFS lands not covered by another form.

2. FS–2700–4b, *Forest Road Special Use Permit,* is the form used by the Forest Service to collect information and to authorize, under FLPMA, the construction and use of an NFS road, typically to access private property within a national forest for commercial purposes, such as timber hauling or noncommercial purposes such as residential use.

3. FS–2700–4c, *Private Road Special Use Permit,* is the form used by the Forest Service to collect information and to authorize, under FLPMA, the construction and use of a road that is not part of the forest transportation system to access non-Federal land, a mining claim, a mineral leasing area, or other uses of NFS lands.

4. FS–2700–4d, *Temporary Cost Share Agreement Road Special Use Permit,* is the form used by the Forest Service to collect information and to authorize, under FLPMA, the construction, maintenance, and use of a temporary road on NFS lands covered by a cost share agreement to access private property within a national forest for commercial purposes, such as timber harvesting.

5. FS–2700–4h, *Special Use Permit for Campground and Related Granger-Thye Concessions,* is the form used by the Forest Service to collect information and to authorize the operation and maintenance of a government-owned recreation site on NFS lands.

6. FS–2700–4h—*Appendix B, Annual Granger-Thye Fee Offset Agreement,* is used by authorized Forest Service official and the holder to specify the government maintenance, reconditioning, renovation, and improvement used to offset the land use fee for a Campground and Related Granger-Thye Concessions Special Use Permit.

7. FS–2700–4h—*Appendix F, Special Use Permit for Campground and Related Granger-Thye Concessions,* describes the Forest Service's drinking water program and the requirements that apply to holders authorized to operate a federally owned drinking water system.

8. FS–2700–4h—*Appendix G, Granger-Thye Fee Offset Claim Certification,* is used by a holder to provide a record of said holder's direct and indirect costs attributable to a project enumerated in a Granger-Thye Fee Offset Agreement.

9. FS–2700–4i, *Special Use Permit for Outfitting and Guiding,* is the form used by the Forest Service to collect information and authorize the use and occupancy of NFS lands to provide outfitting and guiding services.

10. FS–2700–4j, *Special Use Permit for a Federal Agency's Electric Transmission Facilities,* is the form used by the Forest Service to collect information and authorize the use and occupancy of NFS lands by a Federal agency that owns and operates electric transmission lines and facilities.

11. FS–2700–4–*Shawnee, Special Use Permit for Equestrian Outfitting on the Shawnee National Forest,* is required as part of a litigation settlement for the Shawnee National Forest.

12. FS–2700–5, *Term Special Use Permit,* is the form used by the Forest Service to collect information and authorize long-term use of NFS lands involving privately owned facilities.

13. FS–2700–5a, *Term Special Use Permit for Recreation Residences,* is the form used by the Forest Service to collect information and authorize a privately owned recreation residence on NFS lands.

14. Grand Island–FS–2700–5a, *Term Special Use Permit for Recreation Residences,* is the form used by the Forest Service to collect information and authorize a privately owned recreation residence on Grand Island Recreation Area.

15. FS–2700–5b, *Ski Area Term Special Use Permit,* is the form used by the Forest Service to collect information and authorize ski areas on NFS lands.

16. FS–2700–5c, *Resort/Marina Term Special Use Permit,* is the form used by the Forest Service to collect information and authorize a resort/marina on NFS lands.

17. FS–2700–5d, *Resort Supplement for Outfitting and Guiding,* provides information the Forest Service uses to authorize outfitting and guiding occurring at a resort/marina on NFS lands.

18. FS–2700–9a, *Agricultural Irrigation and Livestock Watering System Easement,* is used by the Forest Service to collect information and grant an easement for an agricultural irrigation or a livestock watering system on NFS lands.

19. FS–2700–9b, *Cost Share Easement,* is used by the Forest Service to collect information and authorize, under FRTA, the acquisition, construction, or reconstruction and the maintenance and use of an NFS road that is subject to a cost share agreement. The parties to the cost share agreement grant each other easements within the geographic area covered by the agreement. A cost share easement is for a NFS road and is subject to the cost sharing provisions of the agreement.

20. FS–2700–9c, *Non-Cost Share Easement,* is used by the Forest Service to collect information and authorize, under FRTA, the construction, reconstruction, maintenance, and use of

private roads under a cost share agreement. The parties to the cost share agreement grant each other easements within the geographic area covered by the agreement. A non-cost share easement is for a private road (rather than a NFS road) and is not subject to the cost sharing provisions of the agreement.

21. FS–2700–9d, *Public Road Easement,* is used by the Forest Service to collect information and grant easements, under FRTA, to public road authorities, such as States or counties, to construct and maintain public roads that are not part of the Federal Aid Highway System.

22. FS–2700–9e, *Forest Road Easement,* is issued under the National Forest Roads and Trails Act. This form is used by the Forest Service to collect information and to grant an easement, under FRTA, to a party to a cost share agreement, or to another non-Federal landowner who is cooperating in the acquisition, construction, or maintenance of a NFS road. The easement is for acquisition, construction or reconstruction, maintenance, and use of a NFS road that is outside the boundaries of a cost share agreement. At the time the easement is granted, the grantor and the grantee share the costs of acquisition, construction, and reconstruction. After the easement is granted, the grantor and the grantee share only the cost of maintenance.

23. FS–2700–9f, *Private Road Easement,* issued under the National Forest Roads and Trails Act; the Forest Service uses this form to collect information and grant an easement, under FRTA, to a party to a cost share agreement, or to another non-Federal landowner who is cooperating in the acquisition, construction, or maintenance of a NFS road. The easement is for construction or reconstruction, maintenance, and use of a private road that is outside the boundaries of a cost share agreement. Since the easement is for a private rather than a NFS road, the cost of constructing, reconstructing, and maintaining the road are borne by the grantee.

24. FS–2700–9g, *Forest Road Easement,* issued under the Federal Land Policy and Management Act, is used by Forest Service to collect information and grant an easement, under FLPMA, for construction, reconstruction, maintenance, and use of an NFS road, when the grantee is not a party to a cost share agreement for the acquisition, construction, and maintenance of an NFS road, or when the grantee does not meet the requirements for issuance of a forest road easement under FRTA.

25. FS–2700–9h, *Private Road Easement,* issued under the Federal Land Policy and Management Act, is used by the Forest Service to collect information and grant an easement, under FLPMA, for construction, reconstruction, maintenance, and use of a private road, when the grantee is not a party to a cost share agreement for the acquisition, construction, and maintenance of NFS roads, or when the grantee does not meet the requirements for issuance of a private road easement under FRTA.

26. FS–2700–10b, *Communications Site Lease,* is the form used by the Forest Service to collect information and to authorize a communications use within a designated communications site on NFS lands.

27. FS–2700–10c *(re-numbered from 2700–39), Communications Use Permit for Federal Agencies,* is the form used by the Forest Service to collect information and to authorize a communications use within a designated communications site on NFS lands is to be used ONLY for Federal Agencies (other than the Forest Service) who have jurisdiction over the facility.

28. FS–2700–23, *Amendment for Special Use Authorization,* is used by the Forest to collect information and amend an existing special use authorization.

29. FS–2700–25, *Temporary Special Use Permit,* is used by the Forest Service to authorize uses of 1 year or less on NFS lands.

30. FS–2700–26, *Major Category Cost Recovery Agreement,* is used to effectuate cost recovery for special use applications or authorizations involving over 50 hours to process or monitor.

31. FS–2700–26b, *Cost Recovery Master Agreement,* is used by Forest Service officials to effectuate cost recovery for special use applications or authorizations involving multiple phases of development or groups of applications or similar applications for a specified geographic area.

32. FS–2700–27, *Notice to Alaska Native Corporations Regarding Prospectus for Visitor Services,* is used by the Forest Service to collect information and provide notice to Alaska Native Corporations of the issuance of a prospectus to conduct visitor services in Conservation System Units in Alaska. Notification provides the Alaska Native Corporations a chance to request designation as a most directly affected Native Corporation for purposes of competing for the opportunity to conduct visitor services.

33. FS–2700–31, *Electric Transmission Line Easement,* the Forest Service uses this form to collect information and to grant a long-term easement, under FLPMA, for an electric transmission line to a non-federal organization.

34. FS–2700–32, *Permit for Archaeological Investigations,* the Forest Service uses this form to collect information and to grant a permit to a qualified applicant to conduct archeological investigations on or within NFS lands.

Category 3: Annual Financial Information

1. FS–2700–6b, *Recreation Residence Self-Inspection Report,* is the Forest Service uses this form to review and record any modifications made to a recreation residence.

2. FS–2700–7, *Reconciliation of Sales for Fee Calculation,* this form provides information used by the Forest Service to determine land use fees based on sales revenue.

3. FS–2700–8, *Reconciliation of Gross Fixed Assets to Booked Amounts,* the Forest Service uses the information provided on this form to determine land use fees based on the gross fixed assets of the holder.

4. FS–2700–10a, *Telecommunications Facility Inventory,* the Forest Service uses the information provided on this form to determine the rent for a communications facility based on the number of tenants in the facility.

5. FS–2700–19, *Fee Calculation for Concession Permits,* information collected via this form is used by the Forest to determine the land use fee for concession permits under the Graduated Rate Fee System.

6. FS–2700–19a, *Fee Calculation for Ski Area Permits,* this form collects information used by the Forest Service to determine the land use fee for ski area permits under the Ski Fee Act.

7. FS–2700–38, *RUS Certification Form—Telephone Facility,* this form collects information to determine eligibility of fee waiver by the Rural Utility Service.

8. *Business Practices* (no designated form). The holder provides information regarding various business practices, such as basic accounting or financial records, upon request by the authorized officer or as a term and condition of an authorization. In most circumstances, the form used is one customarily used for the type of business involved.

Category 4: Preparing and Updating Operating Plans (No Designated Form)

Special use authorizations may contain a clause requiring the holder to

prepare and update an operating plan that governs day-to-day operations of the authorized use. This information is useful to the holder and the Forest Service, because it specifies procedures and policies for conducting the authorized use. Typically, operating plans contain daily operating guidelines, fire abatement and control procedures, monitoring guidelines, maintenance standards, safety and emergency plans, and inspection standards. Operating plans are usually necessary for complex operations, commercial uses, and uses conducted in environmentally sensitive areas.

Category 5: Preparing and Updating Maintenance Plans (No Designated Form)

A permit or easement issued under FLPMA or FRTA may require the holder or grantee to submit and update a road maintenance plan or information necessary for the preparation of a road maintenance plan. A road maintenance plan governs the responsibility of the holder or grantee to perform or pay for maintenance of an NFS road.

Category 6: Compliance Reports and Information Updates

1. FS–2700–1, *Inspection form for Special Uses,* is used to document onsite examination of an authorized activity or facility to assess conditions and inform a compliance review.

2. *Compliance Reports and Information Updates* (no designated form). Special use authorizations may contain a clause requiring the holder to provide the Forest Service with compliance reports, information reports, and other information required by Federal law or to manage NFS lands to ensure adequate protection of national forest resources and public health and safety. Examples of compliance and information updates include dam maintenance inspection reports and logs required by the Reclamation Safety of Dams Act of 1978; the Federal Dam Safety Inspection Act of 1979; and the Dam Safety Act of 1983; documentation that authorized facilities passed safety inspections; documentation showing that the United States is named as an additional insured in an insurance policy issued to a holder; notifications involving a change in ownership of authorized improvements or a change in control of the holder; and documentation of compliance with Title VI of the Civil Rights Act of 1964.

Forest Service

Estimated Annual Burden: 2.9 burden hours per response (This is an average burden per form. This estimated annual burden also includes data from the Department of the Interior and the U.S. Army Corp of Engineers.)

Type of Respondents: Individuals, Businesses, Non-profit Organizations, and Non-Federal Governmental entities.

Estimated Annual Number of Respondents: 168,728 respondents (This is a 3-year user rate average as tracked by the Special Use Data System (SUDS). This estimated annual number of respondents also includes data from the Department of the Interior and the U.S. Army Corp of Engineers.)

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 336,463.5 hours. (This is an estimation based on a three year usage rate as tracked by SUDS multiplied by Burden Hours per Form. This estimated annual burden on respondents also includes data from the Department of the Interior and the U.S. Army Corp of Engineers.)

Department of the Interior—BLM, FWS, NPS and BOR

Estimated Annual Burden: 25 burden hours per response.

Type of Respondents: Individuals, Businesses, Non-profit Organizations, and State and Local and Federal Government.

Estimated Annual Number of Respondents: 5,254.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 131,051 hours.

U.S. Army Corp of Engineers

Estimated Annual Burden: 25 burden hours per response.

Type of Respondents: Individuals, Businesses, Non-profit Organizations, and State and Local and Federal Government.

Estimated Annual Number of Respondents: 32.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 800 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: December 14, 2016.

Gregory C. Smith,

Director, Lands and Realty Management, National Forest System.

[FR Doc. 2016–31214 Filed 12–23–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS 2016–0013]

Notice of Availability of the Mississippi Trustee Implementation Group Draft 2016–2017 Restoration Plan/ Environmental Assessment for Review and Public Comment

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), the *Deepwater Horizon* Federal and State natural resource trustee agencies for the Mississippi Trustee Implementation Group (MS TIG) have prepared a Draft 2016–2017 Restoration Plan/Environmental Assessment (Draft RP/EA). The Draft RP/EA describes and proposes restoration project alternatives and proposed projects considered by the MS TIG to restore natural resources and ecological services injured or lost as a result of the *Deepwater Horizon* oil spill. The proposed projects are consistent with the restoration alternatives selected in the Final Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS). The purpose of this notice is to inform the public of the availability of the Draft RP/EA and to seek public comments on the document.

DATES: *Effective Date:* This is effective December 27, 2016. *Comments Date:* Submit comments on or before February 10, 2017.

ADDRESSES: *Obtaining Documents:* You may download the Draft RP/EA at *http://www.gulfspillrestoration.noaa.gov.* Alternatively, you may request a CD of the Draft RP/EA (see **FOR FURTHER INFORMATION CONTACT**). Also, you may view the document at any of the public facilities listed at *http://www.gulfspillrestoration.noaa.gov.*

Submitting Comments: You may submit comments on the Draft RP/EA by one of following methods:

- *Via the Web: http://www.gulfspillrestoration.noaa.gov* or
- *Via U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 49567, Atlanta, Georgia 30345. Please note that mailed comments must be postmarked on or before the comment deadline of February 10, 2017 to be considered.

FOR FURTHER INFORMATION CONTACT: Mississippi—Tabatha Baum, *mississippiTIG@deq.state.ms.us.*

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* that was being used to drill a well for BP Exploration and Production Inc. (BP) in the Macondo prospect (Mississippi Canyon 252—MC252) exploded, caught fire, and subsequently sank in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest maritime oil spill in United States (U.S.) history, discharging millions of barrels of oil over a period of 87 days. In addition, well over one million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas also was released to the environment as a result of the spill.

The *Deepwater Horizon* State and Federal natural resource trustees (DWH Trustees) conducted the natural resource damage assessment (NRDA) for the *Deepwater Horizon* oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM);
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce (DOC);
- U.S. Department of Agriculture (USDA);
- U.S. Department of Defense (DOD); [1]
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- For the State of Texas, Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

Upon completion of the NRDA, the DWH Trustees reached and finalized a settlement of their natural resource damage claims with BP in a Consent Decree [2] approved by the U.S. District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Mississippi Restoration Area are now chosen and managed by MS TIG.

MS TIG is composed of the following Trustees:

- Mississippi Department of Environmental Quality;
- DOI, as represented by NPS, USFWS, and BLM;
- NOAA, on behalf of the U.S. DOC;
- USDA;
- EPA;

This restoration planning activity is proceeding in accordance with the *Deepwater Horizon* Oil Spill: Final Programmatic Damage Assessment and Restoration Plan (PDARP) and Final Programmatic Environmental Impact Statement (PEIS). Information on the restoration types being considered in the Draft RP/EA, as well as the OPA criteria against which project ideas are being evaluated, can be viewed in the PDARP/PEIS (*http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan*) and in the Overview of the PDARP/PEIS (*http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan*).

Background

On May 27, 2016, MS TIG published a notice to invite public input regarding natural resource restoration opportunities in the Mississippi Restoration Area for the 2016–2017 planning years. The notice indicated a focus on the following range of potential restoration types that may have benefits to living coastal and marine resources: Restoration of Wetlands, Coastal and Nearshore Habitats, restoration of water quality through Nutrient Reduction (Nonpoint source), restoration of Birds, and restoration of Oysters. Because there are several ongoing or completed projects benefitting oysters and secondary productivity in the Mississippi Restoration Area, MS TIG chose not to prioritize the oyster restoration type in this Draft RP/EA.

On October 31, 2016, MS TIG published a Notice of Initiation for Restoration Plan Drafting in Mississippi indicating its intent to focus on the following restoration types:

- Wetlands, Coastal and Nearshore Habitats
- Nutrient Reduction (nonpoint source)
- Birds

Overview of the Draft RP/EA

The Draft RP/EA is being released in accordance with the OPA, NRDA regulations in the Code of Federal Regulations (CFR) at 15 CFR part 990, and the NEPA (42 U.S.C. 4321 *et seq.*).

For the Draft RP/EA, MS TIG proposes moving forward with the following two preferred alternatives and proposed projects within the Wetlands, Coastal and Nearshore Habitat and Birds Restoration Types: (1) Graveline Bay Land Acquisition and Management and (2) Grand Bay Land Acquisition and Habitat Management. MS TIG also proposes the following preferred alternative and proposed project within the Nutrient Reduction (Nonpoint Source) Restoration Type: Upper Pascagoula River Water Quality Enhancement. RP/EA also evaluates a no action alternative. One or more

[1] Although a trustee under OPA by virtue of the proximity of its facilities to the *Deepwater Horizon* oil spill, DOD is not a member of the Trustee Council and does not participate in DWH Trustee decision-making.

[2] *https://www.justice.gov/enrd/file/838066/download.*

alternatives may be selected for implementation by MS TIG.

MS TIG has examined and assessed the extent of injury and the restoration alternatives. In the Draft RP/EA, MS TIG presents to the public its draft plan for providing partial compensation to the public for natural resources and ecological services in the Mississippi Restoration Area. The proposed projects are intended to continue the process of restoring natural resources and ecological services injured or lost as a result of the *Deepwater Horizon* oil spill. Additional restoration planning for the Mississippi Restoration Area will continue.

Next Steps

The public is encouraged to review and comment on the Draft RP/EA. After the close of the public comment period, MS TIG will consider and address the comments received before issuing a final RP/EA. A summary of comments received and MS TIG's responses will be included in the final document.

Invitation to Comment

MS TIG seeks public review and comment on the Draft RP/EA. Before including your address, telephone 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 publicly available at any time.

Administrative Record

The documents included in the Administrative Record can be viewed electronically at the following location: *http://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority of this action is the OPA of 1990 (33 U.S.C. 2701 *et seq.*) and the implementing NRDA regulations found at 15 CFR part 990.

Signed this 20th day of December 2016, in Washington, DC.

Jason A. Weller,

Chief, Natural Resources Conservation Service.

[FR Doc. 2016–31064 Filed 12–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request; Entity List Requests

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: Entity List Requests.

Form Number(s): N/A.

OMB Control Number: 0694–0134.

Type of Request: Regular.

Burden Hours: 105 hours.

Number of Respondents: 7 respondents.

Average Hours Per Response: 15 hours per response.

Needs and Uses: This collection is needed to provide a procedure for persons or organizations listed on the Entity List to request removal or modification of the entry that affects them. The Entity List appears at 15 CFR part 744, Supp. No. 4. The Entity List is used to inform the public of certain parties whose presence in a transaction that is subject to the Export Administration Regulations (15 CFR 730–799) requires a license from the Bureau of Industry and Security (BIS).

Affected Public: Businesses and other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016–31162 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Notice of Charter Renewal of Commerce Data Advisory Council (CDAC)

AGENCY: Economics and Statistics Administration (ESA), Department of Commerce.

ACTION: Notice of charter renewal of the Commerce Data Advisory Council (CDAC).

SUMMARY: The Economics and Statistics Administration (ESA) announces the charter renewal of the Commerce Data Advisory Council (CDAC) by the Secretary, Department of Commerce. The renewed charter can be found on the CDAC's Web site at the following link: *http://www.esa.gov/cdac/faca-documentation.html.*

The CDAC is a Federal Advisory Committee established by the Secretary of Commerce to provide advice and recommendations to the Secretary, DOC, on ways to make Commerce data easier to find, access, use, combine, and disseminate, and on other such matters as the Secretary determines. With the exception of the limitations set out in 41 CFR part 102–3, the Under Secretary for Economic Affairs, on behalf of the Secretary, Department of Commerce, will execute the functions and implement the provisions of the Federal Advisory Committee Act and its implementing regulation.

The Charter will be effective for two years from the date it is filed.

FOR FURTHER INFORMATION CONTACT: Burton Reist, Designated Federal Officer of the CDAC, Director of External Affairs, Economics and Statistics Administration, Department of Commerce, at (202) 482–3331 or email *BReist@doc.gov,* also at 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2). As noted above, the CDAC is a Federal Advisory Committee established to provide advice and recommendations to the Secretary, DOC, on ways to make Commerce data easier to find, access, use, combine, and disseminate, and on other such matters as the Secretary determines.

Dated: December 19, 2016.

Burton Reist,

Director of External Affairs, Economics & Statistics Administration.

[FR Doc. 2016–31224 Filed 12–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Five-Year Records Retention Requirement for Export Transactions and Boycott Actions

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 27, 2017.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093 or at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

All parties involved in export transactions and the U.S. party involved in a boycott action are required to maintain records of these activities for a period of five years. These records can include memoranda, correspondence, contracts, invitations to bid, books of account, financial records, restrictive trade practice or boycott documents and reports. The five-year record retention period corresponds with the five-year statute of limitations for criminal actions brought under the Export Administration Act of 1979 and predecessor acts, and the five-year statute for administrative compliance proceedings. Without this authority, potential violators could discard records demonstrating violations of the Export Administration Regulations prior to the expiration of the five-year statute of limitations.

II. Method of Collection

Recordkeeping requirement. No information is provided to BIS.

III. Data

OMB Control Number: 0694–0096.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 84,001,108.

Estimated Time per Response: 1 second to 1 minute.

Estimated Total Annual Burden Hours: 248.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016–31169 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Technical Data Letter of Explanation

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 27, 2017.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093 or at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

These technical data letters of explanation will assure the Bureau of Industry and Security that U.S.-origin technical data will be exported only for authorized end-uses, users and destinations. The information contained in the letters describes the transaction and fixes the scope of technology to be exported, the parties to the transaction, their roles, the purpose for the export, and the methods authorized to be used in exporting the technology. The letters also place the foreign consignee on notice that the technical data is subject to U.S. export controls and may only be re-exported in accordance with U.S. law.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0047.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 6,313.

Estimated Time per Response: 30 minutes to 2 hours.

Estimated Total Annual Burden Hours: 6,226.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016–31161 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday, January 26, 2017, from 9:00 a.m. to 4:30 p.m. Eastern Standard Time (EST). The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EST on Friday January 20, 2017.

ADDRESSES: The meeting will be held in Room 1412, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave. NW., Washington, DC 20230. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 20010, 1401 Constitution Ave. NW., Washington, DC 20230. (Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 20010, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the Thursday, January 26, 2017 CINTAC meeting will be as follows:

9:00 a.m.–4:00 p.m.

1. International Trade Administration's Civil Nuclear Trade Initiative Update
2. Election of CINTAC Leadership
3. Civil Nuclear Trade Promotion Activities Discussion
4. Public comment period

The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EST on Friday, January 20, 2017 in order to pre-register. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting.

Oral Comments: A limited amount of time will be available for pertinent, brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EST on Friday, January 20, 2017. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Written Comments: Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 20010, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on Friday, January 20, 2017. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2016–31190 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964]

Seamless Refined Copper Pipe and Tube From the People's Republic of China: Preliminary Results of Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is conducting the fifth administrative review of the antidumping duty order on seamless refined copper pipe and tube from the People's Republic of China (''PRC''), covering the period November 1, 2014 through October 31, 2015. The Department preliminarily finds that, during the period of review (''POR''), the Hailiang Single Entity sold subject merchandise in the United States at less than normal value. Additionally, the Department preliminarily finds that the GD Single Entity did not sell subject merchandise in the United States at less than normal value. Interested parties are invited to comment on these preliminary results.

DATES: Effective December 27, 2016.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Stephen Bailey, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: 482–4406, and 482–0193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2010, the Department published in the **Federal Register** an antidumping duty order on copper pipe and tube from the PRC.[1] On November 3, 2015, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on copper pipe and tube from the PRC for the period November 1, 2014 through October 31, 2015.[2] On November 30, 2015, the Department received a request from Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products Inc., and Mueller Copper Tube Company, Inc. (collectively, ''Petitioners'') to conduct administrative reviews of the following companies: (1) GD Group; (2) GD Holding; (3) GD Trading; (4) Zhejiang Hailiang Co., Ltd.; (5) Shanghai Hailiang Copper Co., Ltd.; (6) Zhejiang Jiahe Pipes Inc.; (7) Sinochem Ningbo Ltd.; (8) Sinochem Ningbo Import & Export Co., Ltd.; (9) Ningbo Jintian Copper Tube Co., Ltd.; (10) Zhejiang Naile Copper Co., Ltd.; (11) Guilin Lijia Metals Co., Ltd.; (12) Foshan Hua Hong Copper Tube Co., Ltd.; (13) Taicang City Jinxin Copper Tube Co., Ltd.; (14) Hong Kong Hailiang Metal; (15) Hong Kong Hailiang Metal Trading Limited; (16) China Hailiang Metal Trading; and (17) Shanghai Hailiang Metal Trading Limited.[3] Also, on November 30, 2015, the Department received a request from the Hailiang Group Companies[4] to conduct an administrative review of its sales for the POR.[5] On January 7, 2016, the Department published in the **Federal Register** a notice initiating an antidumping duty administrative review of copper pipe and tube from the PRC for the period November 1, 2014, through October 31, 2015, with respect to these 16 companies.[6]

Scope of the Order

The merchandise subject to the order is seamless refined copper pipe and tube. The product is currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 7411.10.1030 and 7411.10.1090. Products subject to this order may also enter under HTSUS item numbers 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this order remains dispositive.[7]

Extension of Deadlines for Preliminary Results

On July 12, 2016, the Department extended the time period for issuing the preliminary results of this review until December 5, 2016.[8]

Preliminary Affiliation and Single Entity Determination

Based on record evidence in this review, as well as the Department's affiliation determination in the 2013–2014 administrative review,[9] the Department preliminarily finds that the following companies are affiliated pursuant to section 771(33)(F) of the Tariff Act of 1930, as amended (''the Act''): (1) Golden Dragon Precise Copper Tube Group, Inc.; (2) Golden Dragon Holding (Hong Kong) International, Ltd.; (3) Hong Kong GD Trading Co., Ltd.; (4) Shanghai Longyang Precise Copper Compound Copper Tube Co., Ltd.; (5) Jiangsu Canghuan Copper Industry Co., Ltd.; (6) Guangdong Longfeng Precise Copper Tube Co., Ltd.; (7) Wuxi Jinlong Chuancun Precise Copper Tube Co., Ltd.; (8) Longkou Longpeng Precise Copper Tube Co., Ltd.; (9) Xinxiang Longxiang Precise Copper Tube Co., Ltd.; (10) Coaxian Ailun Metal Processing Co., Ltd.; and (11) Chonqing Longyu Precise Copper Tube Co., Ltd.[10] Additionally, based on record evidence, the Department preliminarily finds that the following companies are affiliated pursuant to section 771(33)(F) of the Act: Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., and Anhui Hailiang.[11]

[1] *See Seamless Refined Copper Pipe and Tube from Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico,* 75 FR 71070 (November 22, 2010).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 80 FR 67706 (November 3, 2015).

[3] *See* Letter to the Department from Petitioners, ''Seamless Refined Copper Pipe and Tube from China: Request for Administrative Review,'' dated November 30, 2015.

[4] Submissions in this proceeding were filed on behalf of Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd. and Shanghai Hailiang Copper Co., Ltd. (collectively, the ''Hailiang Group Companies'').

[5] *See* Letter to the Department from the Hailiang Group Companies, ''Request for Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People's Republic of China,'' dated November 30, 2015.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736 (January 7, 2016) (''*Initiation Notice*'').

[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding, ''Decision Memorandum for the Preliminary Results of the 2014–2015 Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People's Republic of China,'' dated concurrently with and hereby adopted by this notice (''Preliminary Decision Memorandum''), for a complete description of the scope of the order.

[8] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Abdelali Elouaradia, Office Director, Antidumping and Countervailing Duty Operations, Office 4, regarding, ''Seamless Refined Copper Pipe and Tube from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated July 12, 2016.

[9] *See* GD Group *et al.*'s July 15, 2016, Supplemental questionnaire response (''supplemental response'') at 28–29. In the supplemental questionnaire response at 28–29 the Golden Dragon Group Companies confirm that all material facts from the 2013–2014 administrative review and the current 2014–2015 administrative review did not change with regard to the following: (1) Affiliation; (2) production facilities for similar or identical products; (3) level of common ownership; (4) cross-managers or board members between affiliates, including the roll of Mr. Changjie Li as Chairman of Golden Dragon Precise Copper Tube, Inc. and his duties and responsibilities as legal representative of the affiliates listed above (excluding Jiangsu Canghuan Copper Industry Co., Ltd.); (5) sharing of sales information; (6) production or pricing decisions; (7) intercompany employee transfers during the current POR and three years prior; (8) sharing of facilities during the current POR and three years prior; (9) transactions or sales; (10) sharing of accounting information; and (11) sales or purchase of material inputs through Golden Dragon Holding (Hong Kong) International Co., Ltd. or Hong Kong GD Trading Co., Ltd. during the POR. Because the information with regard to the above facts remain unchanged in this 2014–2015 administrative review, we continue to find it appropriate to treat the Golden Dragon Group Companies as a single entity for Department purposes. *See also* the Department's Memorandum For Abdelali Elouaradia, Director, AC/CVD Operation, Office 4, from Drew Jackson, International Trade Analyst, AD/CVD Operations, Office 4, regarding ''Affiliation and Single Entity Status of Golden Dragon Precise Copper Tube Group, Inc.; Golden Dragon Holding (Hong Kong) International Co., Ltd.; Hong Kong GD Trading Co., Ltd.; Shanghai Longyang Precise Copper Compound Copper Tube Co., Ltd.; Jiangsu Canghuan Copper Industry Co., Ltd.; Guangdong Longfeng Precise Copper Tube Co., Ltd.; Wuxi Jinlong Chuancun Precise Copper Tube Co., Ltd.; Longkou Longpeng Precise Copper Tube Co., Ltd.; Xinxiang Longxiang Precise Copper Tube Co., Ltd.; Coaxian Ailun Metal Processing Co., Ltd.; and Chonqing Longyu Precise Copper Tube Co., Ltd.,'' dated November 30, 2015.

[10] *See* Memorandum to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, through Robert Bolling, Program Manager, AD/CVD Operations Office IV, regarding ''Affiliation and Single Entity Status of Golden Dragon Precise Copper Tube Group, Inc.; Golden Dragon Holding (Hong Kong) International Co., Ltd.; Hong Kong GD Trading Co., Ltd.; Shanghai Longyang Precise Copper Compound Copper Tube Co., Ltd.; Jiangsu Canghuan Copper Industry Co., Ltd.; Guangdong Longfeng Precise Copper Tube Co., Ltd.; Wuxi Jinlong Chuancun Precise Copper Tube Co., Ltd.; Longkou Longpeng Precise Copper Tube Co., Ltd.; Xinxiang Longxiang Precise Copper Tube Co., Ltd.; Coaxian Ailun Metal Processing Co., Ltd.; and Chonqing Longyu Precise Copper Tube Co., Ltd.,'' dated November 30, 2015.

[11] *See* Memorandum to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, through Robert Bolling, Program Manager, AD/CVD

Continued

Moreover, based on the information presented in this review, we preliminarily find that Golden Dragon and its group of affiliated companies should be treated as a single entity and Hailiang and its group of affiliated companies should be treated as a single entity for purposes of this review pursuant to 19 CFR 351.401(f). Specifically, pursuant to 19 CFR 351.401(f)(1), the Department preliminarily found that the Golden Dragon companies are affiliated, have production facilities for producing similar or identical products that would not require substantial retooling of their respective facilities in order to restructure manufacturing priorities, and there is a significant potential for manipulation of price or production. The Department reached a similar preliminarily decision with respect to Hailiang and its affiliated companies. Additionally, the Department preliminarily finds that among the Golden Dragon companies and among the Hailiang companies, a significant potential for manipulation exists pursuant to 19 CFR 351.401(f)(2). For additional information, *see* Preliminary Decision Memorandum and Hailiang Single Entity Memorandum.

Separate Rates

In the Initiation Notice, we informed parties of the opportunity to request a separate rate.[12] In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assigned a single weighted-average dumping margin. It is the Department's policy to assign all exporters of merchandise subject to an administrative review involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Companies that wanted to be considered for a separate rate in this review were required to timely file a separate-rate application or a separate-rate certification to demonstrate their eligibility for a separate rate. Separate-rate applications and separate-rate certifications were due to the Department within 30 calendar days of the publication of the Initiation Notice.

In this review, nine companies for which a review was requested and which remain under review did not submit separate-rate information to rebut the presumption that they are subject to government control. These companies are: Zhejiang Jiahe Pipes Inc., Sinochem Ningbo Ltd., Sinochem Ningbo Import & Export Co., Ltd., Ningbo Jintian Copper Tube Co., Ltd., Zhejiang Naile Copper Co., Ltd., Guilin Lijia Metals Co., Ltd., Foshan Hua Hong Copper Tube Co., Ltd., Hong Kong Hailiang Metal, and Taicang City Jinxin Copper Tube Co., Ltd. As further discussed in the Preliminary Decision Memorandum,[13] we preliminarily find that these entities have not demonstrated that they operate free from government control and thus are not eligible for a separate rate.

The Department preliminarily finds that information placed on the record by the GD Single Entity [14] and the Hailiang Single Entity [15] demonstrates that these companies are entitled to separate rate status.

PRC-Wide Entity

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[16] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate (*i.e.,* 60.85 percent) is not subject to change.[17] Apart from the GD Single Entity and Hailiang Single Entity companies discussed above, the Department considers all other companies for which a review was requested [18] to be part of the PRC-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Act. The Department calculated export prices and constructed export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy country, within the meaning of section 771(18) of the Act, the Department calculated normal value in accordance with section 773(c) of the Act. For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice.

The Preliminary Decision Memorandum is a public document and is made available to the public *via* ACCESS. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily finds that the following weighted-average dumping margins exist for the POR:

Operations Office IV, regarding ''Affiliation and Single Entity Status of (1) Hong Kong Hailiang Metal Trading Limited, (2) Zhejiang Hailiang Co., Ltd., (3) Shanghai Hailiang Copper Co., Ltd., and (4) Hailiang (Anhui) Copper Co., Ltd.,'' (''Hailiang Single Entity Memorandum'') dated concurrently with this notice, for a full discussion of the proprietary details of the Department's single-entity analysis.

[12] See Initiation Notice.

[13] *See* Preliminary Determination Memorandum.

[14] The GD Single Entity includes the following companies: (1) Golden Dragon Precise Copper Tube Group, Inc.; (2) Golden Dragon Holding (Hong Kong) International, Ltd.; (3) Hong Kong GD Trading Co., Ltd.; (4) Shanghai Longyang Precise Copper Compound Copper Tube Co., Ltd.; (5) Jiangsu Canghuan Copper Industry Co., Ltd.; (6) Guangdong Longfeng Precise Copper Tube Co., Ltd.; (7) Wuxi Jinlong Chuancun Precise Copper Tube Co., Ltd.; (8) Longkou Longpeng Precise Copper Tube Co., Ltd.; (9) Xinxiang Longxiang Precise Copper Tube Co., Ltd.; (10) Coaxian Ailun Metal Processing Co., Ltd.; and (11) Chonqing Longyu Precise Copper Tube Co., Ltd. (the ''GD Single Entity''). *See* section entitled, ''Preliminary Affiliation and Single Entity Determination,'' below.

[15] The Hailiang Single Entity includes the following companies: (1) Hong Kong Hailiang Metal Trading Limited; (2) Zhejiang Hailiang Co. Ltd.; (3) Shanghai Hailiang Copper Co., Ltd.; and (4) Anhui Hailiang (the ''Hailiang Single Entity''). *See* section entitled, ''Preliminary Affiliation and Single Entity Determination,'' below.

[16] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[17] *See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 60725 (October 1, 2010).

[18] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736 (January 7, 2016) (''*Initiation Notice*'').

Exporter	Weighted-average dumping margin (percent)
Golden Dragon Precise Copper Tube Group, Inc./Golden Dragon Holding (Hong Kong) International Co., Ltd./Hong Kong GD Trading Co., Ltd./Shanghai Longyang Precise Copper Compound Copper Tube Co., Ltd./Jiangsu Canghuan Copper Industry Co., Ltd./Guangdong Longfeng Precise Copper Tube Co., Ltd./Wuxi Jinlong Chuancun Precise Copper Tube Co., Ltd./Longkou Longpeng Precise Copper Tube Co., Ltd./Xinxiang Longxiang Precise Copper Tube Co., Ltd./Coaxian Ailun Metal Processing Co., Ltd./Chonqing Longyu Precise Copper Tube Co., Ltd	0.00
Hong Kong Hailiang Metal Trading Limited/Zhejiang Hailiang Co., Ltd./Shanghai Hailiang Copper Co., Ltd./Hailiang (Anhui) Copper Co., Ltd	8.53

Disclosure and Public Comment

The Department intends to disclose to parties the calculations performed for these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[19] Rebuttal briefs may be filed no later than five days after case briefs are due and may respond only to arguments raised in the case briefs.[20] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[21] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral argument presentations will be limited to issues raised in the briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.[22] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[23] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time (''ET'') on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[24]

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, the Department will determine, and Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[25] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For assessment purposes, the Department applied the assessment rate calculation method adopted in Assessment Rate Modification.[26] For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), the Department intends to calculate importer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[27] Where the respondent reported reliable entered values, the Department intends to calculate importer- (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to the importer- (or customer) and dividing this amount by the total entered value of the sales to the importer- (or customer).[28] Where the Department calculates an importer- (or customer)-specific weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to the importer- (or customer) by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer- (or customer)-specific assessment rates based on the resulting per-unit rates.[29] Where an importer- (or customer)-specific ad valorem or per-unit rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[30] Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[31]

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price. The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication

[19] *See* 19 CFR 351.309(c)(ii).

[20] *See* 19 CFR 351.309(d).

[21] *See* 19 CFR 351.310(c).

[22] *See* 19 CFR 351.310(d).

[23] *See generally* 19 CFR 351.303.

[24] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[25] *See* 19 CFR 351.212(b)(1).

[26] See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) (''Assessment Rate Modification'') in the manner described in more detail in the Preliminary Decision Memorandum.

[27] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification*'').

[28] *See* 19 CFR 351.212(b)(1).

[29] *Id.*

[30] *See* 19 CFR 351.212(b)(1).

[31] *See Final Modification* at 8103.

date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero or *de minimis,* then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 5, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

Summary
Background
Scope of the Order
Affiliation and Single-Entity Treatment
Discussion of the Methodology
Non-Market Economy Country Status
Surrogate Country and Surrogate Value Data
Separate Rates
Date of Sale
Comparisons to Normal Value
Determination of Comparison Method
Results of the Differential Pricing Analysis
U.S. Price
Export Price
Constructed Export Price
Value-Added Tax
Normal Value
Factor Valuations
Currency Conversion
Recommendation

[FR Doc. 2016–31156 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on multilayered wood flooring (''MLWF'') from the People's Republic of China (''PRC''). The period of review (''POR'') is December 1, 2014, through November 30, 2015. The review covers two mandatory respondents, Dalian Penghong Floor Products Co., Ltd. (''Penghong'') and Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (''Senmao''). We preliminarily find that both respondents made sales of subject merchandise at less than normal value (''NV'').

DATES: Effective December 27, 2016.

FOR FURTHER INFORMATION CONTACT: William Horn or Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2615, and (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2011, the Department published in the **Federal Register** an antidumping duty order on wood flooring from the PRC.[1] On December 1, 2015, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on wood flooring from the PRC.[2] On December 30, 2015, and December 31, 2015, the Department received requests from 74 foreign and domestic interested parties for administrative reviews of wood flooring from the PRC. Additionally, on December 31, 2015, the Department received a request from the Coalition for American Hardwood Parity (''Petitioner''), petitioner in the underlying investigation, to conduct administrative reviews of numerous exporters/producers of wood flooring from the PRC, many of which were already the subject of review requests filed by other parties. On February 9, 2016, the Department published in the **Federal Register** a notice of initiation of an administrative review of the wood flooring order with respect to 111 companies for which a timely request for an administrative review of the applicable antidumping duty order was submitted.[3] On March 3, 2016, the Department published in the **Federal Register** a *Second Initiation Notice* to correct an inadvertent misspelling of one company's name in the *First Initiation Notice.*[4] Requesting parties have subsequently timely withdrawn all review requests for one company for which the Department initiated a review, as discussed below.

Scope of the Order

The merchandise covered by the order includes MLWF, subject to certain exceptions.[5] Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (''HTSUS''): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060;

[1] *See Multilayered Wood Flooring from the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011), as amended *Multilayered Wood Flooring from the People's Republic of China,* 77 FR 5484 (February 3, 2012) (amended AD and CVD orders).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 80 FR 75058 (December 1, 2015).

[3] *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 6832, 6835–37 (February 9, 2016) (''*First Initiation Notice*'').

[4] *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 11179, 11182 (March 3, 2016) (''*Second Initiation Notice*'').

[5] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2014–2016,'' (''Preliminary Decision Memorandum''), issued and dated concurrently with this notice, for a complete description of the Scope of the Order.

4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Tolling of Deadline of Preliminary Results of Review/Extension of Deadlines for Preliminary Results

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government between January 22 and January 26, 2016. All deadlines in this segment of the proceeding were extended by four business days.[6] On August 11, 2016, the Department extended the time period for issuing the preliminary results of this review until November 30, 2016.[7] On November 17, 2016 the Department extended the time period for issuing the preliminary results of this review again, until December 20, 2016.[8]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act''). Export prices and constructed export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy (''NME'') within the meaning of section 771(18) of the Act, normal value (''NV'') has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum, hereby adopted by this notice.[9] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov.* The Preliminary Decision Memorandum is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Affiliation and Collapsing

Based on evidence presented in Penghong's questionnaire responses and a collapsing/single entity memorandum from a prior segment of this proceeding which is on the record of this review,[10] the Department preliminarily finds that: (1) Penghong is affiliated with both a certain glue producer and a certain wood processor within the meaning of sections 771(33)(A), (F), and (G) of the Act; and (2) that Penghong and Dalian Shumaike Floor Manufacturing Co., Ltd. (''Shumaike'') are affiliated within the meaning of section 773(33)(F) of the Act. Additionally, we are preliminarily treating Penghong and Shumaike as a single entity for antidumping duty purposes, within the meaning of 19 CFR 351.401(f), because we continue to find that those two affiliated companies have a high level of common ownership, production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities, and that there is a significant potential for manipulation of price or production.[11]

Verification

As provided in section 782(i) of the Act, the Department verified information provided by the Penghong and Senmao.[12] The Department conducted the verification using standard verification procedures including the examination of relevant sales, financial, and other records and the selection and review of original documentation containing relevant information. The results of the verification are outlined in the public version of the verification reports. The verification reports are on file electronically *via* ACCESS.

Preliminary Results of Review

The Department preliminarily finds that twenty-four companies subject to this review did not establish eligibility for a separate rate. As such, we preliminarily determine they are part of the PRC-wide entity.[13] Because no party

[6] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Tolling of Administrative Deadlines as a Result of the Government Closure During Snowstorm Jonas'' (January 27, 2016).

[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Abdelali Elouaradia, Office Director, Antidumping and Countervailing Duty Operations, Office IV, regarding, ''Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated August 11, 2016.

[8] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Abdelali Elouaradia, Office Director, Antidumping and Countervailing Duty Operations, Office IV, regarding, ''Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated November 17, 2016.

[9] A list of topics discussed in the Preliminary Decision Memorandum is provided in the Appendix to this notice.

[10] *See* Dalian Penghong Floor Products Co., Ltd., Preliminary Affiliation and Single Entity Memorandum dated December 31, 2015 (ACCESS barcode: 3479741–02 on the record of this review) (''AR3 Affiliation memo'').

[11] *See* ''Dalian Penghong Floor Products Co., Ltd., Preliminary Affiliation and Single Entity Memorandum'' dated December 20, 2016.

[12] *See* Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, concerning, ''Verification of the Questionnaire Responses of Dalian Penghong Floor Products Co., Ltd.,'' dated December 05, 2016. *See also* Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, concerning, ''Verification of the Questionnaire Responses of Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.,'' dated December 08, 2016.

[13] The following companies were named in the *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 6832, 6835–37

Continued

requested a review of the PRC-wide entity and the Department no longer considers the PRC-wide entity as an exporter conditionally subject to administrative reviews,[14] we did not conduct a review of the PRC-wide entity. Thus, the rate for the PRC-wide entity is not subject to change as a result of this review.

For companies subject to this review that have established their entitlement to a separate rate, the Department preliminarily determines that the following dumping margins exist for the POR from December 1, 2014, through November 30, 2015:[15]

Exporter	Weighted-average dumping margin
Dalian Penghong Floor Products Co., Ltd./Dalian Shumaike Floor Manufacturing Co., Ltd	4.92
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	0.22
A&W (Shanghai) Woods Co., Ltd	4.92
Anhui Boya Bamboo & Wood Products Co., Ltd	4.92
Anhui Longhua Bamboo Product Co., Ltd	4.92
Baishan Huafeng Wooden Product Co., Ltd	4.92
Benxi Wood Company	4.92
Changzhou Hawd Flooring Co., Ltd	4.92
Chinafloors Timber (China) Co., Ltd	4.92
Dalian Dajen Wood Co., Ltd	4.92
Dalian Huade Wood Product Co., Ltd	4.92
Dalian Huilong Wooden Products Co., Ltd	4.92
Dalian Jiahong Wood Industry Co., Ltd	4.92
Dalian Jiuyuan Wood Industry Co., Ltd	4.92
Dalian Kemian Wood Industry Co., Ltd	4.92
Dalian T-Boom Wood Products Co., Ltd	4.92
Dongtai Fuan Universal Dynamics, LLC	4.92
Dunhua City Hongyuan Wood Industry Co., Ltd	4.92
Dun Hua City Jisen Wood Industry Co., Ltd	4.92
Dunhua City Wanrong Wood Industry Co., Ltd	4.92
Dunhua City Dexin Wood Industry Co., Ltd	4.92
Dun Hua Sen Tai Wood Co., Ltd	4.92
Fine Furniture (Shanghai) Limited	4.92
Fusong Jinlong Wooden Group Co., Ltd	4.92
GTP International Ltd	4.92
Guangdong Yihua Timber Industry Co., Ltd	4.92
Guangzhou Panyu Kangda Board Co., Ltd	4.92
Guangzhou Panyu Southern Star Co., Ltd	4.92
HaiLin LinJing Wooden Products Co., Ltd	4.92
Hangzhou Hanje Tec Co., Ltd	4.92
Hunchun Forest Wolf Wooden Industry Co., Ltd	4.92
Hunchun Xingjia Wooden Flooring Inc	4.92
Huzhou Chenghang Wood Co., Ltd	4.92
Huzhou Fulinmen Imp. & Exp. Co., Ltd	4.92
Huzhou Jesonwood Co., Ltd	4.92
Huzhou Sunergy World Trade Co., Ltd	4.92
Jiangsu Guyu International Trading Co., Ltd	4.92
Jiangsu Kentier Wood Co., Ltd	4.92
Jiangsu Mingle Flooring Co., Ltd	4.92
Jiangsu Simba Flooring Co., Ltd	4.92
Jiashan HuiJiaLe Decoration Material Co., Ltd	4.92
Jiashan On-Line Lumber Co., Ltd	4.92
Jiaxing Hengtong Wood Co., Ltd	4.92
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd	4.92
Jilin Xinyuan Wooden Industry Co., Ltd	4.92
Karly Wood Product Limited	4.92
Kember Hardwood Flooring Inc	4.92
Kemian Wood Industry (Kunshan) Co., Ltd	4.92

(February 9, 2016) (''*First Initiation Notice*'') and 81 FR 11179, 11182 (March 3, 2016) (''*Second Initiation Notice*''), but did not submit a certification of no shipment, separate rate application or separate rate certification; therefore they are part of the PRC-wide entity: Anhui Suzhou Dongda Wood Co., Ltd., Baiying Furniture Manufacturer Co., Ltd., Cheng Hang Wood Co., Ltd., Dalian Qianqiu Wooden Product Co., Ltd., Fusong Jinqui Wooden Product Co., Ltd., Fusong Qianqiu Wooden Products Co., Ltd., HaiLin XinCheng Wooden Products, Ltd., Hangzhou Dazhuang Floor Co., Ltd (dba Dasso Industrial Group Co., Ltd)., Hangzhou Huahi Wood Industry Co., Ltd., Huber Engineering Wood Corp., Huzhou City Nanxun Guangda Wood Co., Ltd., Huzhou Fuma Wood Co., Ltd., Jiafeng Wood (Suzhou) Co., Ltd., Qingdao Barry Flooring Co., Ltd., Shandong Kaiyuan Wood Industry Co., Ltd., Shanghai Anxin (Weiguang) Timber Co., Ltd., Shanghai Eswell Timber Co., Ltd., Shanghai New Sihe Wood Co., Ltd., Shanghai Shenlin Corporation, Vicwood Industry (Suzhou) Co. Ltd., Yixing Lion-King Timber Industry, Zhejiang AnJi XinFeng Bamboo & Wood Industry Co., Ltd., Zhejiang Desheng Wood Industry Co., Ltd., and Zhejiang Haoyun Wooden Co., Ltd.

[14] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

[15] In addition to the companies listed in the table, certain companies certified that they did not ship subject merchandise to the United States during the POR. The Department confirmed these certifications of no shipments with U.S. Customs and Border Protection (''CBP''); therefore, the following companies will maintain their rate from the most recent segment in which they participated: Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd., Dalian Xinjinghua Wood Co., Ltd., Guangzhou Homebon Timber Manufacturing Co., Ltd., Henan Xingwangjia Technology Co., Ltd., Jiangsu Yuhui International Trade Co., Ltd., Shenyang Senwang Wooden Industry Co., Ltd., Xuzhou Antop International Trade Co., Ltd., Yekalon Industry Inc., Zhejiang Shuimojiangnan New Material Technology Co., Ltd.

Exporter	Weighted-average dumping margin
Kingman Floors Co., Ltd	4.92
Linyi Anying Wood Co., Ltd	4.92
Linyi Bonn Flooring Manufacturing Co., Ltd	4.92
Linyi Youyou Wood Co., Ltd.[16]	4.92
Metropolitan Hardwood Floors, Inc	4.92
MuDanJiang Bosen Wood Industry Co., Ltd	4.92
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	4.92
Pinge Timber Manufacturing (Zhejiang) Co., Ltd	4.92
Puli Trading Limited	4.92
Scholar Home (Shanghai) New Material Co., Ltd	4.92
Shanghai Lairunde Wood Co., Ltd	4.92
Shenyang Haobainian Wooden Co., Ltd	4.92
Shenzhenshi Huanwei Woods Co., Ltd	4.92
Sino-Maple (JiangSu) Co., Ltd	4.92
Suzhou Dongda Wood Co., Ltd	4.92
Tongxiang Jisheng Import and Export Co., Ltd	4.92
Xiamen Yung De Ornament Co., Ltd	4.92
Xuzhou Shenghe Wood Co., Ltd	4.92
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd	4.92
Zhejiang Biyork Wood Co., Ltd	4.92
Zhejiang Dadongwu Green Home Wood Co., Ltd	4.92
Zhejiang Fudeli Timber Industry Co., Ltd	4.92
Zhejiang Fuerjia Wooden Co., Ltd	4.92
Zhejiang Fuma Warm Technology Co., Ltd	4.92
Zhejiang Jiechen Wood Industry Co., Ltd	4.92
Zhejiang Longsen Lumbering Co., Ltd	4.92
Zhejiang Shiyou Timber Co., Ltd	4.92

Preliminary Partial Rescission of Antidumping Duty Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Jiangsu Keri Wood Co., Ltd. withdrew its respective request for an administrative review within 90 days of the date of publication of *Initiation Notice.*[17] Accordingly, the Department is rescinding this review with respect to Jiangsu Keri Wood Co., Ltd., in accordance with 19 CFR 351.213(d)(1).[18]

With respect to Dongtai Zhangshi Wood Industry Co., Ltd. and Huzhou Muyun Wood Co., Ltd., the Department preliminarily found each of these company's one sale during the POR to be a non-*bona fide* sale in a concurrent new shipper review (''NSR'').[19] Because the sale subject to this administrative review is the same sale preliminarily found to be a non-*bona fide* sale in the new shipper review, and there are no other reviewable sales by either company during the POR, we are preliminarily rescinding this review with respect to Dongtai Zhangshi Wood Industry Co., Ltd. and Huzhou Muyun Wood Co., Ltd.

Disclosure and Public Comment

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice.[20] Interested parties may submit a case brief no later than 30 days after the date of publication of these preliminary results of review.[21] Rebuttal briefs may be filed no later than five days after the deadline for filing case briefs and may respond only to arguments raised in the case briefs.[22] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department.[23] This summary should be limited to five pages total, including footnotes. Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[24] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time to be determined.[25] Parties should confirm by telephone the

[16] On September 30, 2014, the Department determined that Linyi Youyou Wood Co., Ltd. is the successor-in-interest to Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai. *See Multilayered Wood Flooring From the People's Republic of China: Final Results of Changed Circumstances Review,* 79 FR 58740 (September 30, 2014). Because Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai no longer exists as a legal entity, the rate is assigned to Linyi Youyou Wood Co., Ltd.

[17] *See* Letter from Jiangsu Keri Wood Co., Ltd. to the Department regarding ''*Withdrawal of Review Request*'' dated February 22, 2016.

[18] *See* Appendix. As stated in *Change in Practice in NME Reviews,* the Department will no longer consider the non-market economy (''NME'') entity as an exporter conditionally subject to administrative reviews. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013) (''*Change in Practice in NME Reviews*''). The PRC-wide entity is not subject to this administrative review because no interested party requested a review of the entity. *See First Initiation Notice.*

[19] *See Multilayered Wood Flooring from the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews; 2014–2015,* 81 FR 74393 (October 26, 2016).

[20] *See* 19 CFR 351.224(b).

[21] *See* 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 (for general filings requirements).

[22] *See* 19 CFR 351.309(d).

[23] *See* 19 CFR 351.309(c)(2) and (d)(2).

[24] *See* 19 CFR 351.310(c).

[25] *See* 19 CFR 351.310(d).

date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time (''ET'') on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[26]

Unless extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[27] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, the Department will calculate an importer- (or customer-) specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). In these preliminary results, the Department applied the assessment rate calculation method adopted in the *Final Modification for Reviews.*[28] Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[29] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the current rate for the PRC-wide entity (which, as noted above, is not subject to change in this review).

Additionally, for the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(l)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the companies listed above the cash deposit rate will be their respective rate established in the final results of this review, except if the rate is zero or *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero; (2) for previously investigated PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: December 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Review
4. Extension of Preliminary Results
5. Scope of the Order
6. Selection of Respondents
7. Non-Market Economy Country
8. Separate Rate
9. Rate for Non-Examined, Separate Rate Respondents
10. Preliminary Partial Rescission Of Antidumping Duty Administrative Review
11. Companies That Did Not Establish Their Eligibility for a Separate Rate
12. Surrogate Country and Surrogate Value Data
13. Date of Sale
14. Fair Value Comparisons
15. Affiliation and Single Entity Status
16. U.S. Price
17. Value Added Tax
18. Normal Value
19. Factor Valuations
20. Adjustment Under Section 777(A)(f) of the Act
21. Currency Conversion
22. Recommendation

[FR Doc. 2016–31157 Filed 12–23–16; 8:45 am]

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[26] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[27] *See* 19 CFR 351.212(b)(1).

[28] *See Antidumping Proceeding Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews*'').

[29] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Gulf of Mexico Shrimp Fishery Electronic Logbook.

OMB Control Number: 0648–0543.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 1,441.

Average Hours per Response: 3 hours.

Burden Hours: 4,323.

Needs and Uses: This request is for extension of a currently approved information collection.

The National Marine Fisheries Service (NMFS) manages the shrimp fishery in federal waters of the Gulf of Mexico (Gulf) under the Shrimp Fishery Management Plan (FMP). Regulations implementing the FMP require owners and operators (permit holders) of federally permitted shrimp vessels, if selected by NMFS, to carry an electronic logbook (ELB) on their vessel and participate in the NMFS-sponsored electronic logbook reporting program. ELBs provide a more precise means of estimating fishing effort than paper logbooks. Using ELBs to estimate fishing effort serves an important role to help estimate bycatch across the Gulf shrimp fleet.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: December 15, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–31134 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Greater Atlantic Region Gear Identification

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 27, 2017.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230; or *JJessup@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Cynthia Hanson, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930; (978) 281–9180, or *cynthia.hanson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. Regulations at 50 CFR 648.84(a),(b), and (d), 648.123(b)(3), 648.144(b)(1), 648.264(a)(5), and 697.21(a) and (b) require that Federal Fisheries permit holders using certain types of fishing gear, mark the gear with specified information for the purposes of vessel and gear identification (*e.g.,* hull identification number, Federal fishing permit number, etc.). The regulations also specify how the gear is to be marked for the purposes of visibility (*e.g.,* buoys, radar reflectors, etc.).

The quantity of gear in this collection is distinguished by the number of attached end lines associated with each string of hooks, pots, or traps. As such, a single Federal permit holder may be responsible for marking several strings of a given gear type, or may use multiple different gear types that require marking. These gear marking requirements aid in fishery law enforcement, make the gear more visible to other vessels to aid in navigation, and provide other fisherman with information regarding the gear type being used to help prevent gear conflicts.

II. Method of Collection

No information is submitted to the National Marine Fisheries Service (NMFS) as a result of this collection. The vessel's hull identification number or other means of identification specified in the regulations must be affixed to the buoy or other part of the gear as specified in the regulations.

III. Data

OMB Control Number: 0648–0351.

Form Number(s): None.

Type of Review: Regular (extension of a current information collection).

Affected Public: Individuals and households; business or other for-profit organizations.

Estimated Number of Respondents: 5,339.

Estimated Time per Response: 1 minute per string of gear.

Estimated Total Annual Burden Hours: 17,848.

Estimated Total Annual Cost to Public: $53,390 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 21, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–31192 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF097

South Atlantic Fishery Management Council (Council)—Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings/scoping meetings and question & answer session via Webinar.

SUMMARY: The South Atlantic Fishery Management Council (Council) will

hold a series of public hearings/scoping meetings on four amendments to the *Snapper Grouper* Fishery Management Plan (FMP) for the South Atlantic Region:

Amendment 43 addressing management options for *red snapper* and recreational reporting;

Vision Blueprint Regulatory Amendment 26 addressing recreational management options based on the Council's Vision Blueprint for the *Snapper Grouper* Fishery;

Vision Blueprint Regulatory Amendment 27 addressing commercial management options based on the Council's Vision Blueprint for the *Snapper Grouper* Fishery; and

Amendment 44 addressing management measures for *yellowtail snapper* including allocations.

Scoping comments will be accepted for *Snapper Grouper* Amendment 43 and the Vision Blueprint amendments. Public hearing comments will be accepted for Amendment 44. The Council will hold a Question & Answer Session via Webinar for measures proposed in Amendment 44 for *yellowtail snapper* and possible management actions pertaining to *red snapper* and recreational reporting to be addressed in Amendment 43.

DATES: The series of public hearings/scoping meetings/Webinars will begin at 6 p.m. on January 12, 2017 and end at close of business on February 8, 2017. Registration is required for Webinars. Registration information will be posted on the SAFMC Web site at *http://safmc.net/safmc-meetings/public-hearing-and-scoping-meeting-schedule/* as it becomes available. The meetings will be held on the following dates and locations:

ADDRESSES:

1. January 12, 2017—Public scoping via Webinar for Vision Blueprint Regulatory Amendment 26 (Recreational) and Vision Blueprint Regulatory Amendment 27 (Commercial).

2. January 17, 2017—Question & Answer Session via webinar for *Snapper Grouper* Amendment 44 (yellowtail snapper) and Snapper Grouper Amendment 43 (*red snapper* and recreational reporting).

3. January 18, 2017—Listening Station with emphasis on the Public Hearing for *Snapper Grouper* Amendment 44 (*yellowtail snapper*)—Harvey Government Center, 1200 Truman Avenue, 2nd Floor, Key West, FL 33040; Phone: 305/295-4385. **Note:** Public comment will be accepted on management measures Proposed in the public hearing document for in the *Snapper Grouper* Amendment 44 and scoping items in Amendment 43 and the Vision Blueprint Amendments.

4. January 19, 2017—Listening Station with emphasis on the Public Hearing for *Snapper Grouper* Amendment 44 (*yellowtail snapper*)—Hyatt Place Marathon, 1996 Overseas Highway, Marathon, FL 33050; Phone: 305/743–1234. **Note:** Public comment will be accepted on management measures proposed in the Public hearing document for *Snapper Grouper* Amendment 44 and scoping items in Amendment 43 and the Vision Blueprint Amendments.

5. January 23, 2017—Lexington Hotel & Conference Center, 1515 Prudential Drive, Jacksonville, FL 32207: Phone 904/396–5100.

6. January 24, 2017—Hilton Cocoa Beach Oceanfront, 1550 N. Atlantic Avenue, Cocoa Beach, FL 32931; Phone: 321/799–0003.

7. January 25, 2017—Flagler Place, 201 SW. Flagler Avenue, Stuart, FL 34994; Phone: 772/985–3863.

8. January 26, 2017—Hilton Key Largo, 97000 Overseas Highway, Key Largo, FL 33037; Phone: 305/852–5553.

9. January 30, 2017—Murrells Inlet Community Center, 4450 Murrells Inlet Road, Murrells Inlet, SC 29576; Phone: 843/651–4152.

10. January 31, 2017—Crowne Plaza Hotel, 4831 Tanger Outlet Blvd., N. Charleston, SC 29418; Phone: 843/744–4422.

11. February 1, 2017—Richmond Hill City Center, 520 Cedar Street, Richmond Hill, GA 31324; Phone: 912/445–0043.

12. February 6, 2017—Hilton Wilmington Riverside, 301 N. Water Street, Wilmington, NC 28401; Phone: 910/763–5900.

13. February 7, 2017—Hatteras Community Center, 57689 NC Highway 12, Hatteras, NC 27943; Phone: 252–986–2161 or 252/986–2109.

14. February 8, 2017—Doubletree by Hilton, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512; Phone: 252/240–1155.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone 843/571–4366 or toll free 866/SAFMC–10; FAX 843/769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Agenda

The Council is soliciting public hearing comments on management measures proposed for *yellowtail snapper* through *Snapper Grouper* Amendment 44. The amendment includes management actions and alternatives for shifts in allocations between commercial and recreational sectors as well as an action to merge current annual catch limits for *yellowtail snapper* in the Gulf of Mexico and South Atlantic.

Public scoping meetings are being held for the following amendments:

(1) *Snapper Grouper* Amendment 43—The *red snapper* fishery remains closed to harvest in federal waters in the South Atlantic. The stock continues to experience overfishing due to the number of discarded *red snapper* as fishermen target other species in the *snapper grouper* management complex.

The Council is soliciting public input on ways to reduce the number of *red snapper* discards, improve the survivorship of discarded *red snapper,* improve estimates of private recreational catch and effort, and limit harvest of *red snapper* to below the annual catch limit if discards are reduced sufficiently.

(2) *Snapper Grouper* Vision Blueprint Recreational Regulatory Amendment 26—The amendment includes items identified in the 2016–2020 Vision Blueprint for the *Snapper Grouper* Fishery pertaining to recreational management measures including removing size limits for deepwater species; re-evaluation of the *shallow water grouper* closure; re-evaluation of aggregate bag limits and specification of individual bag limits for some species; and modification to the recreational minimum size limit for *black sea bass.*

(3) *Snapper Grouper* Vision Blueprint Commercial Regulatory Amendment 27—The amendment includes items identified in the 2016–2020 Vision Blueprint for the *Snapper Grouper* Fishery pertaining to commercial management measures including commercial split seasons for deepwater species, *red porgy,* and *greater amberjack;* re-evaluation of the *shallow water grouper* closure; trip limits and step-downs; and fishing year changes.

Copies of the public hearing document, scoping documents, and other relevant information will be posted on the Council's Web site at as they become available.

Submitting Written Comments

The Council requests that written comments be submitted using the online public comment form for each amendment available from the Council's Web site at *http://safmc.net/meetings/public-hearing-and-scoping-meeting-schedule.* Click on the ''Submit Written Comments'' section of the page to access

individual links for providing comments. Comments submitted using the online comment forms are immediately posted to the Council's Web site and available for all Council members and the public to view.

Written comments may also be submitted by mail or by FAX. Comments may be submitted by mail to: Gregg Waugh, Executive Director, SAFMC, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405. Fax comments to 843–769–4520.

Public hearing and scoping comments for the amendments will be accepted until 5:00 p.m. on February 10, 2017.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 20, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–30999 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF098

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Data Workshop for Atlantic blueline tilefish (Caulolatilus microps)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 50 Data Workshop for Atlantic *blueline tilefish.*

SUMMARY: The SEDAR 50 assessment(s) of the Atlantic stock(s) of *blueline tilefish* will consist of a series of workshops and Webinars: Stock ID Work Group Meeting; Data Workshop; Assessment Workshop and Webinars; and a Review Workshop.

DATES: The SEDAR 50 Data Workshop will begin at 1 p.m. on Monday, January 23, 2017, and end at 1 p.m. on Friday, January 27, 2017, to view the agenda see **SUPPLEMENTARY INFORMATION.**

The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice. Additional SEDAR 50 workshops and Webinar dates and times will publish in a subsequent issue in the **Federal Register**.

ADDRESSES:

Meeting Address: The SEDAR 50 Data Workshop will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407, 843–571–1000.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405 or on their Web site, at *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION:

Agenda

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing Webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Data Workshop are as follows:

1. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery independent and fishery dependent measures of stock abundance, as specified in the Terms of Reference for the workshop, to develop an assessment data set and associated documentation.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 20, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–31048 Filed 12–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–HA–0119]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the

Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 27, 2017.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to ATTN: Ms. Shane Pham, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101, or call at (703) 681–8666.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: TRICARE Plus Enrollment Application and TRICARE Plus Disenrollment Request; DD Form 2853 and DD Form 2854; OMB Control Number 0720–0028.

Needs and Uses: The information collection requirement is necessary for enrollment and disenrollment in the Department of Defense's TRICARE Plus Health Plan established in accordance with Title 10 U.S.C. 1099 (which calls for a healthcare enrollment system) and 1086 (which authorizes TRICARE eligibility of Medicare Eligible Persons and has resulted in the development of a new enrollment option called TRICARE Plus) and the Assistant Secretary of Defense for Health Affairs Policy Memorandum to Establish the TRICARE Plus Program, June 22, 2001. The information collected hereby provides the TRICARE contractors with necessary data to determine beneficiary eligibility and to identify the selection of a health care option.

Affected Public: Individuals or households.

Annual Burden Hours: 386.

Number of Respondents: 3305.

Responses per Respondent: 1.

Annual Responses: 3305.

Average Burden per Response: 7 minutes.

Frequency: On occasion.

The Department of Defense established TRICARE Plus as an enrollment option for persons who are eligible for care in Military Treatment Facilities (MTF) and not enrolled in TRICARE Prime. TRICARE Plus provides an opportunity to enroll with a primary care provider at a specific MTF, to the extent capacity exists. This is a way to facilitate primary care appointments at an MTF when needed. TRICARE Plus enrollment will help MTFs maintain an adequate clinical case mix for Graduate Medical Education programs and support readiness-related medical skills sustainment activities. In order to carry out this program, it is necessary that certain beneficiaries electing to enroll/disenroll in TRICARE Plus complete an enrollment application/disenrollment request. Completion of the enrollment forms is an essential element of the TRICARE program. There is no lock-in and no enrollment fee for TRICARE Plus.

Dated: December 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–31078 Filed 12–23–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the New Haven Harbor (New Haven, Connecticut) Navigation Improvement Project

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), New England District is conducting a feasibility study and Environmental Impact Statement (EIS) to examine navigation-improvements to the existing New Haven Harbor Federal Navigation project. The non-Federal sponsor for the study is the New Haven Port Authority in partnership with the Connecticut State Port Authority. Inadequate channel depths result in navigation inefficiencies in transporting goods into and out of the harbor. To reach the terminals, larger ships must lighter outside the breakwaters and/or experience delays while waiting for favorable tide conditions, or both. Deeper and wider navigation features (main channel, maneuvering area, and turning basin) are needed to increase the navigation efficiency and safety of New Haven Harbor.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS can be answered by: Mr. Todd Randall, U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742–2751, (978) 318–8518, email: *todd.a.randall@usace.army.mil.*

DATES: A public scoping meeting will be held on January 24, 2017 from 6:30 p.m. to 8:30 p.m. (registration starts at 6:00 p.m.) at the Hall of Records, Hearing Room, 200 Orange Street, New Haven, Connecticut.

SUPPLEMENTARY INFORMATION: The Corps participation in this study is authorized by a resolution of the Senate Committee on the Environment and Public Works dated July 31, 2007. This study was initiated at the request of the New Haven Port Authority and the Connecticut State Port Authority. The study is being cost-shared 50-percent Federal and 50-percent non-Federal with the New Haven Port Authority.

Proposed Action: The study will consider navigation improvements including deepening and widening the federal navigation project. The New Haven Harbor navigation project's main ship channel, maneuvering area, and

turning basin are authorized to a depth of −35 feet mean lower low water (MLLW). The main ship channel is about 5 miles long extending from deep water in Long Island Sound to the terminals at the head of the harbor. The channel varies in width from 500 feet (outer-harbor) to 400 feet (inner-harbor), and widens to 800 feet along the terminals. Deeper and wider channels, maneuvering area, and turning basin are needed to increase the navigation efficiency and safety of New Haven Harbor.

Alternatives: The feasibility study will identify, evaluate, and recommend to decision makers an appropriate, coordinated and workable solution to the navigation inefficiencies at New Haven Harbor. Alternatives will include analyzing various incremental channel depths and widths based upon need, as well as alternative dredging methodologies. In addition, the study will evaluate various dredged material disposal alternatives such as beneficial use (*e.g.,* marsh creation, beach nourishment, historic disposal mound capping), nearshore placement, open water placement, and upland placement.

Public Involvement and Scoping: Full public participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties is invited. All interested parties are encouraged to submit their names and email addresses to the address noted above, to be placed on the project mailing list to receive fact sheets, newsletters and related public notices. The Corps and the New Haven Port Authority will host a public meeting on the study on January 24, 2017 (*see* **DATES** section). The public is invited to attend and further identify issues that should be addressed in the EIS. In addition to this notice, the date, place, and time of the public meeting will be announced in the local newspaper and on the USACE New England District Web page. Following the scoping process, a public informational meeting will be held in 2017 to present and discuss potential project alternatives. The Draft Integrated Feasibility Report and Environmental Impact Statement (IFR/EIS) is scheduled to be complete in April of 2018 and will be available for public review and comment.

Significant Issues: Significant issues to be discussed in the DEIS include the effects of dredging and disposal on the physical, biological, cultural, and socioeconomic environment of the project area.

Environmental Review and Consultation Requirements: The proposed project is subject to review pursuant (but not limited to) to the Coastal Zone Management Act, Clean Water Act, Clean Air Act, Endangered Species Act, Fish and Wildlife Coordination Act, Magnuson-Stevens Fishery Conservation and Management Act, Marine Protection, Research, and Sanctuaries Act, and the National Environmental Policy Act.

Estimated Date: It is estimated that the Draft IFR/EIS will be made available to the public in April of 2018.

Dated: December 20, 2016.

Colonel Christopher J. Barron,

District Commander, U.S. Army Corps of Engineers, New England.

[FR Doc. 2016–31210 Filed 12–23–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0145]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Credit Enhancement for Charter School Facilities Program (1894–0001)

AGENCY: Office of Innovation and Improvement (OII), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 26, 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–0145. 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 226–62, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Clifton Jones, 202–205–2204.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Grants under the Credit Enhancement for Charter School Facilities Program (1894–0001).

OMB Control Number: 1855–0007.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 15.

Total Estimated Number of Annual Burden Hours: 1,200.

Abstract: An application is required by statute to award the Credit Enhancement for Charter School Facilities Program (formerly known as the Charter School Facilities Financing Demonstration Program) grants. These grants are made to private, non-profits; public entities; and consortia of these organizations. The funds are to be deposited into a reserve account that will be used to leverage private funds on behalf of charter schools to acquire, construct, and renovate school facilities. The U.S. Department of Education is seeking an OMB extension approval for

the application for the Credit Enhancement for Charter School Facilities Program.

Dated: December 21, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–31152 Filed 12–23–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–24–000]

Portland Natural Gas Transmission System; Notice of Application

Take notice that on December 12, 2016, Portland Natural Gas Transmission System (PNGTS), 700 Louisiana Street, Suite 700, Houston, TX 77002–2700, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations seeking authorization to increase the certificated capacity on PNGTS's wholly-owned north system from Pittsburg, New Hampshire, to Westbrook, Maine, by 42,000 Mcf/d, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Additionally, pursuant to and in accordance with Section 3 of the NGA, 15 U.S.C. Section 717b, Part 153 of the Commission's regulations, 18 CFR part 153, Executive Order 10485, as amended by Executive Order 12038, and Secretary of Energy Delegation Order No. 0204–112, PNGTS requested authorization to increase its authorized import and export capacity from 178,000 Mcf/d to 210,000 Mcf/d and to amend the Presidential Permit issued to PNGTS on September 24, 1997, as amended on November 18, 2003, in Docket No. CP96–248, et, al. to reflect such an increase.[1]

PNGTS states that the authorizations requested will satisfy the requirements of the Continent to Coast Expansion Project, which will expand gas service delivery options for the New England market. PNGTS proposes no construction or modifications to its existing system or border crossing facilities in connection with this request and as such, there are no costs associated with the project.

Any questions regarding this application should be directed to Robert Jackson, Manager, Certificates and Regulatory Administration, Portland Natural Gas Transmission System, 700 Louisiana Street, Suite 700, Houston, Texas, or call (832) 320–5487, or by email *robert_jackson@transcanada.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on January 10, 2017.

Dated: December 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–31095 Filed 12–23–16; 8:45 am]

BILLING CODE 6717–01–P

[1] *See Portland Natural Gas Transmission System,* 80 FERC ¶ 61,346 (1997); and 105 FERC ¶ 61,235 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Cd17–3–000]

City of Louisville, Colorado; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On December 15, 2016, the City of Louisville, Colorado filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Louisville Recreation Center Pressure Reducing Valve Hydropower Project would have an installed capacity of 13 kilowatts (kW) and would be located on the City of Louisville's existing potable water transmission pipeline. The project would be located near the City of Louisville in Boulder County, Colorado.

Applicant Contact: Cory Peterson, Water Resources Engineer, City of Louisville, Colorado, 749 Main Street, Louisville, CO 80027, Phone No. (303) 335–4610.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 8-foot long, 8-inch-diameter intake pipe teeing off of the existing 8-inch potable water transmission pipeline; (2) a proposed vertical in-line hydro turbine, containing one generating unit with an installed capacity of 13-kW; (3) a proposed 8-foot long, 8-inch-diameter discharge pipe connecting with the existing 8-inch potable water transmission pipeline; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 78 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff has preliminarily determined that the proposal satisfies the requirements for a qualifying conduit hydropower facility under 16 U.S.C. 823a, and is exempted from the licensing requirements of the FPA.

Comments and Motions to Intervene: The deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

The deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD17–3–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: December 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–31091 Filed 12–23–16; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2015).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD17–2–000]

City of Louisville, Colorado; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On December 15, 2016, the City of Louisville, Colorado filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Louisville HBWTP Hydro Project would have an installed capacity of 33 kilowatts (kW) and would be located at the end of the City of Louisville's existing raw water supply pipeline. The project would be located near the City of Louisville in Boulder County, Colorado.

Applicant Contact: Cory Peterson, Water Resources Engineer, City of Louisville, Colorado, 749 Main Street, Louisville, CO 80027, Phone No. (303) 335–4610.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 12-foot long, 24-inch-diameter intake pipe teeing off of the existing 14-inch-diameter raw water pipeline; (2) a proposed powerhouse containing one generating unit with an installed capacity of 33-kW; (3) a proposed 12-foot long, 24-inch-diameter discharge pipe connected to the existing 14-inch raw water pipeline; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 196 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff has preliminarily determined that the proposal satisfies the requirements for a qualifying conduit hydropower facility under 16 U.S.C. 823a, and is exempted from the licensing requirements of the FPA.

Comments and Motions to Intervene: The deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

The deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD17–2–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: December 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–31090 Filed 12–23–16; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2015).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–17–000]

Commission Information Collection Activities (FERC–551); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–551 (Reporting of Flow Volume and Capacity by Interstate Natural Gas Pipelines) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (81 FR 70671, 10/13/2016) requesting public comments. The Commission received no comments on the FERC–551 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by January 26, 2017.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0243, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov. Attention:* Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC16–17–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–551, Reporting of Flow Volume and Capacity by Interstate Natural Gas Pipelines

OMB Control No.: 1902–0243

Type of Request: Three-year extension of the FERC–551 information collection requirements with no changes to the reporting requirements.

Abstract: The Commission has a statutory requirement to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers. FERC–551 uses the information provided by pipelines as part of its overall implementation of the statutory provisions of sections 23(a)(1) of the Natural Gas Act, 16 U.S.C. 717t–2(a)(1); Section 316 of EPAct 2005; section 23 of the Natural Gas Act; section 1281 of EPAct 2005; and section 220 to the Federal Power Act. More specifically, the Commission uses the pipelines' FERC–551 postings as part of fulfilling the transparency provisions of section 23(a)(1) of the Natural Gas Act as mandated by Congress. FERC relies in part on section 23(a)(1) of the Natural Gas Act, for authority to collect this information. The data requirements for pipelines are listed in the Code of Federal Regulations (CFR) under 18 CFR part 284.13, reporting requirements for interstate pipelines. The Commission has directed the data requirements under FERC–551 are to be posted on interstate pipelines' Web sites and not filed on formatted/printed forms.

FERC is obligated to prescribe rules for the collection and dissemination of information regarding the wholesale, interstate markets for natural gas and electricity. The Commission is authorized to adopt rules to assure the timely dissemination of information about the availability and prices of natural gas and natural gas transportation and electric energy and transmission service in such markets.

The posting requirements are based on the Commission's authority under section 23 of the NGA (as added by the Energy Policy Act of 2005, EPAct 2005), which directs the Commission, in relevant part, to obtain and disseminate ''information about the availability and prices of natural gas at wholesale and in interstate commerce.'' [1] This provision enhances the Commission's authority to ensure confidence in the nation's natural gas markets. The Commission's market-oriented policies for the wholesale natural gas industry require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the efficiency of price formation, the true value of transactions is very difficult to determine. Further, price transparency facilitates ensuring that jurisdictional prices are ''just and reasonable.'' [2]

The posting for FERC–551 occurs on a daily basis. The data must be available for download for 90 days and must be retained by the pipeline for 3 years.

The Commission uses the daily posting of information by interstate pipelines to provide information regarding the price and availability of natural gas to market participants, state commissions, FERC, and the public. The postings contribute to market transparency by aiding the understanding of the volumetric/availability drivers behind price movements and it provides a better picture of disruptions in interstate natural gas flows.

Type of Respondents: Interstate Natural Gas Pipelines.

Estimate of Annual Burden: [3] The Commission estimates the annual public reporting burden for the information collection as:

[1] Section 23(a)(2) of the NGA, 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005).

[2] *See* sections 4 and 5 of the NGA, 15 U.S.C. 717c and 717d.

[3] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

FERC–551: REPORTING OF FLOW VOLUME AND CAPACITY BY INTERSTATE NATURAL GAS PIPELINES

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [4]	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
FERC–551	169	365	61,685	0.5 hrs.; $30.22	30,842.50 hrs.; $1,864,120.70	182.5 hrs.; $11,030.30.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–31096 Filed 12–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–50–000.
Applicants: ITC Midwest LLC.
Description: Application Pursuant to Section 203 of the Federal Power Act to Acquire New Assets of ITC Midwest LLC.
Filed Date: 12/19/16.
Accession Number: 20161219–5425.
Comments Due: 5 p.m. ET 1/9/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1817–015; ER10–1818–014; ER10–1819–016; ER10–1820–019.
Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation, Public Service Company of Colorado, Southwestern Public Service Company.
Description: Supplement to November 7, 2016 Notice of Change in Status of Northern States Power Company, a Minnesota corporation, et al.
Filed Date: 12/19/16.
Accession Number: 20161219–5375.
Comments Due: 5 p.m. ET 1/9/17.

Docket Numbers: ER10–3177–001; ER10–3181–001; ER10–3285–001.
Applicants: UGI Utilities, Inc., UGI Development Company, UGI Energy Services, LLC.
Description: Updated Triennial Market Power Analysis for Northeast region of the UGI MBR Companies.
Filed Date: 12/19/16.
Accession Number: 20161219–5294.
Comments Due: 5 p.m. ET 2/17/17.

Docket Numbers: ER15–1775–003.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Basin Electric Power Cooperative Formula Rate Compliance Filing to be effective 10/1/2015.
Filed Date: 12/20/16.
Accession Number: 20161220–5114.
Comments Due: 5 p.m. ET 1/10/17.

Docket Numbers: ER15–1943–002.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Missouri River Energy Services Formula Rate Compliance Filing to be effective 10/1/2015.
Filed Date: 12/20/16.
Accession Number: 20161220–5105.
Comments Due: 5 p.m. ET 1/10/17.

Docket Numbers: ER17–581–000.
Applicants: ISO New England Inc.
Description: § 205(d) Rate Filing: Original Service Agreement No. SGIA–ISONE/CMP–16–01 under Schedule 23 to be effective 11/30/2016.
Filed Date: 12/19/16.
Accession Number: 20161219–5339.
Comments Due: 5 p.m. ET 1/9/17.
Docket Numbers: ER17–582–000.
Applicants: Westside Solar, LLC.
Description: Baseline eTariff Filing: Westside Solar, LLC Application for MBR Authority to be effective 2/17/2017.
Filed Date: 12/19/16.
Accession Number: 20161219–5352.
Comments Due: 5 p.m. ET 1/9/17.
Docket Numbers: ER17–583–000.
Applicants: Whitney Point Solar, LLC.
Description: Baseline eTariff Filing: Whitney Point Solar, LLC Application for MBR Authority to be effective 2/17/2017.
Filed Date: 12/19/16.
Accession Number: 20161219–5353.
Comments Due: 5 p.m. ET 1/9/17.

Docket Numbers: ER17–584–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Queue Position AB2–027, Original Service Agreement No. 4588 to be effective 11/18/2016.
Filed Date: 12/19/16.
Accession Number: 20161219–5354.
Comments Due: 5 p.m. ET 1/9/17.
Docket Numbers: ER17–585–000.
Applicants: Michigan Electric Transmission Company.
Description: § 205(d) Rate Filing: Notice of Cancellation of METC RS No. 7 to be effective 11/19/2016.
Filed Date: 12/19/16.
Accession Number: 20161219–5357.
Comments Due: 5 p.m. ET 1/9/17.

Docket Numbers: ER17–586–000.
Applicants: International Transmission Company.
Description: § 205(d) Rate Filing: Notice of Termination of ITCT RS No. 10 to be effective 11/19/2016.
Filed Date: 12/19/16.
Accession Number: 20161219–5360.
Comments Due: 5 p.m. ET 1/9/17.

Docket Numbers: ER17–587–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3290 Sholes Wind Energy, LLC GIA to be effective 12/5/2016.
Filed Date: 12/20/16.
Accession Number: 20161220–5033.
Comments Due: 5 p.m. ET 1/10/17.

Docket Numbers: ER17–588–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1135R1 Public Service Co of OK and GRDA Interconnection Agr to be effective 12/1/2016.
Filed Date: 12/20/16.
Accession Number: 20161220–5034.
Comments Due: 5 p.m. ET 1/10/17.

[4] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response × $60.44 per hour = Average Cost per Response. This figure includes wages plus benefits and comes from the Bureau of Labor Statistics (*http://bls.gov/oes/current/naics2_22.htm* data from May 2015) using Management Analyst category code (13–1111).

Docket Numbers: ER17–589–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3283 NextEra Energy and Sunflower Electric Meter Agent Agreement to be effective 12/1/2016.

Filed Date: 12/20/16.

Accession Number: 20161220–5110.

Comments Due: 5 p.m. ET 1/10/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–31147 Filed 12–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD17–5–000]

Town of Alma, Colorado; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On December 15, 2016, the Town of Alma, Colorado filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Alma WTP Hydro Project would have an installed capacity of 25 kilowatts (kW) and would be located at the end of the Town of Alma's existing raw water pipeline. The project would be located near the Town of Alma in Park County, Colorado.

Applicant Contact: Nancy Comer, Town Administrator, Town of Alma, Colorado, P.O. Box 1050, Alma, CO 80420, Phone No. (719) 836–2712.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 8-foot long, 6-inch-diameter intake pipe teeing off of the existing 8-inch raw water pipeline; (2) a proposed powerhouse containing one generating unit with an installed capacity of 25-kW; (3) a proposed 8-foot long, 6-inch-diameter discharge pipe connected to the existing 8-inch raw water pipeline; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 200 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff has preliminarily determined that the proposal satisfies the requirements for a qualifying conduit hydropower facility under 16 U.S.C. 823a, and is exempted from the licensing requirements of the FPA.

Comments and Motions to Intervene: The deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

The deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at

[1] 18 CFR 385.2001–2005 (2015).

FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD17–5–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: December 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–31093 Filed 12–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD17–4–000]

City of Louisville, Colorado; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On December 15, 2016, the City of Louisville, Colorado filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed SCWTP Hydro Project would have an installed capacity of 34 kilowatts (kW) and would be located at the end of the City of Louisville's existing raw water pipeline. The project would be located near the City of Louisville in Boulder County, Colorado.

Applicant Contact: Cory Peterson, Water Resources Engineer, City of Louisville, Colorado, 749 Main Street, Louisville, CO 80027, Phone No. (303) 335–4610.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 12-foot long, 24-inch-diameter intake pipe teeing off of the existing 14-inch raw water pipeline; (2) a proposed powerhouse containing one generating unit with an installed capacity of 34-kW; (3) a proposed 12-foot long, 24-inch-diameter discharge pipe connected to the existing 14-inch raw water pipeline; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 196 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff has preliminarily determined that the proposal satisfies the requirements for a qualifying conduit hydropower facility under 16 U.S.C. 823a, and is exempted from the licensing requirements of the FPA.

Comments and Motions to Intervene: The deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

The deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888

[1] 18 CFR 385.2001–2005 (2015).

First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD17–4–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: December 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–31092 Filed 12–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Cp16–498–000; Pf16–4–000]

Columbia Gas Transmission, LLC; Notice of Schedule for Environmental Review of the B-System Project

On September 9, 2016, Columbia Gas Transmission, LLC (Columbia) filed an application in Docket No. CP16–498–000 requesting a Certificate of Public Convenience and Necessity pursuant to Sections 7(b) and 7(c) of the Natural Gas Act to abandon, construct, and operate certain natural gas pipeline facilities. The proposed project is known as the B-System Project (Project), and would modernize and upgrade Columbia's B-System pipelines by replacing and abandoning old pipeline as well as constructing new pipeline and appurtenant facilities in Fairfield and Franklin Counties, Ohio.

On September 21, 2016, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—March 13, 2017
90-day Federal Authorization Decision Deadline—June 11, 2017

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Columbia would abandon in place approximately 17.5 miles of its Line B–105; replace 14.0 miles of its Line B–111; replace 0.1 mile of its Line B–121; replace 0.5 mile of its Line B–130; construct 7.6 miles of new pipeline Line K–270 and appurtenant facilities; and modify various point of delivery and point of receipt customer interconnects in Fairfield and Franklin Counties, Ohio.

Background

On May 6, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed B-System Project and Request for Comments on Environmental Issues* (NOI). The NOI was issued during the pre-filing review of the Project in Docket No. PF16–4–000 and was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from one U.S. representative, three Ohio state representatives, the U.S. Fish and Wildlife Service, the Miami Tribe of Oklahoma, the Ohio Department of Natural Resources, Columbia Gas of Ohio, Inc., and four landowners. The primary issues raised by the commentors are pipeline route alternatives, pollinator habitat, endangered species, migratory birds, and methods of pipe abandonment.

The Ohio Department of Natural Resources is a cooperating agency in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP16–498), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–31094 Filed 12–23–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0122; FRL–9957–37–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Notice of Arrival of Pesticides and Devices Under Section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Notice of Arrival of Pesticides and Devices under section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act'' (EPA ICR No. 0152.12, OMB Control No. 2070–0020) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through December 31, 2016. Public comments were previously requested via the **Federal Register** (81 FR 22261) on April 15, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public.

An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 26, 2017.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPP–2016–0122, to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ryne Yarger, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–605–1193; email address: *yarger.ryne@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The U.S. Customs and Border Protection (Customs) regulations at 19 CFR 12.112 require that an importer desiring to import a pesticide or device into the United States shall, prior to the shipment's arrival in the United States, submit a Notice of Arrival (NOA) of Pesticides and Devices (EPA Form 3540–1 or its Customs-authorized electronic equivalent) to EPA. Once EPA receives the NOA, EPA will determine the disposition of the shipment upon its arrival in the United States. Upon completing its review, the EPA response is sent to the importer of record or licensed customs broker, who must present the NOA to Customs upon arrival of the shipment at the port of entry. This is necessary to ensure that EPA is notified of the arrival of pesticides and pesticidal devices as required under FIFRA section 17(c), and that EPA has the ability to examine such shipments to determine compliance with FIFRA. Customs compares entry documents for the shipment with the NOA and notifies the EPA regional office of any discrepancies. Alternatively, importers may submit NOA information electronically through Customs' Automated Commercial Environment (ACE). Most of the electronic filings are automatically processed, and an early indication is provided to the filer if the initial reporting requirements have been met and if the shipment can be released upon arrival at the port of entry. For those filings that do not meet the reporting requirements, automatic checks will be performed to notify the filer of errors. For filings that require non-automated checks, EPA staff can review and provide feedback notifications through ACE to the filer on what information is needed that has not been provided.

Form Numbers: EPA Form 3540–1.

Respondents/affected entities: Entities potentially affected by this ICR are pesticide importers, which includes many types of business entities ranging from Commercial and Institutional Building Construction (NAICS 236220) to Pesticide and Other Agricultural Chemical Manufacturing (NAICS 325300) and even Public Administration: Executive Offices (NAICS 921110). Other business and institutions that import pesticides include Agriculture, Forestry, Fishing and Hunting (Sector 11), Wholesale Trade, (Sector 42). The majority of responses come from businesses that fall under NAICS code 325300.

Respondent's obligation to respond: mandatory (7 U.S.C. 136o—Section 17 of the Federal Insecticide, Fungicide, and Rodenticide Act.)

Estimated number of respondents: 38,000 (total).

Frequency of response: On occasion.

Total estimated burden: 16,340 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,006,034 (per year). There is no capital or operation & maintenance costs.

Changes in the Estimates: There is increase of 1,290 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase reflects EPA's updating of burden estimates for this collection based upon historical information on the number of NOAs received by EPA. Based upon revised estimates, the number of NOAs received has increased from 35,000 to 38,000. The average burden hours per response will remain unchanged from the previous ICR renewal of 0.43 hours per response. This change is an adjustment.

Spencer Clark,

Acting Director, Regulatory Support Division.

[FR Doc. 2016–31159 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0313; FRL–9955–10–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Stationary Gas Turbines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for Stationary Gas Turbines (40 CFR part 60, subpart GG) (Renewal)'' (EPA ICR No. 1071.12, OMB Control No. 2060–0028), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2016. Public comments were previously requested via the **Federal Register** (81 FR 26546) on May 3, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 26, 2017.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0313, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public

docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as for the specific requirements at 40 CFR part 60, subpart GG. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Stationary gas turbines.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart GG).

Estimated number of respondents: 535 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 69,100 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,130,000 (per year), which includes $0 for both annualized capital/startup and operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent labor hours as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in labor hour and cost estimates occurred because of a change in assumption. This ICR assumes all existing sources will have to re-familiarize with the regulatory requirements each year.

Spencer Clark,

Acting Director, Regulatory Support Division.

[FR Doc. 2016–31160 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0346; FRL–9955–73–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving (40 CFR part 63, subparts LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP, and QQQQQQ) (Renewal)'' EPA ICR Number 2256.05, OMB Control Number 2060–0598, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through December 31, 2016. Public comments were requested previously via the **Federal Register** (81 FR 26546) on May 3, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 26, 2017.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0346, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: EPA established NESHAP for seven area source categories. The requirements for two area source categories (Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication) are combined in one Subpart. These standards include emissions limitations and work practice requirements for new and existing plants based on the generally available control technology or management practices (GACT) for each area source category. Potential respondents include one existing acrylic and modacrylic production facility, two existing chromium product manufacturing facilities, 500 existing flexible polyurethane foam production and fabrication facilities, 60 existing lead acid battery manufacturing facilities, and 393 existing wood preserving

facilities. The total annual responses attributable to this ICR for existing sources are two one-time notifications; some existing facilities may be required to prepare a startup, shutdown, and malfunction plan, perform additional monitoring and recordkeeping, and/or conduct an initial performance test. The owner or operator of a new area source would be required to comply with all requirements of the General Provisions (40 CFR part 63, subpart A).

Form Numbers: None.

Respondents/affected entities: Acrylic and modacrylic fibers production, carbon black production, chemical manufacturing: Chromium compounds, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP, and QQQQQQ).

Estimated number of respondents: 956 (total).

Frequency of response: Initially, semiannually, and occasionally.

Total estimated burden: 6,340 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $654,000 (per year), which includes neither annualized capital/startup nor operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent burden hours in this ICR compared to the previous ICR. This is not due to program changes; rather, the increase occurred due to a difference in the assumption and calculation methodology. This ICR assumes existing sources will need to re-familiarize themselves with the regulatory requirements each year. This change in assumption results in an increase in the estimated number of labor hours for each affected industry sector.

Spencer Clark,

Acting Director, Regulatory Support Division.

[FR Doc. 2016–31168 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0340; FRL–9954–98–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Stationary Reciprocating Internal Combustion Engines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Stationary Reciprocating Internal Combustion Engines (40 CFR part 63, subpart ZZZZ) (Renewal)'' (EPA ICR No. 1975.10, OMB Control No. 2060–0548), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through December 31, 2016. Public comments were previously requested via the **Federal Register** (81 FR 26546) on May 3, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 26, 2017.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0318, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as the specific requirements at 40 CFR part 63, subpart ZZZZ. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Owners or operators of stationary reciprocating internal combustion engines (RICE).

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart ZZZZ).

Estimated number of respondents: 906,640 (total).

Frequency of response: Initially, quarterly, semiannually, and annually.

Total estimated burden: 3,610,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $407,000,000 (per year), includes $35,100,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an overall increase in burden and cost in this ICR compared to the previous ICR. The increase is not due to program changes; rather, it occurred because of an estimated increase in the total number of sources subject to the rule since the last ICR renewal. EPA estimates a linear growth in the industry sector with an additional of 1,284 new sources per year that become subject to the NESHAP.

Spencer Clark,

Acting Director, Regulatory Support Division.

[FR Doc. 2016–31167 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0335; FRL–9954–89–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Aerospace Manufacturing and Rework Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Aerospace Manufacturing and Rework Facilities (40 CFR part 63, subpart GG) (Renewal)'' (EPA ICR No. 1687.11, OMB Control No. 2060–0314), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through December 31, 2016. Public comments were previously requested via the **Federal Register** (81 FR 26546) on May 3, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 26, 2017.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0335, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets*.

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the specific requirements at 40 CFR part 63, subpart GG. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Aerospace manufacturing and rework facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63 Subpart GG).

Estimated number of respondents: 144 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 154,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $13,900,000 (per year), which includes $144,000 in either annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden hours and cost as currently identified in the OMB Inventory of Approved Burdens. The increase is due to an increase in the estimated number of sources subject to the rule, and a recent amendment which added reporting and recordkeeping requirements for facilities with specialty coating operations. However, there is a decrease in the total number of responses due to the rule removing SSM exemptions and requirements for SSM reports.

Spencer Clark,

Acting Director, Regulatory Support Division.

[FR Doc. 2016–31166 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9957–36–ORD]

Hydraulic Fracturing for Oil and Gas: Impacts From the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of a final report titled, ''Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States'' (EPA/600/R/16/236F), which was prepared by EPA's Office of Research and Development (ORD). This final report provides a review and synthesis of available scientific information concerning the relationship between hydraulic fracturing activities and drinking water resources in the United States.

DATES: This document was available on December 13, 2016.

ADDRESSES: The final report, ''Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States'' is available primarily via the internet on EPA–ORD's hydraulic fracturing Web site at *www.epa.gov/hfstudy.* A limited number of paper copies are available from the Information Management Team, NCEA; phone: 703–347–8561; fax: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

FOR FURTHER INFORMATION CONTACT: Dayna Gibbons, Office of Research and Development; phone: 202–564–7983; or email: *gibbons.dayna@epa.gov.* For technical information, contact Dr. Jeffrey Frithsen, Office of Research and Development; phone: 703–347–8623; or email: *frithsen.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

Information About the Document

EPA found scientific evidence that hydraulic fracturing activities can impact drinking water resources under some circumstances. The report

identifies certain conditions under which impacts from hydraulic fracturing activities can be more frequent or severe, to include:

- Water withdrawals for hydraulic fracturing in times or areas of low water availability, particularly in areas with limited or declining groundwater resources;
- Spills during the handling of hydraulic fracturing fluids and chemicals or produced water that resulted in large volumes or high concentrations of chemicals reaching groundwater resources;
- Injection of hydraulic fracturing fluids into wells with inadequate mechanical integrity, allowing gases or liquids to move to groundwater resources;
- Injection of hydraulic fracturing fluids directly into groundwater resources;
- Discharge of inadequately treated hydraulic fracturing wastewater to surface water; and
- Disposal or storage of hydraulic fracturing wastewater in unlined pits resulting in contamination of groundwater resources.

Data gaps and uncertainties limited EPA's ability to fully assess the potential impacts on drinking water resources locally and nationally. Because of these data gaps and uncertainties, it was not possible to fully characterize the severity of impacts, nor was it possible to calculate or estimate the national frequency of impacts on drinking water resources from activities in the hydraulic fracturing water cycle.

EPA's report advances the scientific understanding of hydraulic fracturing's impact on drinking water resources and can inform decisions by federal, state, tribal, local officials, industry, and communities to protect drinking water resources now and in the future.

Dated: December 15, 2016.

Mary A. Ross,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2016–31034 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0333; FRL–9956–15–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Air Emission Standards for Tanks, Surface Impoundment and Containers (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Air Emission Standards for Tanks, Surface Impoundment and Containers (40 CFR part 264, subpart CC, and 40 CFR part 265, subpart CC) (Renewal)'' (EPA ICR No. 1593.10, OMB Control No. 2060–0318), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through December 31, 2016. Public comments were previously requested via the **Federal Register** (81 FR 26546) on May 3, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 26, 2017.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0333, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 264, subpart A and 40 CFR part 265, subpart A), as well as for the specific requirements at 40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Facilities that treat, store, or dispose of hazardous wastes in tanks, surface impoundments, and containers.

Respondent's obligation to respond: Mandatory (40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC).

Estimated number of respondents: 6,209 (total).

Frequency of response: Occasionally and semiannually.

Total estimated burden: 712,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $85,900,000 (per year), which includes $12,400,000 for either annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in labor hours and capital and O&M costs from the most-recently approved ICR. This is not due to any program changes. The decrease

has occurred because this ICR rounds totals to three significant figures.

Spencer Clark,

Acting Director, Regulatory Support Division.

[FR Doc. 2016–31165 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9957–38–OA]

Notification of a Public Teleconference of the Chartered Clean Air Scientific Advisory Committee (CASAC) and the CASAC Oxides of Nitrogen Primary National Ambient Air Quality Standards (NAAQS) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Chartered Clean Air Scientific Advisory Committee (CASAC) and the CASAC Oxides of Nitrogen Primary National Ambient Air Quality Standards (NAAQS) Review Panel to discuss the CASAC draft review of EPA's *Policy Assessment for the Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide (External Review Draft—September 2016).*

DATES: The teleconference will be held on Tuesday, January 24, 2017, from 1:30 p.m. to 4:30 p.m. (Eastern Time).

Location: The public teleconference will be held by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning the public teleconference may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone/voice mail at (202) 564–2050 or at *yeow.aaron@epa.gov.* General information about the CASAC, as well as any updates concerning the meeting announced in this notice, may be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and NAAQS and recommend any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and any adverse effects which may result from various strategies to attain and maintain air quality standards. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including oxides of nitrogen. EPA is currently reviewing the primary (health-based) NAAQS for nitrogen dioxide (NO_2), as an indicator for health effects caused by the presence of oxides of nitrogen in the ambient air.

Pursuant to FACA and EPA policy, notice is hereby given that the Chartered CASAC and the CASAC Oxides of Nitrogen Primary NAAQS Review Panel will hold a public teleconference to discuss the CASAC draft review of the EPA's *Policy Assessment for the Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide (External Review Draft—September 2016).* The Chartered CASAC and CASAC Oxides of Nitrogen Primary NAAQS Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Technical Contacts: Any technical questions concerning the *Policy Assessment for the Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide (External Review Draft—September 2016)* should be directed to Dr. Scott Jenkins (*jenkins.scott@epa.gov*), EPA Office of Air and Radiation.

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible on the CASAC Web site at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Interested members of the public may submit relevant written or oral information on the topic of this advisory activity, and/or the group conducting the activity, for the CASAC to consider during the advisory process. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments. *Oral Statements:* In general, individuals or groups requesting an oral presentation on a public teleconference will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by January 17, 2017, to be placed on the list of public speakers. *Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above by January 17, 2017, so that the information may be made available to the Committee/Panel members for their consideration. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at the contact information provided above. To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to each meeting to give EPA as much time as possible to process your request.

Dated: December 19, 2016.

Khanna Johnston,

Acting Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2016–31217 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2016–0465; FRL–9957–53–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Information Requirements for Boilers and Industrial Furnaces (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Information Requirements for Boilers and Industrial Furnaces (Renewal)'' (EPA ICR No. 1361.17, OMB Control No. 2050–0073) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through December 31, 2016. Public comments were previously requested via the **Federal Register** (81 FR 58510) on August 25, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 26, 2017.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OLEM–2016–0465, to (1) EPA, either online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Office of Resource Conservation and Recovery (mail code 5303P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: EPA regulates the burning of hazardous waste in boilers, incinerators, and industrial furnaces (BIFs) under 40 CFR parts 63, 264, 265, 266 and 270. This ICR describes the paperwork requirements that apply to the owners and operators of BIFs. This includes the general facility requirements at 40 CFR parts 264 and 265, subparts B thru H; the requirements applicable to BIF units at 40 CFR part 266; and the RCRA Part B permit application and modification requirements at 40 CFR part 270.

Form Numbers: None.

Respondents/affected entities: Business or other for-profit.

Respondent's obligation to respond: Mandatory (per 40 CFR 264, 265, and 270).

Estimated number of respondents: 105.

Frequency of response: On occasion.

Total estimated burden: 271,358 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $37,253,148 (per year), includes $19,660,605 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 20,399 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to an adjustment based on a reduction in the universe size.

Spencer Clark,

Acting Director, Regulatory Support Division.

[FR Doc. 2016–31164 Filed 12–23–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0986]

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, 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 February 27, 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: 3060–0986.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481, FCC Form 505, FCC Form 507, FCC Form 508, FCC Form 509, and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 1,977 respondents; 14,109 responses.

Estimated Time per Response: 0.5 hours–100 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 274,455 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval for this revised information collection. In November 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*); and the Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order;* see also Connect America Fund et al., WC Docket No. 10–90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012); Connect America Fund et al., WC Docket No. 10–90 et al., Order, 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); Connect America Fund et al., WC Docket No. 10–90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549 (2012); Connect America Fund et al., WC Docket No. 10–90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); Connect America Fund et al., WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); Connect America Fund, WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); Connect America Fund, WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); Connect America Fund, WC Docket No. 10–90, Report and Order, 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); Connect America Fund et al., WC Docket No. 10–90 et al., Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014); Connect America Fund et al., WC Docket No. 10–90 et al., Report and Order, 29 FCC Rcd 15644 (2014); Modernizing the E-rate Program for Schools and Libraries et al., WC Docket No. 13–184 et al., Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538 (2014). The Commission has received OMB approval for most of the information collections required by these orders. At a later date the Commission plans to submit additional revisions for OMB review to address other reforms adopted in the orders (*e.g.,* 47 CFR 54.313(a)(11)).

In March 2016, the Commission adopted the *Rate-of-Return Reform Order* to continue modernizing the universal service support mechanisms for rate-of-return carriers. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016). The *Rate-of-Return Reform Order* replaces the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops.

We propose to revise this information collection, specifically FCC Form 481 and its instructions to provide clarification for some reporting items and to reflect certain updates. This revision is a narrow expansion of similar information related to the existing approval. There are no changes to FCC Form 505, FCC Form 507, FCC Form 508, FCC Form 509 and FCC Form 525. The Commission also, subject to OMB approval, proposes to move certain reporting requirements from this control number into a new information collection for which OMB approval will be sought—3060–XXXX—Connect America Fund High Cost Portal Filing.

Authority: 44 U.S.C. 3501–3520.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of the Secretary.

[FR Doc. 2016–31068 Filed 12–23–16; 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 no later than January 10, 2017.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Jane Salland Trust dated December 16, 2015, Jane Salland and Andrea Falconieri, trustees, and Andrea Falconieri, individually,* all of Denver, Colorado; to acquire voting shares of Heritage Bancshares Group, Inc. (HBGI), Spicer, Minnesota, and thereby join the Geiger family shareholder group, which controls HBGI and indirectly controls Heritage Bank, National Association, Spicer, Minnesota.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Robert David Becker, individually and as trustee for The Harold M. Becker Irrevocable Children's Trust,* Cedar Rapids, Iowa, *together with Sherri A. Becker,* Kansas City, Missouri, *Linda*

Deaktor, Chatsworth, California, *Deborah B. Josephson, as trustee for the Deborah B. Josephson Revocable Trust,* Omaha, Nebraska, *Erik Leibsohn,* Paradise Vally, Arizona, *Steve Liebsohn,* Scottsdale, Arizona, *and Matthew Rose,* Phoenix, Arizona; as a group acting in concert to retain control of Guaranty Bankshares, Ltd. and thereby indirectly retain control of Guaranty Bank and Trust Company, both in Cedar Rapids, Iowa.

Board of Governors of the Federal Reserve System, December 21, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–31179 Filed 12–23–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3099]

Turn Inc., Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 19, 2017.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/turnconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''In the Matter of Turn Inc., File No. 152 3099—Consent Agreement'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/turnconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of Turn Inc., File No. 152 3099—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jamie E. Hine, (202) 326–2188, Attorney, and Justin Brookman, (202) 326–2214, Attorney, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 20, 2016), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 19, 2017. Write ''In the Matter of Turn Inc., File No. 152 3099—Consent Agreement'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/turnconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''In the Matter of Turn Inc., File No. 152 3099—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 19, 2017. You can find more information, including routine uses permitted by the Privacy Act, in

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Turn Inc. (''Turn'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission again will review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves Turn, a digital advertising company that enables commercial brands and ad agencies to engage in targeted advertising, which is the practice of tracking a consumer's activities or characteristics to deliver ads tailored to the consumer's interests. The FTC complaint alleges that Turn violated Section 5(a) of the FTC Act by falsely representing to consumers the extent to which consumers could restrict the company's tracking of their online activities and the extent to which Turn's opt-out applied to mobile app advertising.

Specifically, the complaint alleges that until at least April 2015, Turn's privacy policy misrepresented that consumers could prevent Turn's tracking by blocking or otherwise limiting cookies. Contrary to representations that consumers could opt out of tracking by instructing their browser to ''stop accepting cookies,'' Turn tracked consumers by using and synchronizing the Verizon X–UIDH header, a unique identifier appended to the internet traffic of more than 100 million consumers on the Verizon Wireless data network. Even if a consumer deleted cookies or reset their device advertising identifier (*e.g.,* Apple's IDFA or Google's advertising ID), Turn would be able to recognize the user by cross-referencing the unique X–UIDH header associated with an individual consumer's device. In fact, if a Verizon Wireless user deleted their cookies, Turn would attempt to set a new cookie containing the same unique identifier as the cookie the user had deleted, thereby maintaining the linkage between the consumer's browser or device and an identifier associated with behavioral, demographic, or tracking data.

In addition, the complaint alleges that Turn's privacy policy misrepresented that its opt-out mechanism would be effective in blocking targeted advertising on both mobile Web sites and in mobile apps. Contrary to Turn's representations, Turn's opt-out applied only to mobile browsers, and was not effective in blocking ads in mobile applications.

The proposed consent order contains provisions designed to prevent Turn from engaging in similar acts and practices in the future. Part I of the proposed order prohibits Turn from misrepresenting (1) the extent to which it collects, uses, discloses, retains, or shares Covered Information; and (2) the extent to which users may limit, control, or prevent Turn's collection, use, disclosure, retention, or sharing of covered information. Part II of the proposed order requires Turn, within thirty days following service of the order, to place a clear and conspicuous hyperlink on the Turn Web site homepage that states ''Consumer Opt Out of Targeted Advertising.'' The hyperlink must take consumers to a clear and conspicuous disclosure that explains what information Turn collects and uses for targeted advertising, and provides an effective opt-out mechanism that allows consumers to prevent Turn from collecting or using consumers' information. In addition, Turn's Web site must describe to consumers the technologies and methods it uses for targeted advertising. Part III of the proposed order requires Turn to honor mobile operating system control signal (*e.g.,* Apple's IDFA or Google's advertising ID) to opt out of or otherwise control or limit targeted advertising, where it knows or reasonably should know that it is receiving such a signal.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires acknowledgment of the order and dissemination of the order now and in the future to persons with managerial responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status and mandates that Turn submit an initial compliance report to the FTC. Part VI requires Turn to retain documents relating to its compliance with the order for a five-year period. Part VII mandates that Turn make available to the FTC information or subsequent compliance reports, as requested. Part VIII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint order or to modify in any way the proposed orders terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–31132 Filed 12–23–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0196; Docket No. 2016–0053; Sequence 33]

Submission for OMB Review; Payment of Subcontractors

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Payment of Subcontractors.

DATES: Submit comments on or before January 26, 2017.

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 for OMB control number 9000–0196, Payment of Subcontractors. Select the link ''Submit a Comment'' that corresponds with ''9000–0196; Payment of Subcontractors.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''9000–0196; Payment of Subcontractors'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW.,

Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0196.

Instructions: Please submit comments only and cite IC 9000–0196, in all correspondence related to this case. All comments received 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. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448, or email *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 1334 of the Small Business Jobs and Credit Act of 2010 (Pub. L. 111–240) and the Small Business Administration's Final Rule at 78 FR 42391, Small Business Subcontracting, published on July 16, 2013, and effective August 15, 2013, requires the prime contractor to self-report to the contracting officer when the prime contractor makes late or reduced payments to small business subcontractors. In addition, the contracting officer is required to record the identity of contractors with a history of late or reduced payments to small business subcontractors in the Federal Awardee Performance and Integrity Information System (FAPIIS). FAR Part 42 is revised to include in the past performance evaluation reduced or untimely payments reported to the contracting officer by the prime contractor in accordance with the clause at 52.242–XX, Payments to Small Business Subcontractors, that are determined by the contracting officer to be unjustified.

A notice was published in the **Federal Register** at 81 FR 3087, on January 20, 2016, as part of a proposed rule under FAR Case 2014–004. Two comments were received on the information collection.

B. Discussion and Analysis

Comment: Two respondents stated that the Councils had underestimated the public burden in regards to the proposed rule. One respondent commented that the FAR Council has greatly underestimated the implementation burden on commercial item and COTS item contractors, especially considering the broad definition of ''subcontractor'' that applies to the proposed rule. The other respondent believed that the estimate of reporting time of only two hours per respondent is grossly underestimated. This negligible amount of time assumes that all contractors can easily identify from their payment systems which subcontractors are small businesses. The respondent believed that this is often not the case, and that the small business size status of a subcontractor may be unknown to the contractor's other accounting systems. The other respondent commented that since the Small Business Jobs Act of 2010 does not specifically require that the subcontractor payment clause apply to commercial contracts, the respondent recommended that the FAR Council seek additional information about the burden on contractors before a determination is made to apply the payment of subcontractor requirements to commercial item acquisitions. The respondent did not find that the availability of limited information indicated that the burden may not be significant, as described in the proposed rule. Rather, initial feedback from contractors suggested that the burdens associated with reporting under the rule will have a significant impact.

Response: The respondents do not offer data with which to support changing the current estimated public burden hours. However, since this is a new rule without an empirical frame of reference, the public reporting burden is reviewed every three years and can be adjusted as necessary.

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.

C. Annual Reporting Burden

Respondents: 5,457.
Responses per Respondent: 1.
Total Annual Responses: 5,457.
Hours per Response: 2.
Total Burden Hours: 10,914.

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 9000–0196, Payment of Subcontractors, in all correspondence.

Dated: November 15, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–31130 Filed 12–23–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) GH17–001, Evaluations to Improve Prevention Interventions Under the President's Emergency Plan for AIDS Relief (PEPFAR).

Time and Date: 9:00 a.m.–2:00 p.m., EST, January 25, 2017 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to FOA GH17–001, Evaluations to Improve Prevention Interventions Under the President's Emergency Plan for AIDS Relief (PEPFAR).

Contact Person for More Information: Hylan Shoob, Scientific Review Officer, Center for Global Health (CGH) Science Office, CGH, CDC, 1600 Clifton Road, NE., Mailstop D–69, Atlanta, Georgia 30329, Telephone: (404) 639–4796.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–31184 Filed 12–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcing the Intent To Award a Single-Source Program Expansion Supplements to Cooperative Agreements Within the Office of Refugee Resettlement's Unaccompanied Children's (UC) Program

AGENCY: Office of Refugee Resettlement, ACF, HHS.

ACTION: This notice announces the intent to award a single-source expansion supplement grant to existing grantees', BCFS Health and Human Services (90ZU0075) and the U.S. Committee for Refugees and Immigrants (90ZU0081), Cooperative Agreement within the Office of Refugee Resettlement's Unaccompanied Children's (UC) Program.

SUMMARY: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), announces its intent to award a cooperative agreement of up to $3,311,087 as a single-source expansion supplements to the Post Release Services Programs within the Unaccompanied Children's (UC) Program.

The expansion supplement grants will support the immediate need for additional post-release services to accommodate the increasing number of UCs being referred by DHS, and as a result, the increase of UCs referred for post-release services. The increase in the UC population necessitates the need for expansion of services to expedite the release of UC. The *Flores* v. *Reno* settlement agreement requires that requires the timely release of children and youth to qualified parents, guardians, relatives or other adults, referred to as ''sponsors.''

DATES: Supplemental award funds will support activities from September 30, 2015 through September 29, 2016.

FOR FURTHER INFORMATION CONTACT: Jallyn Sualog, Director, Division of Children's Services, Office of Refugee Resettlement, 330 C Street SW., Washington, DC 20201. Email: *DCSProgram@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: ORR is continuously monitoring its capacity to provide post-release services to the unaccompanied children in HHS custody.

ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing, experience, and appropriate level of trained staff to meet those requirements. The expansion of the existing post-release services program through this supplemental award is a key strategy for ORR to be prepared to meet its responsibility of safe and timely release of Unaccompanied Children referred to its care by DHS and so that the US Border Patrol can continue its vital national security mission to prevent illegal migration, trafficking, and protect the borders of the United States.

Statutory Authority: This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of Unaccompanied Alien Children from the Commissioner of the former Immigration and Naturalization Service (INS) to the Director of ORR of the Department of Health and Human Services (HHS).

(B) The Flores Settlement Agreement, Case No. CV85–4544RJK (C.D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the Flores Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996), pertinent regulations and ORR policies and procedures.

Christopher Beach,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration, Administration for Children and Families.

[FR Doc. 2016–31062 Filed 12–23–16; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1495]

Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled ''Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions.'' This guidance is intended to provide clarity for FDA staff and industry regarding the benefit and risk factors FDA may consider in prioritizing resources for compliance and enforcement efforts to maximize medical device quality and patient safety. Although product availability and other medical device compliance and enforcement decisions are generally fact-specific, FDA believes that explaining how we consider the factors listed in the guidance will improve the consistency and transparency of these kinds of decisions. A common understanding of how FDA considers benefit and risk may better align industry's and FDA's focus on actions that maximize benefit to patients, improve medical device quality, and reduce risk to patients. This guidance is in effect at this time.

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: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–1495 for the guidance entitled ''Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://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 ''Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions'' 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: Ann M. Ferriter, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3680, Silver Spring, MD 20993, 301–796–5530.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance is intended to provide a framework for FDA and stakeholders that sets forth overarching benefit-risk principles. FDA may consider the types of benefit-risk factors described in the guidance—including reliable patient input from a representative sample—on a case-by-case basis when determining the appropriate regulatory actions to take and to help ensure that informed and science-based decisions are made to the greatest extent practicable. Factors may be weighted differently for different decisions and as the timeframe allows. FDA intends to use pilots and other evaluation techniques to help determine how to apply the benefit-risk framework described in this guidance. Because of the variability in the facts of, and data available for, each decision, specific factors that will inform FDA's thinking may vary.

In addition, the guidance is intended to harmonize FDA's approach to weighing benefits and risks for medical device product availability, compliance, and enforcement decisions with FDA's benefit-risk framework for evaluating medical device marketing and investigational device exemption applications. The benefit-risk factors in the guidance also support assessment of medical devices with real world evidence.

The framework described in the guidance may be applicable to industry and FDA decisions. The benefit-risk factors may be considered when device manufacturers evaluate appropriate responses to nonconforming product or regulatory compliance issues, such as determining whether to limit the availability of a medical device (*e.g.,* a voluntary recall or market withdrawal). FDA may consider the benefit-risk factors during, for example, the evaluation of device shortage situations, selection of the appropriate regulatory engagement mechanism following an inspection during which regulatory non-compliance was observed, evaluation of recalls and consideration of petitions for variance from those sections of the Quality System regulation (21 CFR part 820) for which there were inspectional observations during a premarket approval preapproval inspection.

The guidance applies to both diagnostic and therapeutic medical devices subject to, and exempt from, premarket review. The scope of the guidance excludes medical devices regulated by FDA's Center for Biologics Evaluation and Research combination products, as defined in 21 CFR 3.2(e), for which the Center for Devices and Radiological Health (CDRH) is not the lead Center; and electronic products that are not devices as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(h)) as regulated by CDRH under the Electronic Product Radiation Control provisions in the FD&C Act and implementing regulations (21 CFR Subchapter J—Radiological Health). This guidance does not apply to products (*e.g.,* drugs, biologics, dietary supplements, foods, tobacco products, or cosmetics) regulated by other FDA Centers.

In the **Federal Register** of June 16, 2016 (81 FR 39272), FDA published a notice of availability for the draft guidance entitled ''Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions.'' FDA considered the comments received on the draft guidance and has revised the guidance as appropriate in response to the comments.

II. Significant 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 ''Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions.'' 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 using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500065 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 7, subpart C, have been approved under OMB control number 0910–0249. 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 21 CFR part 803, regarding medical device reporting, have been approved under OMB control numbers 0910–0291, 0910–0437, and 0910–0471. The collections of information in 21 CFR part 806 have been approved under OMB control number 0910–0359. The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120. The collections of information in 21 CFR part 810, regarding medical device recall authority, have been approved under OMB control number 0910–0432. The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078. The collections of information in 21 CFR part 814, subparts B and E, have been approved under OMB control number 0910–0231. The collections of information in 21 CFR part 820, regarding the Quality System regulation, have been approved under OMB control number 0910–0073. The collections of information in 21 CFR part 822, regarding postmarket surveillance of medical devices, have been approved under OMB control number 0910–0449.

Dated: December 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31145 Filed 12–23–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–4187]

Coordinated Registry Network for Devices Used for Acute Ischemic Stroke Intervention; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Coordinated Registry Network (CRN) for Devices Used for Acute Ischemic Stroke Intervention (DAISI).'' The purpose of the public workshop is to obtain stakeholders' input on the coordination of registries for DAISI.

DATES: The public workshop will be held on February 2, 2017, 8 a.m. to 5 p.m. EST. The deadline for submitting comments regarding this public workshop is March 2, 2017. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the Ruth L. Kirschstein Auditorium, Natcher Conference Center, Bldg. 45, National Institutes of Health Campus, 9000 Rockville Pike, Bethesda, MD 20892. Entrance for the public workshop participants (non-NIH employees) is through the NIH Gateway Center located adjacent to the Medical Center Metro, where routine security check procedures will be performed. Please visit the following Web site for NIH campus location, parking, security, and travel information: *http://www.nih.gov/about/visitor/index.htm.* Please visit the following Web site for information on the Natcher Conference Center: *http://www.genome.gov/11007522.*

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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

In order to permit the widest possible opportunity for public comment, FDA is soliciting either electronic or written comments on all aspects of the workshop topics.

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–4187 for ''Coordinated Registry Network (CRN) for Devices Used for Acute Ischemic Stroke Intervention (DAISI).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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.'' FDA 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 *https://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 *https://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: Jamie Waterhouse, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2611, Silver Spring, MD 20993, 301–796–3063, email: *Jamie.Waterhouse@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Stroke is the fifth leading cause of death in the United States and the number one preventable cause of disability (Ref. 1). Recent publication of five prospective randomized trials and revised practice guidelines in the treatment of stroke has suggested the potential therapeutic role of endovascular therapy in combination with pharmacotherapy (typically intravenous tissue plasminogen activator (IV t-PA)) for patients with proximal large vessel occlusion stroke in the anterior circulation (M1 Middle Cerebral Artery segment with or without concomitant Internal Carotid Artery occlusion) (Refs. 2–6). FDA believes that research and development in this field, including the collection of data through the use of registries, provides a potential data source for expanding indications for already cleared/approved devices. Development and leveraging support for data collected within appropriate registries; with the participation of professional medical societies, industry, patient groups, healthcare facilities, and payers; can further drive innovation in this area and aid in the improvement of clinical care and patient outcomes. A coordinated registry network may also collect data reflective of clinical practice that is of sufficient quality and breadth to support scientific, clinical, and regulatory decision-making and aid in the design of future studies and performance testing requirements for new or existing devices.

II. Topics for Discussion at the Public Workshop

This workshop is aimed at addressing scientific, clinical, and regulatory considerations associated with medical devices used in the treatment of acute ischemic stroke medical devices and the development of coordinated registry networks to serve the following topic areas:

• Clinical Common Data Elements;
• Standardized Definitions and Case Report Forms;
• Informatics, Sustainability, and Data Quality; and
• Additional scientific, methodological, and clinical considerations for evaluating information obtained from registries.

III. Participating in the Public Workshop

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences (Medical Devices) calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* Persons interested in attending this public workshop must register online by January 26, 2017, at 4 p.m. EST. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by January 26, 2017, at 4 p.m. EST. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. You will be notified if you are on a waiting list.

If you need special accommodations due to a disability, please contact Peggy Roney, Center for Devices and Radiological Health, Office of Communication and Education, 301–796–5671, email: *Peggy.Roney@fda.hhs.gov* no later than January 19, 2017.

IV. 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 *https://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. American Stroke Association, ''Impact of Stroke (Stroke statistics)'' (*http://www.strokeassociation.org/STROKEORG/AboutStroke/Impact-of-Stroke-Stroke-statistics_UCM_310728_Article.jsp#.VvFGChvruUk*).
2. Berkhemer, O. A., et al. ''A Randomized Trial of Intraarterial Treatment for Acute Ischemic Stroke.'' *New England Journal of Medicine.* 372, 11–20 (2015).
3. Saver, J. L., et al. ''Stent-Retriever Thrombectomy After Intravenous t-PA Versus t-PA Alone in Stroke.'' *New England Journal of Medicine.* 372, 2285–2295 (2015).
4. Goyal, M., et al. ''Randomized Assessment of Rapid Endovascular Treatment of Ischemic Stroke.'' *New England Journal of Medicine.* 372, 1019–1030 (2015).
5. Campbell, B. C., et al. ''Endovascular Therapy for Ischemic Stroke with Perfusion-Imaging Selection.'' *New England Journal of Medicine.* 372, 1009–1018 (2015).
6. Jovin, T. G., et al. ''Thrombectomy Within 8 Hours After Symptom Onset in Ischemic Stroke.'' *New England Journal of Medicine.* 372, 2296–2306 (2015).

Dated: December 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31143 Filed 12–23–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Psychopharmacologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on February 16, 2017, from 8 a.m. to 5 p.m.

ADDRESSES: College Park Marriott Hotel and Conference Center, 3501 University Blvd. East, Hyattsville, MD 20783. The conference center's telephone number is 301–985–7300. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *PDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug application (NDA) 209241, Valbenazine 40 milligram (mg) capsules, for the proposed treatment of Tardive Dyskinesia, submitted by Neurocrine Biosciences, Inc.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 2, 2017. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 25, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 26, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31144 Filed 12–23–16; 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; Forms for Use With Applications to the Maternal and Child Health Bureau and Bureau of Health Workforce Research and Training Grants

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) 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 must be received no later than February 27, 2017.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N–39, 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: Forms for Use with Applications to the Maternal and Child Health Bureau and Bureau of Health Workforce Research and Training Grants OMB No. 0906–xxxx—New

Abstract: Currently HRSA is cleared to use the National Institutes of Health's (NIH) Biographical Sketch and Public Health Service (PHS) Inclusion Enrollment forms (0925–0001) for HRSA's SF424 Research & Related (R&R) application package research grants. However, both of these documents contain NIH-specific references. To use the forms, HRSA plans to remove the NIH-specific references and obtain its own OMB control number for the collection of this information.

The current Statement of Appointment (form PHS–2271) is also tailored to NIH programs. HRSA plans to remove references to NIH and where appropriate replace them with references to HRSA for use in the SF424 R&R application package.

Need and Proposed Use of the Information: Currently, there are two Bureaus within HRSA, the Maternal and Child Health Bureau (MCHB) and the Bureau of Health Workforce (BHW), that use the Biographical Sketch. In addition to the Biographical Sketch, MCHB also uses the PHS Inclusion Enrollment form, and BHW uses the Statement of Appointment form as required elements of the SF424 Research & Related application package. These Bureaus plan to modify these forms in slightly different ways to meet the needs of their own research and training grant programs.

In MCHB's research grant programs, the modified Biographical Sketch form will be used by applicants to summarize the qualifications of key personnel on their proposed research team; the grant reviewers will use this information to assess the capabilities of the research team to carry out the research project. MCHB's modified PHS Inclusion Enrollment form will be used by applicants to summarize their expected population of research study participants at the time of submission of their proposal; it will also be used for Enrollment Reporting during the annual Noncompeting Continuation Award. Monitoring Inclusion Enrollment is one important component of ensuring statistically meaningful demographics (race, ethnicity, and gender) among research study participants in MCHB's research grant portfolio. MCHB does not use the Statement of Appointment form, as it does not pertain to the MCHB research program.

Similarly, in BHW the modified Biographical Sketch form will be used by applicants to summarize the qualifications of key personnel proposed as project staff; the grant reviewers will use this information to assess the capabilities of the applicant organization to carry out the proposed project. The modified Statement of Appointment form is used to document the appointment of individuals supported by the award to applicable institutional research and training programs. BHW does not use the PHS Inclusion Enrollment form, as it does not pertain to the BHW training and research programs.

Likely Respondents: Respondents are applicants to HRSA's research programs in MCHB and research and training programs in BHW.

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 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
Biographical Sketch for MCHB research grant applicants	200	5	1000	2	2000
PHS Inclusion Enrollment form for MCHB research grant applications	200	1	200	.5	100
Biographical Sketch for BHW training and research grant applicants	1000	5	5000	2	10,000
Statement of Appointment form for BHW training grantees	800	7	5600	.5	2,800
Total	2200	.....	11,800	.....	14,900

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. 2016–31080 Filed 12–23–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Updating the HRSA-Supported Women's Preventive Services Guidelines

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: Effective December 20, 2016, the Health Resources and Services Administration (HRSA) updated the HRSA-supported Women's Preventive Services Guidelines for purposes of health insurance coverage for preventive services that address health needs specific to women based on clinical recommendations from the Women's Preventive Services Initiative. This notice serves as an announcement of the decision to update the guidelines as listed below. Please see *https://www.hrsa.gov/womensguidelines2016* for additional information.

FOR FURTHER INFORMATION CONTACT: HRSA, Maternal and Child Health Bureau at email: *wellwomancare@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Breast Cancer Screening for Average-Risk Women

The Women's Preventive Services Initiative recommends that average-risk women initiate mammography screening no earlier than age 40 and no later than age 50. Screening mammography should occur at least biennially and as frequently as annually. Screening should continue through at least age 74 and age alone should not be the basis to discontinue screening.

These screening recommendations are for women at average risk of breast cancer. Women at increased risk should also undergo periodic mammography screening, however, recommendations for additional services are beyond the scope of this recommendation.

Breastfeeding Services and Supplies

The Women's Preventive Services Initiative recommends comprehensive lactation support services (including counseling, education, and breastfeeding equipment and supplies) during the antenatal, perinatal, and postpartum periods to ensure the successful initiation and maintenance of breastfeeding.

Screening for Cervical Cancer

The Women's Preventive Services Initiative recommends cervical cancer screening for average-risk women aged 21 to 65 years. For women aged 21 to 29 years, the Women's Preventive Services Initiative recommends cervical cancer screening using cervical cytology (Pap test) every 3 years. Cotesting with cytology and human papillomavirus testing is not recommended for women younger than 30 years. Women aged 30 to 65 years should be screened with cytology and human papillomavirus testing every 5 years or cytology alone every 3 years. Women who are at average risk should not be screened more than once every 3 years.

Contraception

The Women's Preventive Services Initiative recommends that adolescent and adult women have access to the full range of female-controlled contraceptives to prevent unintended pregnancy and improve birth outcomes. Contraceptive care should include contraceptive counseling, initiation of contraceptive use, and follow-up care (*e.g.,* management, and evaluation as well as changes to and removal or discontinuation of the contraceptive method). The Women's Preventive Services Initiative recommends that the full range of female-controlled U.S. Food and Drug Administration-approved contraceptive methods, effective family planning practices, and sterilization procedures be available as part of contraceptive care.

The full range of contraceptive methods for women currently identified by the U.S. Food and Drug Administration include: (1) Sterilization surgery for women, (2) surgical sterilization via implant for women, (3) implantable rods, (4) copper intrauterine devices, (5) intrauterine devices with progestin (all durations and doses), (6) the shot or injection, (7) oral contraceptives (combined pill), 8) oral contraceptives (progestin only, and), (9) oral contraceptives (extended or continuous use), (10) the contraceptive patch, (11) vaginal contraceptive rings, (12) diaphragms, (13) contraceptive sponges, (14) cervical caps, (15) female condoms, (16) spermicides, and (17) emergency contraception (levonorgestrel), and (18) emergency contraception (ulipristal acetate), and additional methods as identified by the FDA. Additionally, instruction in fertility awareness-based methods, including the lactation amenorrhea method, although less effective, should be provided for women desiring an alternative method.

Screening for Gestational Diabetes Mellitus

The Women's Preventive Services Initiative recommends screening pregnant women for gestational diabetes mellitus after 24 weeks of gestation (preferably between 24 and 28 weeks of gestation) in order to prevent adverse birth outcomes. Screening with a 50-g oral glucose challenge test (followed by a 3-hour 100-g oral glucose tolerance test if results on the initial oral glucose challenge test are abnormal) is preferred because of its high sensitivity and specificity.

The Women's Preventive Services Initiative suggests that women with risk factors for diabetes mellitus be screened for preexisting diabetes before 24 weeks of gestation—ideally at the first prenatal visit, based on current clinical best practices.

Screening for Human Immunodeficiency Virus Infection

The Women's Preventive Services Initiative recommends prevention education and risk assessment for human immunodeficiency virus (HIV) infection in adolescents and women at least annually throughout the lifespan. All women should be tested for HIV at least once during their lifetime. Additional screening should be based on risk, and screening annually or more often may be appropriate for adolescents and women with an increased risk of HIV infection.

Screening for HIV is recommended for all pregnant women upon initiation of prenatal care with retesting during pregnancy based on risk factors. Rapid HIV testing is recommended for pregnant women who present in active labor with an undocumented HIV status. Screening during pregnancy enables prevention of vertical transmission.

Screening for Interpersonal and Domestic Violence

The Women's Preventive Services Initiative recommends screening adolescents and women for interpersonal and domestic violence, at least annually, and, when needed, providing or referring for initial intervention services. Interpersonal and domestic violence includes physical violence, sexual violence, stalking and psychological aggression (including coercion), reproductive coercion, neglect, and the threat of violence, abuse, or both. Intervention services include, but are not limited to, counseling, education, harm reduction strategies, and referral to appropriate supportive services.

Counseling for Sexually Transmitted Infections

The Women's Preventive Services Initiative recommends directed behavioral counseling by a health care provider or other appropriately trained individual for sexually active adolescent and adult women at an increased risk for sexually transmitted infections (STIs).

The Women's Preventive Services Initiative recommends that health care providers use a woman's sexual history and risk factors to help identify those at an increased risk of STIs. Risk factors may include age younger than 25, a recent history of an STI, a new sex partner, multiple partners, a partner with concurrent partners, a partner with an STI, and a lack of or inconsistent condom use. For adolescents and women not identified as high risk, counseling to reduce the risk of STIs should be considered, as determined by clinical judgement.

Well-Woman Preventive Visits

The Women's Preventive Services Initiative recommends that women receive at least one preventive care visit per year beginning in adolescence and continuing across the lifespan to ensure that the recommended preventive services including preconception, and many services necessary for prenatal and interconception care are obtained. The primary purpose of these visits

should be the delivery and coordination of recommended preventive services as determined by age and risk factors.

The HRSA-supported Women's Preventive Services Guidelines were originally established in 2011 based on recommendations from a Department of Health and Human Services' commissioned study by the Institute of Medicine (IOM), now known as the National Academy of Medicine (NAM). Since then, there have been advancements in science and gaps identified in the existing guidelines, including a greater emphasis on practice-based clinical considerations. To address these, HRSA awarded a 5-year cooperative agreement in March 2016 to convene a coalition of clinician, academic, and consumer-focused health professional organizations and conduct a scientifically rigorous review to develop recommendations for updated Women's Preventive Services Guidelines in accordance with the model created by the NAM *Clinical Practice Guidelines We Can Trust.* The American College of Obstetricians and Gynecologists was awarded the cooperative agreement and formed an expert panel called the Women's Preventive Services Initiative.

Under section 2713 of the Public Health Service Act, non-grandfathered group health plans and issuers of non-grandfathered group and individual health insurance coverage are required to cover specified preventive services without a copayment, coinsurance, deductible, or other cost sharing, including preventive care and screenings for women as provided for in comprehensive guidelines supported by HRSA for this purpose. Non-grandfathered plans and coverage (generally, plans or policies created or sold after March 23, 2010, or older plans or policies that have been changed in certain ways since that date) are required to provide coverage without cost sharing consistent with these guidelines beginning with the first plan year (in the individual market, policy year) that begins on or after December 20, 2017.

The guidelines concerning contraceptive methods and counseling do not apply to women who are participants or beneficiaries in group health plans sponsored by religious employers. Effective August 1, 2013, a religious employer is defined as an employer that is organized and operates as a non-profit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. HRSA notes that, as of August 1, 2013, group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the requirement to cover contraceptive services under section 2713 of the Public Health Service Act, as incorporated into the Employee Retirement Income Security Act and the Internal Revenue Code. HRSA also notes that, as of January 1, 2014, accommodations are available to group health plans established or maintained by certain eligible organizations (and group health insurance coverage provided in connection with such plans), as well as student health insurance coverage arranged by eligible organizations, with respect to the contraceptive coverage requirement. See Coverage of Certain Preventive Services Under the Affordable Care Act (78 FR 39870, July 2, 2013).

James Macrae,

Acting Administrator.

[FR Doc. 2016–31129 Filed 12–23–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Announcement of Updated Requirements and Registration for "The Simple Extensible Sampling Tool Challenge"

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: On September 29, 2016, OIG announced ''The Simple Extensible Sampling Tool Challenge''. This notice serves as an update to the original notice which stated that upon receipt of an updated submission the previous submission would be excluded in its entirety from the competition. This updated notice removes this restriction for entries from teams that have been previously identified as finalists. Any finalist may update their entry without losing their finalist designation. Updates from the finalists will be accepted until 5:00 p.m. EST on the fourteenth day after the fifth finalist has been identified or May 15, 2017, 5:00 p.m. EST, whichever comes first. The newest entry from each team will be used for all judging purposes unless otherwise requested by the team. Other than the above change, all rules and requirements outlined in the September 29, 2016, **Federal Register** notice remain in effect.

Dated: December 21, 2016.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2016–31182 Filed 12–23–16; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.

Open: January 27, 2017.

Time: 8:15 a.m. to 11:30 a.m.

Agenda: Call to Order and Introductions; Announcements and Updates; Tracking Utility of Common Fund Data Sets; Small Molecules from the Human Microbiota; Invited Speaker; NIH Update; Discussion; 2017 Biennial Advisory Council Report—Compliance with the NIH Policy on the Inclusion of Women and Minorities in Clinical Research.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: January 27, 2017.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: Review of grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Open: January 27, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: NIH Perspectives on Enhancing Scientific Rigor and Reproducibility; ODP's FY14–18 Strategic Plan: A Mid-Course Review; Invited Speaker; Peer Review Outcomes and Study Section Design; Closing Remarks.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov*, 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: December 20, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–31178 Filed 12–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Chemical Senses Fellowships Review.

Date: February 6, 2017.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov*.

Name of Committee: Communication Disorders Review Committee.

Date: February 9–10, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Eliane Lazar-Wesley, Scientific Review Officer, Division of Extramural Activities, National Institute on Deafness and other Communication Disorders/NIH, 6001 Executive Blvd., MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 20, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–31176 Filed 12–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R21: Rapid Assessment for ZIKA Virus (ZIKV) Complications Teleconference.

Date: January 25, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ana Olariu, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, *Ana.Olariu@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 19, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–31177 Filed 12–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: January 24, 2017.

Open: 8:30 a.m. to 12:10 p.m.

Agenda: Report to the Director, NIDCR.

Place: National Institutes of Health, Building 31C, Conference Room 10, 31 Center Drive, 6th Floor, Bethesda, MD 20892.

Closed: 1:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31C, Conference Room 10, 31 Center Drive, 6th Floor, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, 301–594–4805, *adombroski@nidcr.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 21, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–31180 Filed 12–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Evaluation of Novel Therapies for Severe Asthma.

Date: January 11, 2017.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–496–9659, *reillymp@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–31174 Filed 12–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Enhancing Developmental Biology Research AREA Review.

Date: January 23–24, 2017.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, MSC 7840, Bethesda, MD 20892, 301–435–1175, *berestm@mail.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: January 24–25, 2017.

Time: 8:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 21, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–31172 Filed 12–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: January 17, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Audrey O. Lau, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852, 240–669–2081, *audrey.lau@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: January 18, 2017.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: B. Duane Price, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, RM 3G50, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, 240–669–5074, *pricebd@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: January 18, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Annie Walker-Abbey, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 20, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–31175 Filed 12–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; TRND3.

Date: January 18, 2017.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Democracy One, Room 987, 6701 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, Office of Scientific Director, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 20, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–31173 Filed 12–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors of the NIH Clinical Center.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the CLINICAL CENTER, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors of the NIH Clinical Center.

Date: January 23–24, 2017.

Time: January 23, 2017, 8:00 a.m. to 12:15 p.m.

Agenda: To review and evaluate the Department of Transfusion Medicine.

Place: National Institutes of Health, Building 10, Rm: 10–42551, 10 Center Drive, Bethesda, MD 20892.

Time: January 23, 2017, 1:00 p.m. to 4:45 p.m.

Agenda: To review and evaluate the Department of Transfusion Medicine.

Place: National Institutes of Health, Building 10, Rm: 10–42551, 10 Center Drive, Bethesda, MD 20892.

Time: January 24, 2017, 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate the Department of Transfusion Medicine.

Place: National Institutes of Health, Building 10, Rm: 10–42551, 10 Center Drive, Bethesda, MD 20892.

Contact Person: David K. Henderson, MD, Deputy Director for Clinical Care, Office of the Director, Clinical Center, National Institutes of Health, Building 10, Room 6–1480, Bethesda, MD 20892, (301) 496–3515.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: December 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–31171 Filed 12–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Protecting Our Infants Act Report to Congress

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment, in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain public comment on a report to Congress in response to the Projecting Our Infants Act of 2015 (POIA) (Pub. L. 114–91). The POIA mandated HHS to: Conduct a review of planning and coordination activities related to prenatal opioid exposure and neonatal abstinence syndrome; develop recommendations for the identification, prevention, and treatment of prenatal opioid exposure and neonatal abstinence syndrome; and develop a strategy to address gaps, overlap, and duplication among Federal programs and Federal coordination efforts to address neonatal abstinence syndrome.

DATES: *Comment Close Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than January 26, 2017.

ADDRESSES: You may submit comments identified by Docket No. [SAMHSA–2016–0004] by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Electronically:* You may submit electronic comments to: *POIAcomments@samhsa.hhs.gov.*
- *By regular mail:* You may mail written comments to the following address ONLY: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, 5600 Fishers Lane, Room 13E49, Rockville, MD 20852 Attn: Docket No. [SAMHSA–2016–0004]. Please allow sufficient time for mailed comments to be received before the close of the comment period.
- *By express or overnight mail:* You may send written comments to the following address ONLY: Substance Abuse and Mental Health Services Administration, Attention: Melinda Campopiano, 5600 Fishers Lane, 13E49, Rockville, MD 20852 Attn: Docket No. [SAMHSA–2016–0004].
- *By hand or courier:* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following address prior to the close of the comment period: For delivery in Rockville, MD: Substance Abuse and Mental Health Services Administration, Attention: Melinda Campopiano, 5600 Fishers Lane, 13E49, Rockville, MD 20852. To deliver your comments to the Rockville address, call telephone number (240) 276–2701 in advance to schedule your delivery with one of our staff members.

Instructions: To avoid duplication, please submit only one copy of your comments by only one method. All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For access to the report or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melinda Campopiano, MD, Chief Medical Officer, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, 5600 Fishers Lane, 13E49, Rockville, MD, 20852. Email: *POIAcomments@samhsa.hhs.gov.* Phone: (240) 276–2701

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. Comments received by the deadline will be available for public inspection at the Substance Abuse and Mental Health Service Administration, 5600 Fishers Lane, 13E49, Rockville, MD, 20852, Monday through Friday of each week from 8:30 a.m. to 4:00 p.m. To schedule an appointment to view public comments, call (240) 276–2701.

Background: The POIA mandated HHS to: (1) Conduct a review of planning and coordination activities related to prenatal opioid exposure and neonatal abstinence syndrome (Section 2(a) of the Act); (2) develop recommendations for the identification, prevention, and treatment of prenatal opioid exposure and neonatal abstinence syndrome (Section 3 of the Act); and (3) develop a strategy to address gaps, overlap, and duplication among Federal programs and Federal coordination efforts to address neonatal abstinence syndrome (Section 2(b) of the Act). The POIA is available at: *https://www.congress.gov/bill/114th-congress/senate-bill/799.*

In response to this Act, this report provides background information on prenatal opioid exposure and neonatal abstinence syndrome (Part 1), summarizes HHS activities related to prenatal opioid exposure and neonatal abstinence syndrome (Part 2), presents clinical and programmatic evidence and recommendations for preventing and treating neonatal abstinence syndrome (Part 3), and presents a strategy to address the identified gaps, challenges, and recommendations (Part 4).

Public comment is sought for ''Part 4: Strategy To Protect Our Infants'' (Section 2(b) of the Act) and comments will be incorporated into the strategy as appropriate. The final strategy will be posted on an HHS Web site by May 25, 2017.

Supporting and Related Material in the Docket: The information provided includes:

(1) The Report

Summer King,

Statistician.

[FR Doc. 2016–31228 Filed 12–23–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0598]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0119

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension, without change, of its approval for the following collection of information: 1625–0119, Coast Guard Exchange System Scholarship Application. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before February 27, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0598] to the Coast Guard using the Federal eRulemaking

Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–0598], and must be received by February 27, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Coast Guard Exchange System Scholarship Application.

OMB Control Number: 1625–0119.

Summary: The information collected on this form allows the Coast Guard Exchange System Scholarship Program Committee to evaluate and rank scholarship applications in order to award the annual scholarships.

Need: Commandant Instruction, COMDTINST 1780.1 (series), provides policy and procedure for the award of three annual scholarships from the Coast Guard Exchange System (CGES) to dependents of Coast Guard employees. The information collected by this form allows for the awarding of scholarships based upon the criteria and procedures outlined in the Instruction under the auspices of 5 U.S.C. 301.

Forms: CG–5687, Coast Guard Exchange System Scholarship Program Application.

Respondents: Coast Guard dependents.

Frequency: Annually.

Hour Burden Estimate: The estimated annual burden remains at 120 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 2016.

Thomas P. Michelli,

Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–31250 Filed 12–23–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0938]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0074

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information without change: 1625–0074, Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before February 27, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0938] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's

purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–0938], and must be received by February 27, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

OMB Control Number: 1625–0074.

Summary: This collection requires the submission of identifying information such as a vessel's name and identification number, and of the owner's choice whether or not to pay fees for future years. A written request to the Coast Guard is necessary.

Need: The Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508], which amended 46 U.S.C. 2110, requires the Coast Guard to collect user fees from inspected vessels. To properly collect and manage these fees, the Coast Guard must have current information on identification. This collection helps to ensure that we get that information and manage it efficiently.

Forms: N/A.

Respondents: Owners of vessels.

Frequency: Annually.

Hour Burden Estimate: The estimated burden has increased from 2,783 hours to 2,999 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 2016.

Thomas P. Michelli,

Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–31248 Filed 12–23–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0934]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0007

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information without change: 1625–0007, Characteristics of Liquid Chemicals Proposed for Bulk Water Movement. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before February 27, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0934] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–0934], and must be received by February 27, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Characteristics of Liquid Chemicals Proposed for Bulk Water Movement.

OMB Control Number: 1625–0007.

Summary: Chemical manufacturers submit chemical data to the Coast Guard. The Coast Guard evaluates the information for hazardous properties of the chemical to be shipped via tank vessel. A determination is made as to the kind and degree of precaution which must be taken to protect the vessel and its contents.

Need: 46 CFR parts 30 to 40, 151, 153, and 154 govern the transportation of hazardous materials. The chemical industry constantly produces new materials that must be moved by water. Each of these new materials has unique characteristics that require special attention to their mode of shipment.

Forms: N/A.

Respondents: Manufacturers of chemicals.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden remains 600 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 2016.

Thomas P. Michelli,

Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–31245 Filed 12–23–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0249]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0056

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0056, Labeling required in 33 Code of Federal Regulation (CFR) Parts 181 and 183 and 46 CFR 25.10–3. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before January 26, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0249] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: OIRA-submission@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2016–0249], and must be received by January 26, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0056.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (81 FR 62164, September 8, 2016) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Labeling required in 33 CFR parts 181 and 183 and 46 CFR 25.10–3.

OMB Control Number: 1625–0056.

Summary: Parts 181 and 183 of Title 33 Code of Federal Regulations and 46 CFR 25.10–3 contain the regulations and safety standards authorized by the statutes which apply to manufacturers of recreational boats, un-inspected commercial vessels and associated equipment. The regulations and safety standards contain information collections, which require boat and associated equipment manufacturers, importers and the boating public to apply for serial numbers and to display various labels evidencing compliance: Hull Identification Numbers; U.S. Coast Guard Maximum Capacities Label; Gasoline Fuel Tank Label; USCG Type Fuel Hose Label; and Certified Navigation Light Label.

Need: Title 46 U.S.C. 4302(a)(3) gives the Coast Guard the authority to require the display of seals, labels, plates, insignia, or other devices for certifying or evidencing compliance with safety regulations and standards of the United States Government for recreational vessels and associated equipment.

Forms: N/A.

Respondents: Manufacturers of boats, fuel tanks, fuel hoses and navigation lights.

Frequency: Once.

Hour Burden Estimate: The estimated burden has increased from 156,170 hours to 176,029 hours a year due to the Coast Guard increasing the reporting burden and an increase in the annual boat sales volume.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 2016.

Thomas P. Michelli,

U.S. Coast Guard, Chief Information Officer.

[FR Doc. 2016–31201 Filed 12–23–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0926]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0008

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information without change: 1625–0008, Regattas and Marine Parades.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before February 27, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0926] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–0926], and must be received by February 27, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include

any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Regattas and Marine Parades.

OMB Control Number: 1625–0008.

Summary: 46 U.S.C. 1233 authorizes the Coast Guard to issue rules to promote the safety of life on navigable waters during regattas or marine parades. Title 33 CFR 100.15 promulgates the rules for providing notice of, and additional information for permitting regattas and marine parades (marine events) to the Coast Guard.

Need: The Coast Guard needs to determine whether a marine event may present an extra or unusual hazard to the safety of human life on navigable waters and determine which measures are necessary to ensure the safety of life during the events. Sponsors must notify the Coast Guard of the efficient means for the Coast Guard to learn of the events and address environmental impacts.

Forms: CG–4423, Application for Marine Event.

Hour Burden Estimate: The estimated burden has decreased from 5,500 hours a year to 5,271hours a year due to the decrease in the number of respondents submitting applications online.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 2016.

Brian P. Burns,

Deputy Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–31247 Filed 12–23–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–1001]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0100

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0100, Advance Notice of Vessel Arrival without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before February 27, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–1001] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–1001], and must be received by February 27, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Advance Notice of Vessel Arrival.

OMB Control Number: 1625–0100.

Summary: The Ports and Waterways Safety Act authorizes the Coast Guard to require pre-arrival messages from any vessel entering a port or place in the United States.

Need: This information is required under 33 CFR 146 and 33 CFR 160 subpart C to control vessel traffic, develop contingency plans, and enforce regulations.

Forms: N/A.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 110,983 hours to 104,515 hours a year due to a decrease in the estimated annual number of initial Notices of Arrival.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 2016.

Thomas P. Michelli,

U.S. Coast Guard, Chief Information Officer.

[FR Doc. 2016–31200 Filed 12–23–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4280–DR; Docket ID FEMA–2016–0001]

Florida; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Florida (FEMA–4280–DR), dated September 28, 2016, and related determinations.

DATES: Effective December 12, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Manny J. Toro, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Terry L. Quarles as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–31076 Filed 12–23–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4293–DR]; [Docket ID FEMA–2016–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4293–DR), dated December 15, 2016, and related determinations.

DATES: *Effective Date*:December 15, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 15, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from wildfires during the period of November 28 to December 9, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Sevier County for Individual Assistance.

Sevier County for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–31070 Filed 12–23–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4283–DR; Docket ID FEMA–2016–0001]

Florida; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Florida (FEMA–4283–DR), dated October 8, 2016, and related determinations.

DATES: Effective December 12, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Manny J. Toro, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Terry L. Quarles as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–31072 Filed 12–23–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4286–DR; Docket ID FEMA–2016–0001]

South Carolina; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of South Carolina (FEMA–4286–DR), dated October 11, 2016, and related determinations.

DATES: Effective December 16, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Seamus K. Leary, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of W. Michael Moore as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–31071 Filed 12–23–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[DHS Docket No. ICEB–2015–0003]

RIN 1653–ZA11

Extension of Employment Authorization for Nepali F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the April 25, 2015 Earthquake in the Federal Democratic Republic of Nepal

AGENCY: U.S. Immigration and Customs Enforcement (ICE), DHS.

ACTION: Notice.

SUMMARY: This notice informs the public of the extension of an earlier notice, which suspended certain requirements for F–1 nonimmigrant students whose country of citizenship is the Federal Democratic Republic of Nepal (Nepal) and who are experiencing severe economic hardship as a direct result of the earthquake in Nepal on April 25, 2015. This notice extends the effective date of that earlier notice. These students will continue to be allowed to apply for employment authorization, work an increased number of hours while school is in session provided that they satisfy the minimum course load requirement, while continuing to maintain their F–1 student status until June 24, 2018.

DATES: This notice is effective December 27, 2016 and will remain in effect through June 24, 2018.

FOR FURTHER INFORMATION CONTACT: Louis Farrell, Director, Student and Exchange Visitor Program; MS 5600, U.S. Immigration and Customs Enforcement; 500 12th Street SW., Washington, DC 20536–5600; (703) 603–3400. This is not a toll-free number. Program information can be found at *http://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary of Homeland Security is exercising his authority under 8 CFR 214.2(f)(9) to extend the temporary suspension of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Nepal and who are experiencing severe economic hardship as a direct result of the earthquake in Nepal on April 25, 2015. *See* 80 FR 69237 (Nov. 9, 2015). The original notice was effective from November 9, 2015, until December 24, 2016. Effective with this publication, suspension of the requirements is

extended for 18 months, from December 24, 2016, through June 24, 2018.

F–1 nonimmigrant students granted employment authorization through the notice will continue to be deemed to be engaged in a ''full course of study'' for the duration of their employment authorization provided they satisfy the minimum course load requirement described in 80 FR 69237. *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered under this action?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions: (1) Are lawful citizens of Nepal; (2) Were lawfully present in the United States in F–1 nonimmigrant status on April 25, 2015, under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i); (3) Are enrolled in a school that is Student and Exchange Visitor Program (SEVP)-certified for enrollment of F–1 students; (4) Are currently maintaining F–1 status; and (5) Are experiencing severe economic hardship as a direct result of the damage caused by the earthquake in Nepal of April 25, 2015.

This notice applies to both undergraduate and graduate students, as well as elementary school, middle school, and high school students. The notice, however, applies differently to elementary school, middle school, and high school students (see the discussion published at 80 FR 69239 in the question, ''Does this notice apply to elementary school, middle school, and high school students in F–1 status?'').

F–1 students covered by this notice who transfer to other academic institutions that are SEVP-certified for enrollment of F–1 students remain eligible for the relief provided by means of this notice.

Why is DHS taking this action?

The Department of Homeland Security (DHS) took action to provide temporary relief to F–1 nonimmigrant students whose country of citizenship is Nepal and experienced severe economic hardship as a direct result of the earthquake in Nepal in April 2015. *See* 80 FR 69237. It enabled these F–1 students to obtain employment authorization, work an increased number of hours while school was in session, and reduce their course load while continuing to maintain their F–1 student status.

Nepal continues to recover from the magnitude 7.8 earthquake that struck the country on April 25, 2015. The earthquake affected more than 8 million people in Nepal, approximately 25 percent to 33 percent of Nepal's population, and damaged critical infrastructure in the country. While conditions have improved in the past 18 months, blockades along the border with India and civil unrest have delayed Nepal's reconstruction efforts.

As of August 11, 2016, 12,189 F–1 students from Nepal were enrolled in courses in U.S. schools. Given the current conditions in Nepal, affected students whose primary means of financial support come from Nepal may need to be exempt from the normal student employment requirements to be able to continue their studies in the United States. The widespread disaster and delayed recovery in Nepal have made it unfeasible for many students to safely return to the country. Without employment authorization, these students may lack the means to meet basic living expenses.

The United States is committed to continuing to assist the people of Nepal. DHS is therefore extending this employment authorization for F–1 nonimmigrant students whose country of citizenship is Nepal and who are continuing to experience severe economic hardship as a result of the earthquake in April 2015.

How do I apply for an employment authorization under the circumstances of this notice?

F–1 nonimmigrant students whose country of citizenship is Nepal who were lawfully present in the United States on April 25, 2015, and are experiencing severe economic hardship as a direct result of the earthquake may apply for employment authorization under the guidelines described in 80 FR 69237. This notice extends the time period during which such F–1 students may seek employment authorization due to the earthquake. It does not impose any new or additional policies or procedures beyond those listed in the original notice. All interested F–1 students should follow the instructions listed in the original notice.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2016–31158 Filed 12–23–16; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5971–N–02]

Notice of Certain Operating Cost Adjustment Factors for 2017

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On October 5, 2016 at 81 FR 69073, HUD published a notice that established the operating cost adjustment factors (OCAFs) for project-based rental assistance contracts issued under Section 8 of the United States Housing Act of 1937 and renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) with an anniversary date on or after February 11, 2017. OCAFs are annual factors used primarily to adjust the rents for contracts renewed under section 515 or section 524 of MAHRA. The October 5, 2016, notice inadvertently stated, however, that the floor for the OCAF was one percent. The statutory floor is zero percent. As a result, today's notice corrects the October 5, 2016, notice. For the convenience of the public, HUD is republishing the corrected notice in its entirety. The factors in the table have not changed.

DATES: *Effective Date:* February 11, 2017.

FOR FURTHER INFORMATION CONTACT: Stan Houle, Program Analyst, Office of Asset Management and Portfolio Oversight, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone number 202–402–2572 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. OCAFs

Section 514(e)(2) and section 524(c)(1) of MAHRA (42 U.S.C. 1437f note) require HUD to establish guidelines for the development of OCAFs for rent adjustments. Sections 524(a)(4)(C)(i), 524(b)(1)(A), and 524(b)(3)(A) of MAHRA, all of which prescribe the use of the OCAF in the calculation of renewal rents, contain similar language. HUD has therefore used a single methodology for establishing OCAFs, which vary from State to State.

MAHRA gives HUD broad discretion in setting OCAFs, referring, for example, in sections 524(a)(4)(C)(i), 524(b)(1)(A), 524(b)(3)(A) and 524(c)(1) simply to ''an operating cost adjustment factor established by the Secretary.'' The sole limitation to this grant of authority is a specific requirement in each of the foregoing provisions that application of an OCAF ''shall not result in a negative adjustment.'' Contract rents are adjusted by applying the OCAF to that portion of

the rent attributable to operating expenses exclusive of debt service.

The OCAFs provided in this notice are applicable to eligible projects having a contract anniversary date of February 11, 2016 or after and were calculated using the same method as those published in HUD's 2016 OCAF notice published on October 13, 2015 (79 FR 59502). Specifically, OCAFs are calculated as the sum of weighted average cost changes for wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water/sewer/trash using publicly available indices. The weights used in the OCAF calculations for each of the nine cost component groupings are set using current percentages attributable to each of the nine expense categories. These weights are calculated in the same manner as in the October 13, 2015, notice. Average expense proportions were calculated using three years of audited Annual Financial Statements from projects covered by OCAFs. The expenditure percentages for these nine categories have been found to be very stable over time, but using three years of data increases their stability. The nine cost component weights were calculated at the state level, which is the lowest level of geographical aggregation with enough projects to permit statistical analysis. These data were not available for the Western Pacific Islands, so data for Hawaii were used as the best available indicator of OCAFs for these areas.

The best current price data sources for the nine cost categories were used in calculating annual change factors. State-level data for fuel oil, electricity, and natural gas from Department of Energy surveys are relatively current and continue to be used. Data on changes in employee benefits, insurance, property taxes, and water/sewer/trash costs are only available at the national level. The data sources for the nine cost indicators selected used were as follows:

- *Labor Costs:* First quarter, 2016 Bureau of Labor Statistics (BLS) ECI, Private Industry Wages and Salaries, All Workers (Series ID CIU2020000000000I) at the national level and Private Industry Benefits, All Workers (Series ID CIU2030000000000I) at the national level.
- *Property Taxes:* Census Quarterly Summary of State and Local Government Tax Revenue—Table 1 *http://www2.census.gov/govs/qtax/2016/q1t1.xls.* 12-month property taxes are computed as the total of four quarters of tax receipts for the period from April through March. Total 12-month taxes are then divided by the number of occupied housing units to arrive at average 12-month tax per housing unit. The number of occupied housing units is taken from the estimates program at the Bureau of the Census. *http://www.census.gov/housing/hvs/data/histtab8.xls.*
- *Goods, Supplies, Equipment:* May 2015 to May 2016 Bureau of Labor Statistics (BLS) Consumer Price Index, All Items Less Food, Energy and Shelter (Series ID CUUR0000SA0L12E) at the national level.
- *Insurance:* May 2015 to May 2016 Bureau of Labor Statistic (BLS) Consumer Price Index, Tenants and Household Insurance Index (Series ID CUUR0000SEHD) at the national level.
- *Fuel Oil:* October 2015–March 2016 U.S. Weekly Heating Oil and Propane Prices report. Average weekly residential heating oil prices in cents per gallon excluding taxes for the period from October 5, 2015 through March 28, 2016 are compared to the average from October 13, 2014 through March 30, 2015. For the States with insufficient fuel oil consumption to have separate estimates, the relevant regional Petroleum Administration for Defense Districts (PADD) change between these two periods is used; if there is no regional PADD estimate, the U.S. change between these two periods is used. *http://www.eia.gov/dnav/pet/pet_pri_wfr_a_EPD2F_prs_dpgal_w.htm.*
- *Electricity:* Energy Information Agency, February 2016 ''Electric Power Monthly'' report, Table 5.6.B. *http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_06_b.*
- *Natural Gas:* Energy Information Agency, Natural Gas, Residential Energy Price, 2015–2016 annual prices in dollars per 1,000 cubic feet at the state level. Due to EIA data quality standards several states were missing data for one or two months in 2015; in these cases, data for these missing months were estimated using data from the surrounding months in 2015 and the relationship between that same month and the surrounding months in 2014. *http://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PRS_DMcf_a.htm.*
- *Water and Sewer:* May 2015 to May 2016 Consumer Price Index, All Urban Consumers, Water and Sewer and Trash Collection Services (Series ID CUUR0000SEHG) at the national level.

The sum of the nine cost component percentage weights equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, state-level cost component weights developed from AFS data are multiplied by the selected inflation factors. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and increased by 4 percent from 2015 to 2016, the wage increase component of the Virginia OCAF for 2017 would be 2.0 percent (50% * 4%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2016 OCAF for Virginia. For states where the OCAF is less than 0 percent, the OCAF is floored at 0 percent. The OCAFs for 2017 are included as an Appendix to this Notice.

II. MAHRA OCAF Procedures

Sections 514 and 515 of MAHRA, as amended, created the Mark-to-Market program to reduce the cost of federal housing assistance, to enhance HUD's administration of such assistance, and to ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without restructuring plans under the Mark-to-Market program, including projects that are not eligible for a restructuring plan and those for which the owner does not request such a plan. Renewals must be at rents not exceeding comparable market rents except for certain projects. As an example, for Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities); or (3) comparable market rents for the market area.

III. Findings and Certifications

Environmental Impact

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.195.

Dated: December 14, 2016.

Edward L. Golding,

Principal Deputy, Assistant Secretary for Housing, H.

Appendix

OPERATING COST ADJUSTMENT FACTORS FOR 2017

State	OCAF (%)
Alabama	2.1
Alaska	0.5
Arizona	2.1
Arkansas	2.3
California	2.2
Colorado	1.7
Connecticut	1.1
Delaware	1.7
District of Columbia	2.0
Florida	2.0
Georgia	2.0
Hawaii	0.0
Idaho	2.3
Illinois	1.5
Indiana	2.0
Iowa	2.1
Kansas	2.0
Kentucky	1.9
Louisiana	1.8
Maine	1.4
Maryland	2.1
Massachusetts	1.8
Michigan	1.7
Minnesota	1.8
Mississippi	2.1
Missouri	2.2
Montana	2.1
Nebraska	2.3
Nevada	2.2
New Hampshire	1.8
New Jersey	1.3
New Mexico	1.6
New York	0.4
North Carolina	2.0
North Dakota	2.4
Ohio	1.9
Oklahoma	2.0
Oregon	2.2
Pacific Islands	0.0
Pennsylvania	2.0
Puerto Rico	1.9
Rhode Island	2.1
South Carolina	2.1
South Dakota	2.1
Tennessee	2.0
Texas	2.0
Utah	2.2
Vermont	0.6
Virgin Islands	2.0
Virginia	2.0
Washington	2.2
West Virginia	2.6
Wisconsin	1.8
Wyoming	2.2
U.S. Average	1.9

[FR Doc. 2016–31206 Filed 12–23–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Nos. FWS–HQ–ES–2015–0177 and 160223138–6138–01; FF09E40000 156 FXES11150900000; 160223138–6999–02]

RIN 1018–BB08; 0648–BF79

Candidate Conservation Agreements With Assurances Policy

AGENCIES: U.S. Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of revised policy.

SUMMARY: We, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services when referring to both, and Service when referring to when the action is taken by one agency), announce revisions to the Candidate Conservation Agreements with Assurances policy under the Endangered Species Act of 1973, as amended. We added a definition of ''net conservation benefit'' to this policy and eliminated references to the confusing requirement of ''other necessary properties'' to clarify the level of conservation effort each agreement needs to include in order for the Services to approve an agreement. In a separate document published in today's **Federal Register**, the U.S. Fish and Wildlife Service changed its regulations regarding Candidate Conservation Agreements with Assurances to make them consistent with these changes to the policy.

DATES: This policy is effective on January 26, 2017.

ADDRESSES: This final policy is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–HQ–ES–2015–0177. Comments and materials received, as well as supporting documentation used in the preparation of this policy, are also available at the same location on the Internet.

FOR FURTHER INFORMATION CONTACT: Jeff Newman, Chief, Division of Recovery and Restoration, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–2171); or Angela Somma, Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (telephone 301–427–8403, facsimile 301–713–0376). Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) are charged with implementing the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA or Act); among the purposes of the ESA are to provide a means to conserve the ecosystems upon which species listed as endangered or threatened depend and a program for listed species conservation. Through its Candidate Conservation program, one of the FWS's goals is to encourage the public to voluntarily develop and implement conservation plans for declining species prior to them being listed under the ESA (16 U.S.C. 1531 *et seq.*). The benefits of such conservation actions may contribute to not needing to list a species, to list a species as threatened instead of endangered, or to accelerate the species' recovery if it is listed. The Services put in place a voluntary conservation program to provide incentives for non-Federal property owners to develop and implement conservation plans for unlisted species: Candidate Conservation Agreements with Assurances (CCAAs). The policy for this type of agreement was finalized on June 17, 1999 (64 FR 32726), along with implementing regulations for FWS in part 17 of title 50 of the Code of Federal Regulations (CFR) (64 FR 32706). The FWS revised the CCAA regulations in 2004 (69 FR 24084; May 2, 2004) to make them easier to understand and implement by defining ''property owner'' and clarifying several points, including the transfer of permits, permit revocation, and advanced notification of take.

To participate in a CCAA, non-Federal property owners agree to implement on their land the CCAA's specific conservation measures that reduce or eliminate threats to the species that are covered under the agreement. An ESA section 10(a)(1)(A) enhancement-of-survival permit is issued to the agreement participant providing a specific level of incidental take coverage should the property owner's agreed-upon conservation measures and routine property-management actions (*e.g.,* agricultural, ranching, or forestry activities) result in

take of the covered species if listed. Property owners receive assurances that they will not be required to undertake any other conservation measures than those agreed to, even if new information indicates that additional or revised conservation measures are needed for the species, and they will not be subject to additional resource use or land-use restrictions.

Under the 1999 policy, to approve a CCAA we had to ''determine that the benefits of the conservation measures implemented by a property owner under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species.'' This language had led some property owners to believe that the Services expected each individual CCAA to provide enough conservation benefits to the species to remove any need to list the species. The confusion created by the hypothetical concept of conservation measures that need to be implemented on ''other necessary properties'' is the reason we are clarifying and revising the CCAA standard to require a net conservation benefit to the covered species specifically on the property to be enrolled and eliminating references to ''other necessary properties.''

Changes From the Draft Policy

Based on comments we received on the draft policy, we include the following changes in this final policy:

(1) In Part 1 of the policy, we inserted language that states that the overall goal of the Services' candidate conservation program is to encourage the public to voluntarily develop and implement conservation plans for declining species prior to them being listed under the ESA. The benefits of such conservation actions may contribute to not needing to list a species, to list a species as threatened instead of endangered, or to accelerate the species' recovery if it is listed. CCAAs are one tool that can help to achieve this goal, and provides an important incentive for property owners to participate in a CCAA. However, we recognize that it is unrealistic to expect, in most situations, an individual CCAA for one property to be successful in reaching this goal (with the exception of an enrolled property that contains the majority of the populations and habitat of a species).

(2) In Parts 1 and 2 of the policy, we inserted the word ''key'' before ''threats'' in certain places to indicate that the conservation measures included in a single or individual CCAA must be designed to address those threats that are of the highest priority or those threats where we expect to achieve the most benefit to the covered species by addressing them on the enrolled property. While a property owner will not be required to address every threat on the enrolled property, the property owner will be required to address the key threat(s) to the covered species that are under the landowner's control in order to participate in a CCAA and achieve a net conservation benefit for that species.

(3) In Part 2 of the policy, we revised the first part of the definition of ''net conservation benefit (for CCAA)'' by changing ''and'' to ''or'' to indicate that benefits from the conservation measures can be designed to improve the status of the species directly, or indirectly through improvements to its habitat, and we slightly revised this phrase to clarify that removing or minimizing threats leads to stabilized or improved populations or habitat improvement: Net conservation benefit (for CCAA) is defined as the cumulative benefits of the CCAA's specific conservation measures designed to improve the status of a covered species by removing or minimizing threats so that populations are stabilized, the number of individuals is increased, or habitat is improved.

(4) In Parts 1 and 2, in several places, we changed ''likely to become candidates'' to ''may become candidates,'' so we do not imply that we are likely to find that a particular species should be a candidate for listing under the ESA.

(5) In Part 12 of the policy, we removed ''when appropriate'' in the second sentence. The Services are committed to coordinating with State fish and wildlife agencies, and the phrase ''when appropriate'' implied that the Services would not regularly coordinate with the States, which is not our intent.

(6) Throughout the policy, as appropriate, we added language regarding improving the status of the covered species after mention of ''net conservation benefit'' to provide more clarity on the requirements of a CCAA because FWS or NMFS staff biologists, CCAA applicants, or consultants may not utilize the definitions section of the policy. We also inserted ''the CCAA's'' before ''specific conservation measures'' in several places in the policy to prevent the potential misunderstanding of ''cumulative benefits'' to mean those other than ones associated with the CCAA.

Summary of Comments and Recommendations

On May 4, 2016, we published a draft revised Candidate Conservation Agreements with Assurances policy in the **Federal Register** (81 FR 26817) that requested written comments and information from the public. Concurrently with the revised proposed policy, we also published revised proposed regulations that reflected the revisions made in the CCAA policy (81 FR 26769). In both documents, we announced that the comment period would be open for 60 days, ending July 5, 2016. Because the vast majority of comments we received addressed revisions to the CCAA policy, other comments did not specifically identify whether the comment pertained to the policy or the regulations, and all the revisions in the regulations completely overlap with those in the policy, we are addressing all comments we received on the policy and the regulations together in this document. Comments we received are grouped into general categories specifically relating to the draft policy and proposed revisions to the regulations.

Comment (1): Many commenters supported the proposed changes, specifically the net-conservation-benefit standard and the deletion of the hypothetical references to ''other necessary properties.'' Several other commenters stated that they believed the new standard will help clarify the intent of the CCAA program and may also encourage landowner enrollment and facilitate greater participation in prelisting conservation actions.

Our Response: We agree with the commenters. The intent of the policy and regulation revisions was to provide a more understandable standard for approving CCAAs.

Comment (2): A commenter expressed concern that the new standard will be viewed by landowners as more onerous, setting a higher bar of required conservation and could discourage participation in CCAAs. Several other commenters believed the ''net conservation benefit'' definition was unclear and could be interpreted as lowering the conservation bar, while others interpreted it as raising the bar. Additionally, commenters stated that ensuring a ''net conservation benefit'' for all covered species in a multi-species CCAA may be difficult to achieve and further discourage the development of such CCAAs.

Our Response: Our only intent in redefining the CCAA standard was to create a standard that is easier for the public and the staff of the Services to

understand. The new standard does not set a higher or lower bar than the standard contained in the original 1999 policy. Under the 1999 policy, a property owner participating in a CCAA was required to address key threats that were under their control to the species on the enrolled property, or in the case where a property owner was already appropriately managing for the benefit of the covered species, the property owner would need to continue those conservation measures for the duration of the CCAA. The revised standard explicitly states these provisions. For multiple-species CCAAs, we must ensure that the property owner meets the standard for all the species covered by the agreement. When designing a multi-species CCAA, we must have sufficient information regarding the species, their habitat and other needs; specific threats; and the conservation measures that can reasonably be expected to address those threats (that are under the control of the property owner) before including that species in the agreement.

Comment (3): Another commenter stated that the term ''status'' was unclear—did the FWS intend it to mean the status of the species as a whole, or the status of the covered species' population found on the site covered by the CCAA? Depending on which is meant, the conservation bar could be quite high or quite low.

Our Response: The term ''status'' in the definition of ''net conservation benefit'' refers to the status of the population on the enrolled property. While it is the overall goal of CCAAs and the Services' candidate program to improve the species' status as a whole, it would be unrealistic to expect, in most cases, that one CCAA would significantly improve the status of the entire species (unless a single enrolled property contains the majority of a species' populations and habitat).

Comment (4): One commenter questioned if the standard meant that a CCAA that is designed only to ''stabilize populations'' will never be approved or whether a CCAA that is designed only to preserve habitat would be approved. Another commenter recommended that the Services expand the definition of ''net conservation benefit'' to include consideration of measures that preserve habitat and populations, and measures that avoid or minimize incidental take. An additional commenter stated that any final CCAA rule or policy should also clarify that, when species and habitat are already effectively managed on a particular property, a CCAA could be appropriate even where no improvement of habitat quality or population increase can be anticipated to occur on the enrolled property, because such improvement is unnecessary. Another commenter stated that requiring an increase in population or improvement of habitat sets too high a threshold for CCAA approval and fails to recognize that the status of a species can be improved in other ways. For example, there will be benefits to the species associated with actions that remove, reduce, or minimize threats; prevent or limit habitat degradation; promote resiliency; or otherwise slow or stabilize a declining population trajectory.

Our Response: As stated in the definition of ''net conservation benefit,'' ''In the case where the species and habitat is already adequately managed to the benefit of the species, a net conservation benefit will be achieved when the property owner commits to continuing to manage the species for a specified period of time, including addressing any future threats that are under the property owner's control, with the anticipation that the population will increase or habitat quality will improve.'' Thus, CCAAs that are designed to preserve habitat could be approved under the revised policy, as long as the property owners continued to manage their property for the species and addressed likely future threats that are under their control. In addition, CCAAs that are designed to ''stabilize populations'' could also be approved because, in order to stabilize a population, any threats to the covered species would need to be addressed by conservation measures included in the CCAA. Also, see our response below to *Comment (5).*

Comment (5): Several commenters indicated that the FWS should not delete the phrase ''preclusion or removal of any need to list''—believing this change suggests that the purpose of CCAAs and the policy is no longer to preclude or remove the need to list a species. The potential for a CCAA to preclude listing is a significant incentive for property owners to participate in it.

Our Response: Any conservation plan that provides a net conservation benefit to the candidate species will contribute to precluding the need to list the species. However, we have found that including that phrase in our issuance criterion has been problematic—it is a confusing and difficult standard for both our field practitioners and participating landowners to apply to an individual conservation plan, and it creates an expectation for an outcome that is often not achievable for wide-ranging species or those that face threats not easily addressed by improved land management. Our objective in revising the issuance criterion is to simplify the conservation objective so that CCAAs can be developed and approved more quickly, while maintaining undiminished the primary incentive for entering into a CCAA: No Surprises assurances that, regardless of the listing determination, ensure that managing in accordance with the CCAA will be accepted by the Services as fully ESA compliant, with no additional obligations to the landowner. Also see our response to *Comment (3)* above.

Comment (6): A few commenters believed that a net-conservation-benefit standard was inappropriate for prelisting agreements and is ambiguous. They expressed that, given the successes already seen with the current CCAA policy, the FWS should just streamline the CCAA process and improve efficiencies in the approval of CCAAs rather than changing the standard. One commenter further stated that the changes are not needed because the very nature of the existing regulations and policy already establish principles of avoid, minimize, and/or mitigate that achieve demonstrated outcomes. Several commenters recommended that the Services withdraw the proposed rule and policy.

Our Response: The Services redefined the standard to require a net-conservation-benefit to eliminate confusion associated with the existing standard. We disagree that it is ambiguous or inappropriate, and believe the net-conservation-benefit standard is easier for the public and Service staff to understand. In addition, the Services believe clarifying the standard, which had been confusing to the public, should be a significant step toward streamlining and achieving efficiency in the CCAA approval process.

Comment (7): A couple of commenters stated that the FWS cannot require property owners to reduce or eliminate unknown or speculative threats. One commenter believed the definition grants the FWS unlimited authority to require ''specific conservation measures'' for future, undetermined threats in order to increase a species' population or improve its habitat. The current CCAA policy already outlines mechanisms that will address anticipated and unanticipated changes in circumstances through its use of adaptive management and the ability to address unforeseen circumstances. Because these mechanisms already exist, the Services should not burden property owners with managing for unknown or speculative threats.

Our Response: We do not require or expect property owners to address unknown or speculative threats in order for us to approve their conservation agreements, which are themselves voluntary undertakings; rather, property owners need to address future threats that are reasonably certain to occur, based on local conditions and the best available scientific information. While the current and revised policy includes provisions for changed and unforeseen circumstances and requires a CCAA to apply adaptive management, it is important to explicitly include a reference to future threats in the net-conservation-benefit standard. Managing for these types of future threats will allow us to make progress toward the goal of improving the species' status in the face of current threats and those future threats that are reasonably certain to occur within the duration of the agreement.

Comment (8): One commenter questioned the utility and benefit of re-designing the CCAA to be more similar to Safe Harbor Agreements (SHAs). They noted that a CCAA, in combination with other CCAAs in the range of a species, will preclude the need to list. SHAs, while important, do not act as a recovery tool by themselves. The commenter also believes the SHA standard for recovery ''lift'' can be quite small and in practice is a lower standard than those set by CCAAs. Another commenter believes the Services' proposal to apply the standard ''net conservation benefit'' to CCAAs with a different definition than in the Safe Harbor policy creates a confusing situation in which CCAAs substantively are both similar but yet different from SHAs. Although the Services have proposed to apply the same standard, it has defined the two terms differently. In addition, another commenter noted that the definition of ''net conservation benefit'' in the proposed policy is not consistent with its definition in other FWS policies and regulations such as the definition of net conservation gain used in the Greater Sage-Grouse Range-Wide Mitigation Framework (2014).

Our Response: Both CCAAs and SHAs are designed to provide incentives to property owners to restore, enhance, or maintain habitats and/or populations of candidate species or listed species, respectively, in a manner that results in a net conservation benefit to these species. We agree that the slightly different definition of ''net conservation benefit'' that was proposed for CCAAs is confusing, and we are aligning the definition in our final rule and policy to that of our longstanding definition of ''net conservation benefit'' in the SHA context to remove this inconsistency and confusion.

Comment (9): One commenter requested that the FWS narrow the scope of the definition of ''net conservation benefit'' to provide landowners more certainty. That commenter and another stated that there was no explanation as to what level of ''increase'' would be required to approve CCAAs.

Our Response: While net conservation benefits must contribute, directly or indirectly, to the conservation of the covered species, we purposely did not specify a level of increase that would be required. It would be extremely difficult to broadly define a level of increase for all CCAAs because CCAAs vary in what species and habitat they cover and the scope of the agreement. We defined a net conservation benefit in terms of addressing key threats on the enrolled property, and each CCAA uses conservation measures that are designed to specifically address those particular threats. The way in which species respond to the elimination of a single or multiple threats can vary dramatically based on the type and severity of a threat and the life history of the species.

Comment (10): One commenter stated that the new standard subjects efforts aimed at precluding a listing to a standard that is appropriate only for species already listed, sending the wrong signal to property owners and discouraging prelisting conservation. To require a ''recovery'' standard for a species that is not yet listed and may never need to be listed is inconsistent with the intended purpose of CCAAs.

Our Response: As noted in the response to *Comment (8)* above, the goals of both CCAAs and SHAs are to incentivize property owners to restore, enhance, or maintain habitats and/or populations of candidate species or listed species, respectively, in a manner that results in a net conservation benefit to these species. Seeking to improve the status of a species or its habitat is the most logical and appropriate objective for a conservation agreement, whether for a candidate species or a listed species.

Comment (11): One commenter thought the proposed changes would discourage rather than encourage voluntary conservation measures. Under the existing framework, property owners need to show that the voluntary conservation measures provided for in the CCAA will not worsen a species' situation. Under the proposed framework, landowners will need to demonstrate the conservation measures will improve the species' situation.

Our Response: It appears that the commenter did not understand that the goal of the 1999 policy was to benefit the species to the extent that listing was not necessary. In our experience with CCAAs since 1999, reaching this goal required that CCAAs improve the status of the covered species and not just prevent the species' status from declining.

Comment (12): One commenter also noted that the introduction of a net-conservation-benefit standard is unsupported by statutory authority and goes beyond the scope of the ESA.

Our Response: As stated in the response to comments on the 1999 policy (for our full response, see *Issue 7;* 64 FR 32729, June 17, 1999), sections 2, 7, and 10 of the ESA allow the implementation of this policy. As stated in the 1999 policy, for example, section 2 states that ''encouraging the States and other interested parties through Federal financial assistance and a system of incentives, to develop and maintain conservation programs * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.'' Establishing a program for the development of CCAAs provides an excellent incentive to encourage conservation of the Nation's fish and wildlife. Section 7 requires the Services to review programs they administer and to ''utilize such programs in furtherance of the purposes of this Act.'' In establishing this policy, the Services are utilizing their Candidate Conservation Programs to further the conservation of the Nation's fish and wildlife. Of particular relevance is section 10(a)(1), which authorizes the issuance of permits to ''enhance the survival'' of a listed species. This interpretation of the Act is also true of this revised policy because we are not changing the overall goals or requirements of CCAAs. Although we are revising our policy and regulations to adopt the ''net conservation benefit'' standard, this revision does not substantively change the amount of conservation required to approve a CCAA. Rather, our purpose in making this change is to address confusion over the original CCAA standard and to make the CCAA standard consistent with the SHA standard.

Comment (13): One commenter stated that the net conservation benefit concept is predicated on the assumption, and potential requirement, that the success of a CCAA will be based upon an increase in species' populations or improvement in habitat. Because many other critical factors, such as weather patterns, food sources,

and disease, can have a major influence on species' populations, it is impractical to use population increase as a goal or metric for the success of a CCAA.

Our Response: We agree with the commenter that many factors influence a species' populations. CCAAs are designed to address key threats to a species and only include those actions that a property owner can take on their enrolled property. As long as the CCAA results in a net conservation benefit, the Service may approve the CCAA and issue the accompanying section 10(a)(1)(A) enhancement-of-survival permit. In addition, because we are not able to always monitor population sizes, particularly for cryptic species, habitat condition can serve as a surrogate to determine whether there will be a net conservation benefit to the species. Thus, in the revised policy, we are using either an increase in the species' population or an improvement in its habitat to determine how to evaluate the success of a CCAA.

Comment (14): One commenter believed the ''net conservation benefit'' standard was overly narrow and does not afford property owners flexibility in developing CCAAs tailored to their own needs and the needs of individual species. The policy should allow property owners to develop conservation measures tailored to their individual needs and the needs of the covered species.

Our Response: While we agree that each CCAA will be tailored to a particular property, the conservation measures in a CCAA will be based on the needs of the species and any key threats that are affecting the species on that property that are under the control of the property owner. Ongoing management activities on the property must be agreed to by the property owner and the Service and described in the CCAA.

Comment (15): A few commenters noted that the definition of ''net conservation benefit'' is also confusing because it does not consistently identify whether improvements in both populations and habitat must be anticipated to occur. The draft revised policy defines ''net conservation benefit'' as ''the cumulative benefits of specific conservation measures designed to improve the status of a covered species by . . . increasing its numbers and improving its habitat.'' The draft revised policy, however, then explains that benefit is measured ''by the projected increase in the species' population or improvement of the species' habitat.'' One commenter requested that the Services clarify whether the FWS will approve a CCAA if there is a ''projected improvement of the species habitat,'' even if there is no ''projected increase in the species population,'' and vice versa.

Our Response: We agree with the commenter that we were inconsistent in how we defined ''net conservation benefit'' in different sections of the policy. We have revised the policy so that it is clear that the anticipated improvements can be in either the species' populations or in its habitat, or both.

Comment (16): One commenter suggested that the FWS should utilize a CCAA standard that focuses on incentivizing voluntary participation and enhancing covered species by providing measures that will ''beneficially contribute to the conservation of a species or habitat.'' This standard is more consistent with the intent and purpose of CCAAs and provides for an appropriate measure of positive contributions to species conservation.

Our Response: The recommended language, ''beneficially contribute,'' may not result in an appropriate level of benefit to a species we are seeking to achieve under a CCAA. CCAAs are designed to provide incentives to landowners to undertake voluntary conservation efforts to benefit candidate species and species likely to become candidates or proposed for listing in the near future. The ''net conservation benefit'' standard establishes that conservation efforts must contribute, directly or indirectly, to the conservation of the covered species and must be designed to reduce or eliminate threats on an enrolled property. Conservation benefits may include, but are not limited to, reduction of habitat fragmentation rates; the maintenance, restoration, or enhancement of habitats; increase in habitat connectivity; maintenance or increase of population numbers or distribution; reduction of the effects of catastrophic events; establishment of buffers for protected areas; and establishment of areas to test and develop new and innovative conservation strategies.

Comment (17): One commenter believed the net-conservation-benefit standard undermines the assurances provided in CCAAs because the standard raises the question of whether a failure to achieve expected conservation benefits affects the assurances provided in the associated enhancement-of-survival permit. The policy should not allow the Services to modify the terms of CCAAs or nullify the assurances provided in a permit if the CCAA's expected benefits are not achieved.

Our response: The assurances are based on the property owner implementing the agreed-to conservation measures and the monitoring or other requirements in the CCAA and are not tied to whether the CCAA reaches the expected net conservation benefit; the assurances are necessary only if the covered species is listed. While each CCAA is based on the best scientific information available and we expect implementation of the CCAA's conservation measures will result in the improvement of the species' populations or habitat, it is possible that the benefit may not be achieved. The adaptive-management features in a CCAA can help to address these situations. In any event, the assurances provided to the property owner are not affected if the species or habitat does not achieve the expected response from the implemented conservation measures.

Comment (18): One commenter thought the inclusion of the phrase ''cumulative benefits'' in the definition of ''net conservation benefit'' creates ambiguity and suggests that the net conservation benefit determination could depend on actions occurring on other properties that are outside the control of the participant. Thus, the FWS should clarify this term in the definition. The commenter suggested we modify the definition to: ''totality of qualitative and quantitative benefits from implementation of specific conservation measures identified in the CCAA on the property or properties to be enrolled.''

Our Response: The net conservation benefit determination is made based only on actions that are taken under the CCAA and does not include those actions that are outside the control of the property owner enrolled in a CCAA. This is one of the reasons why we removed the phrase ''other necessary properties'' from the policy and regulations. The focus is on the key threats on the property and the ability of the property owner to address those threats. For these reasons, we did not modify the definition as recommended.

Comment (19): One commenter thought that the term ''specified period of time'' is problematic because it suggests that permittees or participants must manage the species for a period longer than their participation in the CCAA, such as the duration of a project or the duration of the impacts. The Services cannot obligate participants to commit to manage the species for a period longer than their participation in the CCAA.

Our Response: A participant in a CCAA is required to manage for the

species, as agreed to in the CCAA, only for the length of the agreement. At the end of that time, the participant may choose to end the CCAA and not continue the conservation measures. We used the term ''specified period of time'' to refer to the fact that CCAAs do expire and are valid only for a specified time period, unless the participant chooses to renew the agreement and the Service agrees to renew the CCAA.

Comment (20): One commenter expressed concern that it is difficult to determine whether management activities are equivalent to ''conservation measures'' or whether they reflect different types of actions. To avoid confusion, the commenter requested that the Services eliminate the terms ''management actions'' and ''management activities.'' Another commenter thought the FWS should clarify the scope of activities that may qualify for incidental take coverage under a CCAA, *i.e.,* better define what property-management activities could be covered, and suggested the language be revised to state: ''property-management actions include, but are not limited, to agricultural, ranching, or forestry activities.''

Our Response: The terms ''management activities'' and ''conservation measures'' reflect different types of actions. Conservation measures are those actions specified in the CCAA that are to be implemented in order to address the threats to the species. Management activities are those actions that a property owner does to manage their property for ranching, agricultural, or forestry purposes. A CCAA and the associated ESA section 10(a)(1)(a) enhancement-of-survival permit do not require management actions, but the permit can provide incidental take coverage for these actions, should the species become listed. We do not agree that the language should be revised to expand the types of property-management actions without limits. Some types of activities such as adding housing developments, mining, or other energy-development activities, are inappropriate for CCAAs.

Comment (21): One commenter stated that the FWS should acknowledge that CCAA measures be based upon what is economically and technologically feasible for the property owner to implement on the enrolled property.

Our Response: While the primary basis for determining which conservation measures are needed on a property is the nature of the threats to the species on the property, these are voluntary conservation agreements, and the conservation measures agreed to by participating landowners will obviously be accepted by the landowner as economically and technologically feasible to implement.

Comment (22): A commenter disagreed with the proposed language in Part 5 of the draft revised policy that would require incidental take permits to specify the ''number of individuals of the covered species or quantity of habitat'' that may be incidentally taken under a permit. The commenter believes the Services should not suggest that habitat modification necessarily results in incidental take or that habitat is the only surrogate available to estimate incidental take.

Our Response: It is necessary for incidental take permits to specify a number of individuals authorized to be taken and that it is sometimes appropriate to use the quantity of habitat as a surrogate measure of take. Property owners need certainty in regard to how the take, should it occur through implementation of their property management as described in their agreement, will be exempted through the incidental take permit, if the species is eventually listed under the ESA.

Comment (23): A few commenters suggested that the policy should specify that additional lands may be enrolled in a programmatic CCAA after the effective date of a rule listing a species covered by the CCAA, so long as the lands are within the area covered by the CCAA and permit.

Our Response: This comment is beyond the scope of what we proposed to change in the policy.

Comment (24): One commenter stated that the policy needs to clarify which species can be included in a CCAA since it includes two different definitions of ''candidate species'' and also defines ''covered species'' differently from either of the Services' definitions of ''candidate species.'' The commenter recommended that the policy make it clear that CCAAs may be used for at-risk species, whether or not they have achieved ''candidate'' status.

Our Response: We do not think it is necessary to further clarify which species can be included in a CCAA; the policy is that species proposed for listing, candidates for listing (based on either the FWS or NMFS definition), and other at-risk species that may become candidates for listing can be included in a CCAA. We included the two definitions of ''candidate species'' because the FWS and NMFS have different definitions. We do note that we revised the policy to include other at-risk species that may become candidates; the policy now includes the phrase ''other at-risk species that are likely to become candidates.''

Comment (25): One commenter thought the revocation provision needs to be clarified. In Part 5, the proposed policy states that the FWS ''is prepared as a last resort to revoke a permit implementing a CCAA where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit.'' In view of the fact that an enhancement-of-survival permit will be issued based on a projection of what the implementation of a CCAA can reasonably be expected to achieve in terms of an increase in a species' population or an improvement in habitat, FWS needs to make clear that a permit will not be revoked simply because, notwithstanding the property owner's full compliance with the CCAA, the projected benefits are not achieved.

Our Response: The policy is clear regarding that a permit associated with a CCAA could be revoked as a last resort when the permitted activity is determined to be likely to jeopardize the continued existence of a species covered by the permit. We will not revoke a permit simply because the conservation measures implemented through the CCAA fail to achieve the expected benefits to the species or its habitat despite the property owner's compliance with the provisions in the CCAA.

Comment (26): All of the commenters who submitted a comment on the proposed revisions to the definition of ''property owner'' supported the revision.

Our Response: We are pleased that the comments support this revision that clarifies that entities owning leasehold interests in non-Federal property may participate in CCAAs, as long as they have the authority to carry out the terms of CCAAs on their enrolled properties. This revision aligns the policy with the corresponding regulations for CCAAs.

Comment (27): Although all commenters agreed with the proposed definition of ''property owner'', a few commenters also suggested that the FWS further revise the definition of ''property owner'' to allow CCAAs on land or water under Federal ownership or control.

Our Response: CCAAs are not appropriate for land or water under Federal ownership or control. Under section 7(a)(1) of the ESA, Federal agencies are required to utilize their authorities in ''furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species.'' However, a property owner could also enter into a Candidate

Conservation Agreement without assurances with the Federal agency and carry out the same conservation actions on the Federal land that they are taking under a CCAA on their own property.

Comment (28): One commenter requested that the reference to an ''up-to-date conservation strategy'' be deleted because it is vague and redundant since the policy already states that the CCAA measures will be based on the ''best available scientific information.'' Another commenter requested that the FWS clarify what a conservation strategy is—whether they are formal documents that supplement a CCAA or just components of a CCAA.

Our Response: A species conservation strategy is a planning tool that: Includes an overall goal, objectives, and criteria for obtaining the goal; outlines the species' current condition and threats to that species; identifies and prioritizes conservation measures designed to address the threats and the partners that will implement the measures; identifies any science needs; and outlines the monitoring needed to determine if the conservation measures were implemented and successful in addressing the threats. A conservation strategy is not a component of a CCAA or a step in the CCAA process but is used to help plan and develop a CCAA and other types of agreements.

Comment (29): Several commenters thought the Services should include more recognition for the roles and responsibilities of State fish and wildlife agencies and the Services should enhance coordination with State agencies. A commenter pointed out that States often provide specific measures for avoiding take of State-listed species, and issue permits that contain required minimization and mitigation measures. It is, therefore, critical that the FWS coordinates with States when developing CCAAs. One commenter opposed the Services' proposal to delete the requirement that the Services develop CCAAs in ''close'' coordination with State agencies from Part 1 of the policy. Another commenter indicated that the policy should not include ''when appropriate'' when referring to coordination with the affected State fish and wildlife agency and any affected Tribal government.

Our Response: We agree that it is critical that the Services coordinate with States when developing CCAAs since States generally have jurisdiction over unlisted species and for the reasons stated by the commenters. Also in many instances State agencies administer programmatic CCAAs, ensuring close coordination. Our interagency policy regarding the role of State agencies in ESA activities (81 FR 8663, February 22, 2016) establishes that we will work collaboratively with State agencies to design and encourage the use of CCAAs. We have revised the policy by deleting the phrase ''when appropriate,'' as suggested by the commenter.

Comment (30): A couple of commenters recommended that the FWS also focus attention to Candidate Conservation Agreements (CCAs) and revise its CCA policy and regulations to provide a basis for a Federal agency to seek to enter into a CCA and to facilitate development of agreements covering activities conducted jointly on lands in mixed government and private ownership.

Our Response: While we do not have a separate policy or regulations for CCAs, they play an important role in the conservation of species and have been the basis for a number of FWS decisions not to list a particular species. It is important for Federal agencies to work with non-Federal property owners to develop agreements that complement CCAAs so that there is seamless implementation of species-specific conservation measures across non-Federal and Federal lands for those species that inhabit multiple ownership lands.

Comment (31): One commenter suggested adding the crux of the definition ''that improves the status of the covered species'' after every mention in the policy of ''net conservation benefit'' to provide more clarity on the requirements of a CCAA since the commenter believes that staff biologists, CCAA applicants, or consultants will not utilize the definitions section of the policy. This commenter also recommended inserting ''the CCAA's'' before ''specific conservation measures'' to prevent the potential misunderstanding of ''cumulative benefits'' to mean those other than ones associated with the CCAA.

Our Response: We agree that the suggested edits will help to clarify the intent of the policy; we have revised the policy accordingly.

Candidate Conservation Agreements With Assurances Policy

Part 1. What is the purpose of the policy?

This policy is intended to facilitate the conservation of species proposed for listing under the Endangered Species Act (ESA) and candidate species, and species that may become candidates or proposed for listing in the near future, by giving non-Federal property owners, such as individuals, States, local governments, Tribes, businesses, and organizations, incentives to implement conservation measures for declining species by providing regulatory assurances with regard to land, water, or resource use restrictions that might otherwise apply should the species later become listed as endangered or threatened under the ESA. Under the policy, property owners who commit in a Candidate Conservation Agreement with Assurances (CCAA or Agreement) to implement mutually agreed-upon conservation measures for a species proposed for listing or a candidate species, or a species that may become a candidate or proposed for listing in the near future, will receive assurances from the Service that additional conservation measures above and beyond those contained in the Agreement will not be required, and that additional land, water, or resource use restrictions will not be imposed upon them should the species become listed in the future. In determining whether to enter into a CCAA, the Service will consider the extent to which the Agreement reduces key threats to the covered species so as to contribute to the conservation and stabilization of populations or habitat of the species and provides a substantial net conservation benefit.

The overall goal of the Service's candidate conservation program is to encourage the public to voluntarily develop and implement conservation plans for declining species prior to them being listed under the ESA. The benefits of such conservation actions may contribute to not needing to list a species, to list a species as threatened instead of endangered, or to accelerate the species' recovery if it is listed. Candidate Conservation Agreements with Assurances are one conservation tool that can contribute toward this goal. While the Services recognize that the actions of a single property owner usually will not sufficiently contribute to the conservation of the species to remove the need to list it, we also recognize that the collective result of the conservation measures of many property owners may result in not needing to list the species or other benefits mentioned above. Accordingly, the Service will enter into an Agreement when we determine that the conservation measures to be implemented address the key current and anticipated likely future threats that are under the property owner's control and will result in a net conservation benefit to and improve the status of the covered species. While some property owners are willing to manage their lands to benefit species proposed for listing, candidate species,

or species that may become candidates or proposed for listing in the near future, most desire some degree of regulatory certainty and assurances with regard to possible future land, water, or resource use limitations that may be imposed if the species is listed in the future.

The Service will provide regulatory assurances to a non-Federal property owner who enters into a CCAA by authorizing, through issuance of an enhancement-of-survival permit under section 10(a)(1)(A) of the ESA, a specified level of incidental take of the covered species. Incidental take authorization and the associated agreement benefit property owners in two ways. First, in the event the species is listed, incidental take authorization enables property owners to continue existing and agreed-upon land uses that have the potential to cause take, provided the property owner is properly implementing the CCAA. Second, the property owner is provided the assurance that, if the species is listed, no additional conservation measures will be required and no additional land-use restrictions will be imposed.

These Agreements will be developed in coordination and cooperation with appropriate State fish and wildlife agencies and other affected State agencies and Tribes. Coordination with State fish and wildlife agencies is particularly important given their primary responsibilities and authorities for the management of unlisted resident species. These Agreements must be consistent with applicable State laws and regulations governing the management of these species.

The Service must determine that the benefits of the conservation measures to be implemented by a property owner under a CCAA are reasonably expected to improve the status of and result in a net conservation benefit to the covered species. Pursuant to section 7 of the ESA, the Service must also ensure that the conservation measures and ongoing property-management activities included in a CCAA, and the incidental take allowed under the enhancement of survival section 10(a)(1)(A) permit for these measures and activities, are not likely to jeopardize listed species or species proposed for listing and are not likely to destroy or adversely modify proposed or designated critical habitat.

Because some property owners may not have the necessary resources or expertise to develop a CCAA, the Services are committed to providing, to the maximum extent practicable given available resources, the necessary technical assistance to develop Agreements and prepare enhancement-of-survival permit applications. Also, based on available resources, the Services may assist or train property owners to implement conservation measures. Development of a biologically sound Agreement and enhancement-of-survival permit application is intricately linked. The Services will process the permit application following the procedures described in 50 CFR 17.22(d)(1) and 17.32(d)(1), and part 222, as appropriate. All terms and conditions of the permit must be consistent with the specific conservation measures included in the associated CCAA.

Part 2. What definitions apply to this policy?

The following definitions apply for the purposes of this policy.

Candidate Conservation Agreement (CCA) means an agreement signed by either Service, or both Services jointly, and other Federal or State agencies, local governments, Tribes, businesses, organizations, or a citizen that identifies specific conservation measures that the participants will voluntarily undertake to conserve the covered species. There are no specific requirements for entering into a CCA and no standard has to be met; no incidental take permit or assurances are provided under these Agreements.

Candidate Conservation Agreement with Assurances means a Candidate Conservation Agreement with a non-Federal property owner that meets the standards described in this policy and provides the property owner with the assurances described in this policy.

Candidate Conservation Assurances mean the associated assurances that are authorized by an enhancement-of-survival permit. Such assurances may apply to a whole parcel of land, or a portion, as identified in the Agreement. The assurances provided to a non-Federal property owner in a CCAA are that no additional conservation measures and no land, water, or resource use restrictions, in addition to the measures and restrictions described in the Agreement, will be imposed should the covered species become listed in the future. In addition, the enhancement-of-survival permit provides a prescribed level of incidental take that may occur from agreed-upon, ongoing property-management actions and the conservation measures.

Candidate species are defined differently by the Services. The U.S. Fish and Wildlife Service (FWS) defines ''candidate species'' as species for which FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. The National Marine Fisheries Service (NMFS) defines ''candidate species'' as (1) species that are the subject of a petition to list and for which NMFS has determined that listing may be warranted, pursuant to section 4(b)(3)(A) of the ESA, and (2) species that are not the subject of a petition but for which NMFS has announced the initiation of a status review in the **Federal Register**. The term ''candidate species'' used in this policy refers to those species designated as candidates by either of the Services.

Conservation measures as it applies to CCAAs are actions that a property owner voluntarily agrees to undertake when entering into a CCAA that, by addressing the threats that are occurring or have the potential to occur on their property, will result in an improvement in the species' populations or an improvement or expansion of the species' habitat with the potential for an improvement in the species' population. The appropriate conservation measures designed to address the threats that are causing the species to decline will be based on the best available scientific information relative to the conservation needs of the species such as those contained in an up-to-date conservation strategy.

Covered species means those species that are the subject of a CCAA and associated enhancement-of-survival permit. Covered species are limited to species that are candidates or proposed for listing and species that may become candidates or proposed for listing in the near future.

Enhancement-of-survival permit means a permit issued under section 10(a)(1)(A) of the ESA that, as related to this policy, authorizes the permittee to incidentally take species covered in a CCAA should the species be listed in the future.

Net conservation benefit (for CCAA) is defined as the cumulative benefits of the CCAA's specific conservation measures designed to improve the status of a covered species by removing or minimizing threats so that populations are stabilized, the number of individuals is increased, or habitat is improved. The benefit is measured by the projected increase in the species' population or improvement of the species' habitat, taking into account the duration of the Agreement and any off-setting adverse effects attributable to the incidental taking allowed by the enhancement-of-survival permit. The conservation measures and property-management activities covered by the agreement must be designed to reduce or eliminate those key current and likely future threats on the property that are under

the property owner's control in order to increase the species' populations or improve its habitat. In the case where the species and habitat are already adequately managed to the benefit of the species, a net conservation benefit will be achieved when the property owner commits to continuing to manage the species for a specified period of time, including addressing any likely future threats that are under the property owner's control, with the anticipation that the population will increase or habitat quality will improve.

Property owner means a person with a fee simple, leasehold, or other property interest (including owners of water rights or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable State law, on non-Federal land.

Part 3. What are Candidate Conservation Agreements with Assurances?

A CCAA will identify or include:

A. The population levels (if available or determinable) of the covered species existing at the time the parties sign the Agreement; the existing habitat characteristics that sustain any current, permanent, or seasonal use, or potential use by the covered species on lands or waters in which the participating property owner has an interest; and consideration of the existing and anticipated condition of the landscape of the contiguous lands or waters not on the participating owner's property so that the property enrolled in a CCAA may serve as a habitat corridor or connector or as a potential source of the covered species to populate the enrolled property if they do not already exist on that property.

B. The conservation measures the participating property owner agrees to undertake to address specific threats identified in order to conserve the species included in the Agreement.

C. The benefits expected to result from the conservation measures described in Part 3–B, above (*e.g.,* increase in population numbers; enhancement, restoration, or preservation of habitat; removal of threats), and from the conditions that the participating property owner agrees to maintain. The Service must determine that the benefits of the conservation measures implemented by a property owner under a CCAA will reasonably be expected to provide a net conservation benefit and to improve the status of the covered species.

D. Assurances related to take of the covered species will be authorized by the Service through a section 10(a)(1)(A) enhancement-of-survival permit (see Part 5). Assurances include that no additional conservation measures will be required and no additional land, water, or resource use restrictions will be imposed beyond those described in Part 3–B, above, should the covered species be listed in the future. If conservation measures not provided for in the CCAA are necessary to respond to changed circumstances, the Service will not require any conservation measures in addition to those provided for in the CCAA without the consent of the property owner, provided the CCAA is being properly implemented. If additional conservation measures are necessary to respond to unforeseen circumstances, the Service may require additional measures of the property owner where the CCAA is being properly implemented, only if those measures maintain the original terms of the CCAA to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources available for development or use under the original terms of the CCAA without the consent of the property owner. The permit also allows a prescribed amount of incidental take that may result from the conservation measures or from the agreed-to ongoing property-management actions.

E. A monitoring provision that requires measuring and reporting on: (1) Progress in implementing the conservation measures described in Part 3–B, above, and (2) changes in habitat conditions and the species' status resulting from these measures.

F. As appropriate, a notification requirement to provide the Service or appropriate State agencies with a reasonable opportunity to rescue individuals of the covered species before any authorized incidental take occurs.

Part 4. What are the benefits to the species?

Before entering into a CCAA, the Service must make a written finding that the benefits of the conservation measures to be implemented by a property owner under an Agreement would reasonably be expected to result in a net conservation benefit to the covered species and improve its status. If the Service and the participating property owner cannot agree on conservation measures that satisfy this requirement, the Service will not enter into the Agreement. Expected benefits of the CCAA's specific conservation measures could include, but are not limited to: Removal or reduction of current and anticipated future key threats for a specified period of time; restoration, enhancement, or preservation of habitat; maintenance or increase of population numbers; and reduction or elimination of impacts to the species from agreed-upon, ongoing property-management actions.

Part 5. What are assurances to property owners?

Through a CCAA, the Service will provide the assurance that, if any species covered by the Agreement is listed, and the Agreement has been implemented in good faith by the participating property owner, the Service will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those the property owner voluntarily committed to under the terms of the original Agreement. Assurances involving incidental take will be authorized through issuance of a section 10(a)(1)(A) enhancement-of-survival permit, which will allow the property owner to take a specific number of individuals of the covered species or quantity of habitat, should the species be listed, as long as the level of take is consistent with those levels agreed upon and identified in the Agreement. The Service will issue an enhancement-of-survival permit at the time of entering into the CCAA. This permit will have a delayed effective date tied to the date of any future listing of the covered species. The Service is prepared as a last resort to revoke a permit implementing a CCAA where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit or adversely modify the species' designated critical habitat. Prior to taking such a step, however, the Service will first exercise all possible means to remedy such a situation.

Part 6. How does the Service comply with the National Environmental Policy Act?

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and the regulations of the Council on Environmental Quality (CEQ) require all Federal agencies to examine the environmental impacts of their actions, to analyze a full range of alternatives, and to use public participation in the planning and implementation of their actions. The purpose of the NEPA process is to help Federal agencies make better decisions and to ensure that those decisions are

based on an understanding of environmental consequences. Federal agencies can satisfy NEPA requirements either by preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) or by showing that the proposed action is categorically excluded from individual NEPA analysis. The Service will review each proposed CCAA and associated enhancement-of-survival permit application for other significant environmental, economic, social, historical or cultural impact, or for significant controversy (516 DM 2, Appendix 2 for FWS and the National Oceanic and Atmospheric Administration's (NOAA's) NOAA Administrative Order 216–A and its authorized Companion Manual for NMFS). If the Service determines that the Agreement and permit will likely result in any of the above effects, preparation of an EA or EIS will be required. General guidance on when the Service excludes an action categorically and when and how to prepare an EA or EIS is found in 43 CFR part 46 for FWS and NOAA Administrative Order Series 216–6A and its authorized Companion Manual for NMFS. The Services expect that most CCAAs and associated enhancement-of-survival permits will result in minor or negligible effects on the environment and will be categorically excluded from individual NEPA analysis.

Part 7. Will there be public review?

Public participation in the development of a proposed CCAA will be provided only when agreed to by the participating property owner. However, the Service will make every proposed Agreement available for public review and comment as part of the public evaluation process that is statutorily required for issuance of the associated enhancement-of-survival permit. This comment period will generally be 30 days. The public will also be given other opportunities to review CCAAs in certain cases. For example, when the Service receives an Agreement covering a species proposed for listing, and when the Service determines, based upon a preliminary evaluation, that the Agreement could potentially justify withdrawal of the proposed rule to list the species under the ESA, the comment period for the proposed rule will be extended or reopened to allow for public comments on the CCAA's adequacy in removing or reducing threats to the species. However, the statutory deadlines in the ESA may prevent the Service from considering in their final listing determination those CCAAs that are not received within a reasonable period of time after issuance of the proposed rule.

Part 8. Do property owners retain their discretion?

Nothing in this policy prevents a participating property owner from implementing conservation measures not described in the Agreement, provided such measures are consistent with the conservation measures and conservation goal described in the CCAA. The Service will provide technical advice, to the maximum extent practicable, to the property owner when requested. Additionally, a participating property owner can terminate the Agreement prior to its expiration date, even if the terms and conditions of the Agreement have not been realized. However, the property owner is required to notify the Service prior to termination. The enhancement-of-survival permit is terminated at the same time, and the property owner would no longer have the assurances.

Part 9. What is the discretion of all parties?

Nothing in this policy compels any party to enter into a CCAA at any time. Entering into an Agreement is voluntary for property owners and the Service. Unless specifically noted, a CCAA does not otherwise create or waive any legal rights of any party to the Agreement.

Part 10. Can agreements be transferred?

If a property owner who is a party to a CCAA transfers ownership of the enrolled property, the Service will regard the new property owner as having the same rights and obligations as the original property owner if the new property owner agrees to become a party to the original Agreement and meets the applicable permit issuance criteria. Actions taken by the new participating property owner that result in the incidental take of species covered by the Agreement would be authorized if the new property owner maintains and properly implements the terms and conditions of the original Agreement. If the new property owner does not become a party to the Agreement, the new owner would neither incur responsibilities nor receive any assurances relative to the ESA take prohibitions resulting from listing of the covered species. An Agreement must commit the participating property owner to notify the Service of any transfer of ownership at the time of the transfer of any property subject to the CCAA. This provision allows the Service the opportunity to contact the new property owner to explain the prior CCAA and to determine whether the new property owner would like to continue the Agreement or enter a new Agreement. When a new property owner continues an existing Agreement, the Service will honor the terms and conditions of that Agreement and associated permit.

Part 11. Is monitoring required?

The Service will ensure that necessary monitoring provisions are included in the CCAA and associated enhancement-of-survival permit. Monitoring is necessary to ensure that the conservation measures specified in an Agreement and permit are being implemented and to learn about the effectiveness of the agreed-upon conservation measures. In particular, when adaptive-management principles are included in an Agreement, monitoring is especially helpful for obtaining the information needed to measure the effectiveness of the conservation program and detect changes in conditions. However, the level of effort and expense required for monitoring can vary substantially among CCAAs depending on the circumstances. For many, monitoring can be conducted by the Service or a State agency and may involve only a brief site inspection and appropriate documentation. Monitoring programs must be agreed upon prior to public review and comment. The Services are committed to providing as much technical assistance as possible in the development of acceptable monitoring programs. These monitoring programs will provide valuable information that the Services can use to evaluate program implementation and success.

Part 12. How are cooperation and coordination with the States and Tribes described in the policy?

Coordination between the Service, the appropriate State fish and wildlife agencies, affected Tribal governments, and property owners is important to the successful development and implementation of CCAAs. The Service will coordinate and consult with the affected State fish and wildlife agency and any affected Tribal government that has a treaty right to any fish or wildlife resources covered by a CCAA.

Required Determinations

As discussed above, we intend to apply this policy in considering whether to approve a CCAA. Below we discuss compliance with several Executive Orders and statutes as they pertain to this policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this policy is not a significant rule.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that our regulatory system must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this policy in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Chief Counsel for Regulation of the Department of Commerce and the Department of Interior both certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed policy stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed policy and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none was prepared.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the ''Regulatory Flexibility Act'' section above, this policy would not ''significantly or uniquely'' affect small governments. As explained above, small governments could potentially be affected if they chose to enter into a CCAA. However, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this policy would not impose a cost of $100 million or more in any given year on local or State governments or private entities.

(b) This policy would not produce a Federal mandate on State, local, or Tribal governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act. This policy does not impose any additional obligations on State, local, or tribal governments who participate in a CCAA by requiring them to take additional or different conservation measures above what they would be required to take under the 1999 CCAA policy. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630, this policy would not have significant takings implications. This policy would not pertain to ''taking'' of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this policy (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This policy would substantially advance a legitimate government interest (clarify existing policy through which non-Federal entities may voluntarily help to conserve unlisted and listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this policy does not have significant Federalism effects and a federalism summary impact statement is not required. This policy revision pertains only to the Service's requirement of a net conservation benefit to the covered species for approval of a CCAA and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), this policy would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are revising the existing policy for CCAAs specifically for the purpose of eliminating ambiguity and presenting the policy provisions in clear language.

Paperwork Reduction Act of 1995 (PRA)

This policy revision does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 *et seq.*). This policy will not impose new recordkeeping or reporting requirements on State or local governments; individuals; businesses; or organizations. OMB has reviewed and approved the application form that property owners use to apply for approval of a CCAA and associated enhancement-of-survival permit (Form 3–200–54) and assigned OMB control number 1018–0094, which expires January 31, 2017. 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.

National Environmental Policy Act (NEPA)

We have analyzed the policy in accordance with the criteria of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508), and the Department of the Interior's NEPA procedures (516 DM 2 and 8; 43 CFR part 46) and NOAA's Administrative Order regarding NEPA compliance (NAO 216–6A (April 22,2016)).

We have determined that the policy is categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4 and 43 CFR 46.210(i). This categorical exclusion applies to policies, directives, regulations, and guidelines that are ''of an administrative, financial, legal, technical, or procedural nature.'' This action does not trigger an extraordinary

circumstance, as outlined in 43 CFR 46.215, applicable to the categorical exclusion. Therefore, the policy does not constitute a major Federal action significantly affecting the quality of the human environment.

We have also determined that this action satisfies the standards for reliance upon a categorical exclusion under NOAA Administrative Order (NAO) 216–A. NAO 216–6A superseded NAO 216–6 (May 20, 1999), but temporarily left in effect the categorical exclusions in NAO 216–6 until they are superseded by a Companion Manual authorized under NAO 216–6A, which has not yet been finalized. Therefore, this policy was evaluated under the categorical exclusions in NAO 216–6. Specifically, the policy fits within two categorical exclusion provisions in § 6.03c.3(i)—for ''preparation of regulations, Orders, manuals, or other guidance that implement, but do not substantially change these documents, or other guidance'' and for ''policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature.'' NAO 216–6, § 6.03c.3(i). The policy would not trigger an exception precluding reliance on the categorical exclusions because it does not involve a geographic area with unique characteristics, is not the subject of public controversy based on potential environmental consequences, will not result in uncertain environmental impacts or unique or unknown risks, does not establish a precedent or decision in principle about future proposals, will not have significant cumulative impacts, and will not have any adverse effects upon endangered or threatened species or their habitats. *Id.* § 5.05c. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior Manual at 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have preliminarily determined that there are no potential adverse effects of issuing this policy. Our intent with the policy revision is to provide clarity in regard to the net conservation benefit requirements for a CCAA to be approved, including any agreements in which Tribes may choose to participate. We will continue to work with Tribes as we implement this policy.

Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The policy is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Authors

The primary authors of the policy are staff members of the Ecological Services Program, Branch of Communications and Candidate Conservation, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041–3803.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 20, 2016.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

Dated: December 20, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–31061 Filed 12–23–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2016–N216; FF09F42300–FVWF97920900000–XXX]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public teleconference meeting of the Sport Fishing and Boating Partnership Council (Council). A Federal advisory committee, the Council was created in part to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This teleconference meeting is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: *Teleconference:* Tuesday, January 17, 2017, 10:00 a.m. to 11:30 a.m. (Eastern daylight time). For deadlines and directions on registering to listen to the teleconference, submitting written material, and giving an oral presentation, please see Public Input under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brian Bohnsack, Council Coordinator, via U.S. mail at U.S. Fish and Wildlife Service, Mailstop FAC, Falls Church, VA 22041; via telephone at (703) 358–2435; via fax at (703) 358–2487; or via email at *brian_bohnsack@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a teleconference.

Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Service Director and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc.*

Meeting Agenda

The Council will hold a teleconference to:

- Consider and approve the Council's Boating Infrastructure Grant Program
- Review Sub-Committee's funding recommendations for fiscal year 2017 proposals;

• Consider and approve the Council's recommendations on priority focus areas for the new administration;

• Schedule an upcoming spring meeting; and

• Consider other Council business.

The final agenda will be posted on the Council's Web site at *http://www.fws.gov/sfbpc.*

Public Input

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Listen to the teleconference.	Wednesday, January 11, 2017.
Submit written information or questions before the teleconference for the council to consider during the teleconference.	Wednesday, January 11, 2017.
Give an oral presentation during the teleconference.	Wednesday, January 11, 2017.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the teleconference. Written statements must be received by the date listed, so that the information may be made available to the Council for their consideration prior to this teleconference. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation during the teleconference will be limited to 2 minutes per speaker, with no more than a total of 15 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this teleconference. To ensure an opportunity to speak during the public comment period of the teleconference, members of the public must register with the Council Coordinator. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the teleconference.

Meeting Minutes

Summary minutes of the teleconference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/sfbpc.*

Dated: December 16, 2016.

Stephen Guertin,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–31261 Filed 12–23–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2016–N213; FF08RSDC00–178–F1611MD–FXRS12610800000]

Otay River Estuary Restoration Project, South San Diego Bay Unit of the San Diego Bay National Wildlife Refuge, California; Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of the public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in coordination with the U.S. Army Corps of Engineers, a cooperating agency, announce the reopening of the public review and comment period for the Draft Environmental Impact Statement for the proposed Otay River Estuary Restoration Project at the South San Diego Bay Unit of the San Diego Bay National Wildlife Refuge in San Diego County, California.

DATES: To ensure consideration, we must receive your written comments by December 30, 2016.

ADDRESSES: *Document Availability:* You may obtain documents in the following places:

• *Internet: https://www.fws.gov/refuge/San_Diego_Bay/what_we_do/Resource_Management/Otay_Restoration.html.*

• *In Person:*

○ San Diego Bay National Wildlife Refuge Complex Headquarters, 1080 Gunpowder Point Drive, Chula Vista, CA 91910; telephone: 619–476–9150, extension 103.

○ Chula Vista Public Library, Civic Center Branch, 365 F Street, Chula Vista, CA 91910; telephone: 619–691–5069.

○ San Diego County Library, Imperial Beach Branch Library, 847 Encina Avenue (temporary location), Imperial Beach, CA 91932; telephone: 619–424–6981.

○ Chula Vista Public Library, South Chula Vista Branch, 389 Orange Avenue, Chula Vista, CA 91911; telephone: 619–585–5755.

For how to view comments on the draft EIS from the Environmental Protection Agency (EPA), or for information on EPA's role in the EIS process, see EPA's Role in the EIS Process under **SUPPLEMENTARY INFORMATION.**

Submitting Comments: You may submit written comments by one of the following methods:

• *Email: Otay_EIS@fws.gov.* Include ''Otay Estuary EIS'' in the subject line of the message.

• *Fax:* Attn: Brian Collins, 619–476–9149.

• *U.S. Mail:* Brian Collins, USFWS, San Diego NWR Complex, P.O. Box 2358, Chula Vista, CA 91912.

• *In-Person Drop-off:* You may drop off comments at the San Diego National Wildlife Refuge Complex Headquarters between 9 a.m. and 4 p.m.; please call 619–476–9150, extension 103, for directions.

FOR FURTHER INFORMATION CONTACT: Brian Collins, Refuge Manager, San Diego Bay National Wildlife Refuge, by telephone at 619–575–2704, extension 302, or via email at *brian_collins@fws.gov;* or Andy Yuen, Project Leader, by telephone at 619–476–9150, extension 100, or by email at *andy_yuen@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On October 21, 2016, we published a **Federal Register** notice (81 FR 72817) announcing the availability of the draft environmental impact statement (EIS) for the proposed Otay River Estuary Restoration Project for public review and comment in accordance with National Environmental Policy Act (40 CFR 1506.6(b)) requirements. We originally opened the comment period from October 21, 2016, through December 5, 2016. We now are reopening the public comment period until December 30, 2016. For more information on the draft EIS and a description of the project, please see the October 2016 notice.

EPA's Role in the EIS Process

The EPA is charged under section 309 of the CAA (42 U.S.C. 7401 *et seq.*) to review all Federal agencies' environmental impact statements (EISs)

and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The Environmental Impact Statement (EIS) Database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**. You may search for EPA comments on the EIS, along with the EIS itself, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*. The DEIS is also available at the locations under **ADDRESSES**.

NEPA Compliance

We are conducting environmental review in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and our procedures for compliance with those regulations. The DEIS discusses the direct, indirect, and cumulative impacts of the alternatives on biological resources, cultural resources, water quality, and other environmental resources. Measures to minimize adverse environmental effects are identified and discussed in the DEIS.

Public Involvement

You may submit written comments anytime during the comment period (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2016–31266 Filed 12–23–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000.L10600000PC0000.17X. LXSIADVSBD0.241A]

Call for Nominations for the National Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public nominations for three positions on the Wild Horse and Burro Advisory Board (Board) that will become vacant on April 3, 2017. The Board provides advice concerning the management, protection, and control of wild free-roaming horses and burros on public lands administered by the Department of the Interior, through the Bureau of Land Management (BLM), and the Department of Agriculture, through the U.S. Forest Service.

DATES: Nominations must be post marked or submitted to the address listed below no later than February 10, 2017.

ADDRESSES: All mail sent via the U.S. Postal Service should be sent as follows: Division of Wild Horses and Burros, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134 LM, Attn: Dorothea Boothe, WO–260, Washington, DC 20240. All mail and packages that are sent via FedEx or UPS should be addressed as follows: Wild Horse and Burro Division, U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attn: Dorothea Boothe, Washington, DC 20003. You may also email PDF documents to Ms. Boothe at *dboothe@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Acting Wild Horse and Burro Program Specialist, 202–912–7654. 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. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Members of the Board serve without compensation. However, while away from their homes or regular places of business, Board and subcommittee members engaged in Board or subcommittee business, approved by the Designated Federal Official (DFO), may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service under Section 5703 of Title 5 of the United States Code. Nominations for a term of three years are needed to represent the following categories of interest:

Natural Resource Management
Wild Horse and Burro Research
Public Interest (Equine behavior)

The Board will meet one to four times annually. The DFO may call additional meetings in connection with special needs for advice. Individuals may nominate themselves or others. An individual serving on another resource advisory council is not eligible to serve concurrently on the Board. Any individual or organization may nominate one or more persons to serve on the Board. Nominations will not be accepted without a complete resume. The following information must accompany all nominations for the individual to be considered for a position:

1. The position(s) for which the individual wishes to be considered;
2. The individual's first, middle, and last name;
3. Business address and phone number;
4. Home address and phone number;
5. Email address;
6. Present occupation/title and employer;
7. Education (colleges, degrees, major field of study);
8. Career Highlights: Significant related experience, civic and professional activities, elected offices (include prior advisory committee experience or career achievements related to the interest to be represented). Attach additional pages, if necessary;
9. Qualifications: Education, training, and experience that qualify you to serve on the Board;
10. Experience or knowledge of wild horse and burro management;
11. Experience or knowledge of horses or burros (Equine health, training, and management);
12. Experience in working with disparate groups to achieve collaborative solutions (*e.g.,* civic organizations, planning commissions, school boards, etc.);
13. Identification of any BLM permits, leases, or licenses held by the individual or his or her employer;
14. Indication of whether the individual is a federally registered lobbyist; and
15. Explanation of interest in serving on the Board.

All nominations must be accompanied by at least one letter of

reference sent from special interests or organizations the individual may represent, including, but not limited to, business associates, friends, co-workers, local, State, and/or Federal government representatives, or members of Congress as well as any other information that is relevant to the individual's qualifications.

As appropriate, certain Board members may be appointed as special government employees. Special government employees serve on the Board without compensation, and are subject to financial disclosure requirements in the Ethics in Government Act and 5 CFR 2634. Nominations are to be sent to the address listed under the **ADDRESSES** section above.

Privacy Act Statement: The authority to request this information is contained in 5 U.S.C. 301, the Federal Advisory Committee Act (FACA), and 43 CFR part 1784. The appointment officer uses this information to determine education, training, and experience related to possible service on a BLM advisory council. If you are appointed as an advisor, the information will be retained by the appointing official for as long as you serve. Otherwise, it will be destroyed 2 years after termination of your membership or returned (if requested) following announcement of the Board's appointments. Submittal of this information is voluntary. However, failure to complete any or all items will inhibit fair evaluation of your qualifications, and could result in you not receiving full consideration for appointment.

Membership Selection: Individuals shall qualify to serve on the Board because of their education, training, or experience that enables them to give informed and objective advice regarding the interest they represent. They should demonstrate experience or knowledge of the area of their expertise and a commitment to collaborate in seeking solutions to resource management issues. The Board is structured to provide fair membership and balance, both geographic and interest specific, in terms of the functions to be performed and points of view to be represented. Members are selected with the objective of providing representative counsel and advice about public land and resource planning. No person is to be denied an opportunity to serve because of race, age, sex, religion, or national origin. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils. Pursuant to Section 7 of the Wild Free-Roaming Horses and Burros Act, members of the Board cannot be employed by either Federal or State governments.

(**Authority:** 43 CFR 1784.4–1, 43 CFR 1784.6–1)

Kristin Bail,

Assistant Director, Resources and Planning.

[FR Doc. 2016–31216 Filed 12–23–16; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LNVS01000.L54400000.EQ0000. LVCLF1604550; N–94439; 11–08807; MO# (To Be Assigned at NSO); TAS: 14X5232]

Notice of Realty Action: Proposed Non Competitive Conveyance (N–94439) of Public Lands for Airport Purposes in Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM), Las Vegas Field Office has examined and found suitable a 20 acre parcel of public land for conveyance for airport purposes under the authority of Section 516 of the Airport and Airway Improvement Act of 1982, as requested by the Clark County Department of Aviation.

The parcel is located in the City of Henderson, Clark County, Nevada.

DATES: Interested parties may submit written comments regarding the proposed conveyance until February 10, 2017.

ADDRESSES: Send written comments concerning the proposed conveyance to the BLM Las Vegas Field Office, Attn: Field Manager, 4701 North Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Philip Rhinehart, Realty Specialist, by email at *prhineha@blm.gov* or by telephone at 702–515–5182. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM proposes to convey the following described lands:

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E.,
Sec. 10, SW¼NE¼NE¼ and NW¼SE¼NE¼.

The area described contains 20 acres, more or less and is further described as being bounded on the west side of the Henderson Executive Airport, approximately 6,125 feet south of the intersection of St. Rose Parkway and Executive Airport Drive. The parcel is further described as being located approximately 1,407 feet east of Executive Airport Drive. A map delineating the proposed conveyance parcel is available for public review at the BLM, Las Vegas Field Office at the address above.

This conveyance is in conformance with the BLM Las Vegas Resource Management Plan (RMP) and decision LD–1, approved by Record of Decision on October 5, 1998. It further complies with the Airport and Airway Improvement Act of 1928, as amended (49 U.S.C., Appendix 211–213), and Section 23 of the Airway Development Act of 1970.

The Clark County Department of Aviation (CCDOA), in accordance with Section 23 of the Airway Development Act of 1970, through the U.S. Department of Transportation, Federal Aviation Administration has requested the conveyance of the property to the CCDOA for the expansion of the general aviation airport known as the Henderson Executive Airport, located in Henderson, Nevada. The property is surrounded on three sides by land owned by the CCDOA, for the operation of the Henderson Executive Airport, and on the fourth side by private property.

These public lands are not currently encumbered by any rights-of way grants, or leases. They have been examined and found suitable for conveyance purposes under the provisions of the Airport and Airway Improvement Act of 1928, as amended (49 U.S.C., Appendix 211–213.

The lands identified for conveyance are segregated from mineral entry under the Southern Nevada Public Lands Management Act of 1998 (Pub. L. 105–263). Conveyance of these lands is consistent with the BLM, Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest.

Conveyance of the land is consistent with applicable Federal and county land use plans and will help meet the needs of the community. The land is not required for any other Federal purposes.

Additional detailed information about this request for conveyance, plan of development, and site plan is contained in case file N–94439, which is located in the BLM Las Vegas Field Office at the above address.

The proposed conveyance is based on the consideration that the parcel is

surrounded on three sides by the Henderson Executive Airport (HND), and on the fourth by private property. The parcel is an isolated uneconomic parcel of public land within a designated disposal boundary. Pursuant to regulations found at 49 U.S.C. Section 47125 the Clark County Department of Aviation is entitled to a no cost conveyance of the property.

Conveyance of the public land shall be subject to limitations prescribed by law and regulation. Prior to patent issuance, a holder of any right-of-way within the conveyance area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.

The patent, when issued, will be subject to the provisions of the Airport and Airways Improvement Act of 1982 and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

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.

Conveyance of the public land will be subject to:

1. Valid existing rights.

None known

Conveyance of the public land will contain the following Covenants:

1. That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one to five years after the date of this conveyance. Except that if the property interest is necessary to meet future development of an airport in accordance with National Plan of Integrated Airports System (NPIAS), the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator of the Federal Aviation Administration, and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

2. That the airport runway system and its appurtenant safety areas, and all buildings and facilities, will be operated for public airport purposes on fair and reasonable terms without unjust economic discrimination; or discrimination on the basis of race, color, or national origin, as to airport employment practices, and as to accommodations, services, facilities, or other public uses of the airport.

3. That the grantee will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349 9(a), as amended), at the airport or at any other airport now owned or controlled by it.

4. That the grantee agrees that no person shall be excluded from any participation, be denied any benefits, or be otherwise subjected to any discrimination on the grounds of race, color, national origin, or disability.

5. That the grantee agrees to comply with all requirements imposed by or pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21)—nondiscrimination in federally assisted programs of the Department of Transportation—effectuation of Title VI of the Civil Rights Act of 1964.

6. That in furtherance of the policy of the Federal Aviation Administration under covenant, the grantee:

(a) Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity.

(b) Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before July 17, 1962, at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right.

(c) Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

7. That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance.

8. That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with terms of the conveyance, then the Administrator may give notice to the patentee requiring Clark County, Nevada to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

9. That, if any covenant or condition in the instrument of conveyance, other than the covenant contained in paragraph 7 of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

10. That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts, and that, if the right entry and possession of title stipulated in the forgoing covenants is exercised, the grantee will, upon demand of the Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or in the Administrator's discretion, to that part interest to which the breach relates.

Upon publication of this notice in the **Federal Register**, in addition to the existing segregation from mineral entry under SNPLMA, noted above, the land described will be segregated from all other forms of appropriation under the public land laws, but not conveyance under the Airport and Airway Improvement Act of 1982.

Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether BLM followed proper administrative procedures in reaching the decision to convey under the Airport and Airway Improvement Act of 1982, or any other factor not directly related to the suitability of the land for airport use.

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. Only written comments submitted to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed.

Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify the realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. In the absence of any adverse comments, the decision will become effective on February 27, 2017. The lands will not be available for conveyance until after the decision becomes effective.

(**Authority:** 43 CFR 2911.0–1)

Vanessa Hice,

Assistant Field Manager, Division of Lands.

[FR Doc. 2016–31219 Filed 12–23–16; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF03000 L13400000.FX0000 16X]

Notice of Intent To Amend the Resource Management Plan for the San Luis Valley Field Office, Colorado, and Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) San Luis Valley Field Office, Monte Vista, Colorado, intends to prepare a Resource Management Plan (RMP) amendment with an associated Environmental Assessment (EA) for the San Luis Valley Field Office to analyze de-allocating the Fourmile East Solar Energy Zone (SEZ) and nearby variance land from all solar development. This notice announces the beginning of the scoping process to solicit public comments and identify issues to analyze as a part of the RMP amendment.

DATES: This notice initiates the public scoping process for the RMP amendment with an associated EA. Comments on issues may be submitted in writing until January 26, 2017. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM Web site at: *http://www.blm.gov/co/st/en/fo/slvfo.html*. In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to Fourmile East Solar Energy Zone De-allocation Amendment EA by any of the following methods:

- *Web site: http://www.blm.gov/co/st/en/fo/slvfo.html*
- *Email: SolarMitigation@blm.gov*
- *Fax:* 719–269–8599
- *Mail:* BLM, San Luis Valley Field Office, 1313 East Highway 160, Monte Vista, CO 81144

Documents pertinent to this proposal may be examined at the San Luis Valley Field Office at the address above.

FOR FURTHER INFORMATION CONTACT: Nancy Keohane, Project Manager—Renewable Energy Team; telephone 719–269–8531; mail BLM Front Range District, 3028 East Main Street, Cañon City, Colorado 81212; or email nkeohane@blm.gov. Contact Ms. Keohane to have your name added to our mailing list. 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, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM San Luis Valley Field Office, Monte Vista, Colorado, intends to prepare an RMP amendment with an associated EA for the San Luis Valley Field Office to consider de-allocating the Fourmile East SEZ. This notice announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Alamosa County, Colorado, and encompasses approximately 4,829 acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. These issues include cultural resources, specifically tribal resources and values; big game winter range; National Park and National Scenic Byway view sheds; National Heritage Areas; air quality; and migratory birds. Preliminary planning criteria include: (1) The BLM will continue to manage the San Luis Valley Field Office in accordance with FLPMA and other applicable laws and regulations and all existing public land laws; (2) The BLM will complete the RMP amendment using an interdisciplinary approach to identify alternatives and analyze resource impacts, including cumulative impacts to natural and cultural resources and social and economic environment; (3) The amendment process will follow the FLPMA planning process and the BLM intends to develop an EA consistent with NEPA to inform the planning decision. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later. The BLM will use and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d) (3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes and pueblos on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes, pueblos and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees

for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft RMP/Draft EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: archeology and cultural resources, wildlife, physical resources, special area designations, and tribal issues.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016–31223 Filed 12–23–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–22559; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before December 3, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by January 11, 2017.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 3, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

ARIZONA

Maricopa County

Executive Towers, 207 W. Clarendon, Phoenix, SG100000455

CALIFORNIA

Los Angeles County

La Laguna de San Gabriel, (Latinos in 20th Century California (AD) MPS), 300 W. Wells St., San Gabriel, MP100000462

Orange County

Egan, Richard, House, 31829 Camino Capistrano, San Juan Capistrano, SG100000460

Riverside County

Oasis Commercial Building, (Architecture of E. Stewart Williams MPS MPS), 101 S. Palm Canyon Dr., Palm Springs, MP100000459

San Diego County

Wiipuk uun'yaw Trail, Address Restricted, Mount Laguna vicinity, SG100000463

Santa Barbara County

Rattlesnake Canyon Bridge, (Highway Bridges of California MPS MPS), 1819 Las Canoas Rd., Santa Barbara, MP100000465

Santa Clara County

Arc Jet Complex, 980 Mark Ave., NASA Ames Research Center, Moffett Field, SG100000466

Ames Administration Building, Bush Cir., NASA Ames Research Center, Moffett Field, SG100000467

Flight and Guidance Simulation Laboratory, 655 Cooper Ln., NASA Ames Research Center, Moffett Field, SG100000469

NASA Ames Wind Tunnel Historic District, NASA Ames Research Center, Moffett Field, SG100000470

COLORADO

Bent County

Fort Lyon National Cemetery, 15700 Cty. Rd. HH, Las Animas vicinity, SG100000472

Denver County

Denver Press Club, 1330 Glenarm Pl., Denver, SG100000473

Jackson County

Colorado State Forest Building Complex, Near CO 14, Gould vicinity, SG100000474

DISTRICT OF COLUMBIA

District of Columbia

Apartments at 5922 13th Street NW., (Apartment Buildings in Washington, DC, MPS MPS), 5922 13th St. NW., Washington, MP100000471

Observatory Hill, 23rd & E Sts. NW., Washington, SG100000479

Fifteenth Street Financial Historic District, Fifteenth St. from Pennsylvania Ave. to K, 14th & G Sts. NW., Washington, BC100000540

HAWAII

Honolulu County

Barry, Mr. & Mrs. David Jr., House, 3625 Diamond Head Rd., Honolulu, SG100000481

Bushnell House, 3210 Melemele Pl., Honolulu, SG100000483

IOWA

Black Hawk County

Hotel President, 500 Sycamore St., Waterloo, SG100000484

Buena Vista County, Storm Lake High School, 310 Cayuga St., Storm Lake, SG100000485

Linn County

Iowa State Highway Commission, District 6 Building, 430 16th Ave. SW., Cedar Rapids, SG100000486

Madison County

Bricker—Price Block, 105–115 S. Chestnut Ave., Earlham, SG100000487

Polk County

Mack—International Motor Truck Corporation Building, 121 12th St., Des Moines, SG100000488

Walnut Tire and Battery Co.—Globe Publishing Company Building, 1417–1425 Walnut St., Des Moines, SG100000489

Washington and Elizabeth Miller Tract—Center—Soll Community Historic District, Roughly 35th to 38th Sts. between 3500–3607 Grand Ave. to Center St., Des Moines, SG100000490

Sac County

Park Hotel, 115 NW. State St., Sac City, SG100000491

Scott County

Priester Building, The, 601 Brady St., Davenport, SG100000493

Hamburg Historic District, (Davenport MRA MPS), Roughly bounded by W. 5th, 6th, 7th, 8th & 9th Sts., Davenport, BC100000541

KANSAS

Allen County

Lander's Wagon and Carriage Shop, 403 Bridge St., Humboldt, SG100000494

Cherokee County

Kansas Route 66 Historic District—North Baxter Springs, (Route 66 in Kansas MPS MPS), SE. Beasley Rd., Baxter Springs, BC100000495

Crawford County

Leonard, J.T an Anna, House, 211 N. Summit St., Girard, SG100000505

Dickinson County

Engle, Jacob S., House, 102 Highland Dr., Abilene, SG100000506

Hoffman and Lamb Buildings, 102–104 S. Factory St., Enterprise, SG100000510

Franklin County

Reid, Lyman, House, 306 Elm St., Ottawa, SG100000508

Geary County

Grand Army of the Republic (GAR) Memorial Arch, 500 N. Washington St., Junction City, SG100000512

Johnson County

Olathe Cemetery, 738 Chestnut St., Olathe, SG100000514

Osage County

Arvonia Township Hall, 0000 W. 9th St., Lebo, SG100000516

LOUISIANA

Lafourche Parish

S.S. HALO (shipwreck and remains), (World War II Shipwrecks along the East Coast and Gulf of Mexico MPS MPS), Address Restricted, Port Fourchon vicinity, MP100000520

MAINE

Aroostook County

Freeman Barn, 1533 Aroostook Rd., Wallagrass, SG100000522

Kennebec County

Water Street, 71- 286 Water & 1 Winthrop Sts., Augusta, SG100000524

Sagadahoc County

Wallace—Haskell Homestead, 268 W. Point Rd., Phippsburg, SG100000526

MARYLAND

Baltimore Independent city

Remington Historic District, Roughly bounded by W. 22nd & Sisson Sts., Wyman Park Dr., Mace Alley, Baltimore (Independent city), SG100000530

MASSACHUSETTS

Middlesex County

Stone's Bridge, Old Stonebridge Rd. across Sudbury R., Wayland, SG100000527

MICHIGAN

Jackson County

Ford Motor Company Brooklyn Plant, 221 Mill St., Brooklyn, SG100000532

Leelanau County

Omena Historic District, Generally from jct. of Tatch Rd. & MI 22 through jct. with N. Omena Point Rd. & E. side of MI 22, Omena, SG10000053

MISSISSIPPI

Amite County

Sherman Line Rosenwald School, 3021 Sherman Church Rd., Magnolia vicinity, SG100000535

Bolivar County

Shaw Consolidated School, 214 Dean Blvd., Shaw, SG100000536

Hinds County

Clinton Olde Towne Historic District, Bounded by Belmont, East, College & Capitol/West Sts., Clinton, SG100000537

Warren County

Jackson Street Missionary Baptist Church, (Vicksburg MPS MPS), 1416 Jackson St., Vicksburg, MP100000538

MONTANA

Carter County

Medicine Rocks State Park, 1141 MT 7, Ekalaka vicinity, SG100000539

NEVADA

White Pine County

Bahsahwahbee, Address Restricted, Major's Place vicinity, SG100000464

NEW HAMPSHIRE

Carroll County

Fore Point, (Squam MPS MPS), Address Restricted, Sandwich, MP100000475

Strafford County

Forest Glade Cemetery, 163 Maple St., Somersworth, SG100000476

Sullivan County

Richards, Dexter, & Sons Woolen Mill, 169 Sunapee St., Newport, SG100000468

NEW YORK

Chemung County

Washington, George, School, 430 W. Washington Ave., Elmira, SG100000480

Columbia County

Ancram Hamlet Historic District, Cty Rte. 7, NY Rte 82, Cty Rte 8, Ancram, SG100000477

Monroe County

Terminal Building, 65 W. Broad St., Rochester, SG100000482

New York County

United States Appraisers Store, 201 Varick St., New York, SG100000496

Onondaga County

Syracuse Lighting Company, 311 Genant Dr., Syracuse, SG100000497

Saratoga County

Calvary Episcopal Church, 85 Lake Hill Rd., Burnt Hills, SG100000498

OREGON

Multnomah County

Alco Apartments, 100–11—NE Martin Luther King Blvd., Portland, SG100000499

PENNSYLVANIA

Adams County

Middlekauff, Jacob and Juliana, House, 530 Flohrs Church Rd., Franklin Township, SG100000500

Bucks County

Strassburger, Reuben and Elizabeth, Farmstead, 407 Kestone Dr., Sellersville, SG100000501

Philadelphia County

Mill-Rae, 13475 Proctor Rd, Philadelphia, SG100000502

PUERTO RICO

Catano Municipality, Sanctuary of Blessed Martin de Porres, Comercio St./Oeste Cementerio St., Catano vicinity, SG100000503

TEXAS

Tarrant County

Clayton, Lily B., Elementary School, 2000 Park Place Ave., Fort Worth, SG100000504

Willacy County

Willacy County Courthouse, 547 W. Hidalgo Ave., Raymondville, SG100000507

UTAH

Cache County

Smithfield Tabernacle—Youth Center, 25 N. Main St., Smithfield, SG100000509

Millard County

Callister, Thomas Clark and Millie, House, 155 S 100 E, Fillmore, SG100000511

Weber County

Wilbur, J.M., Company Blacksmith Shop, 2145 N 5500 E, Eden, SG100000513

VERMONT

Bennington County

White, H.C., Company Mill Complex, 940 Water St., North Bennington, SG100000515

WISCONSIN

Dunn County

Downsville Lodge No. 1961 I.O.O.F., E4541 Cty Rd. C, Dunn, SG100000517

Manitowoc County

ALASKA Shipwreck (Scow Schooner), (Great Lakes Shipwreck Sites of Wisconsin MPS MPS), 4.2 mi. NE of Two Rivers, in Lake Michigan, Two Rivers vicinity, MP100000518

Vilas County

Peacock Inn, 8780 WI 70, St. Germain, SG100000519

Waukesha County

Genesee Woolen Mill Site, W308 S4484 and W308 S4473 WI 83, Genesee, SG100000521

Nashotah House Theological Seminary, 2777 Mission Rd., Delafield, SG100000523

WYOMING

Sublette County

Lander Road-New Fork River Crossing, 1371 Paradise Rd., 23–136 (West Side of New Fork River), Boulder vicinity, SG100000525

A request for removal has been made for the following resource(s):

KANSAS

Rice County

Beckett, Charles K., House, 210 W. Main, Sterling, OT08001350

Sumner County

Spring Creek School, 4 mi. N of US 81, approximately 4 mi. NE of Caldwell, Corbin vicinity, OT97000410

UTAH

Salt Lake County

Hotel Albert, (Salt Lake City Business District MRA MPS), 121 SW Temple St., Salt Lake City, OT82004142

A request to move has been received for the following resource(s):

DISTRICT OF COLUMBIA

District of Columbia

Lockkeeper's House, C & O Canal Extension, SW corner of 17th St. and Constitution Ave. NW., Washington, MV73000218

Please note the numbering system has changed in our new database.

Authority: 60.13 of 36 CFR part 60.

Dated: December 8, 2016.

Barbara Wyatt,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–30680 Filed 12–23–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0001; DS63644000 DR2PS0000.CH7000 167D0102R2]

Agency Information Collection Activities: Solid Minerals and Geothermal Collections—OMB Control Number 1012–0010; Comment Request

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of renewal of an existing information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), ONRR is notifying the public that we have submitted to the Office of Management and Budget (OMB) an Information Collection Request (ICR) to renew approval of the paperwork requirements in the regulations under title 30, *Code of Federal Regulations* (CFR), parts 1202, 1206, 1210, 1212, 1217, and 1218. This ICR pertains to royalty and production reporting on solid minerals and geothermal leases on Federal and Indian lands. There are four forms associated with this information collection: ONRR–4430 [*Solid Minerals Production and Royalty Report*], ONRR–4292 [*Coal Washing Allowance Report*], ONRR–4293 [*Coal Transportation Allowance Report*], and ONRR–4440 [*Solid Minerals Sales Summary*]. This notice also provides the public with a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: OMB has up to 60 days to approve or disapprove the information collection request but may respond after 30 days; therefore, you should submit your public comments to OMB by January 26, 2017 for the assurance of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of Interior (1012–0010), by telefax at (202) 395–5806 or via email to *OIRA_Submission@omb.eop.gov.* Also, please send a copy of your comments to Mr. Luis Aguilar, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 64400B, Denver, Colorado 80225. Please reference ''ICR 1012–0010'' in your comments.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues contact Mr. Michael Anspach, Solid Minerals, ONRR, telephone at (303) 231–3618, or email to *michael.anspach@onrr.gov.* For other questions, contact Mr. Luis Aguilar, telephone at (303) 231–3418, or email to *luis.aguilar@onrr.gov.* You may also contact Mr. Aguilar to obtain copies (free of charge) of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information. You may also review the Information Collection Request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary's responsibility, according to various laws, is to (1) manage mineral resource production from Federal and Indian lands and the OCS; (2) collect the royalties and other mineral revenues due; and (3) distribute the funds collected under those laws. We have posted those laws pertaining to mineral leases on Federal and Indian lands and the OCS at *http://www.onrr.gov/Laws_R_D/PubLaws/default.htm.*

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

You can find the information collections covered in this ICR at 30 CFR parts:

- 1202, subpart H, which pertains to geothermal resources royalties.
- 1206, subparts F, H, and J, which pertain to product valuation of Federal coal, geothermal resources, and Indian coal.
- 1210, subparts E and H, which pertain to production and royalty reports on solid minerals and geothermal resources leases.
- 1212, subparts E and H, which pertain to recordkeeping of reports and files for solid minerals and geothermal resources leases.
- 1217, subparts E, F, and G, which pertain to audits and inspections of coal, other solid minerals, and geothermal resources leases.
- 1218, subparts E and F, which pertain to royalties, rentals, bonuses, and other monies payment for solid minerals and geothermal resources.

All data reported is subject to subsequent audit and adjustment.

General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in a value of production from the leased lands. The lessee or designee must report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling such minerals.

Information Collections

ONRR, acting for the Secretary, uses the information that we collect to ensure that lessees accurately value and appropriately pay all royalties based on the correct product valuation. ONRR and other Federal Government entities,

including the Bureau of Land Management, the Bureau of Indian Affairs, and State and Tribal governmental entities, use the information for audit purposes and for evaluating the reasonableness of product valuation or allowance claims that lessees submit. Please refer to the burden hour chart for all reporting requirements and associated burden hours.

A. Solid Minerals

Producers of coal and other solid minerals from any Federal or Indian lease must submit current form ONRR–4430 and other associated data formats such as form ONRR–4440. These companies also report certain data on form ONRR–2014 (OMB Control Number 1012–0004). Producers of coal from any Indian lease must also submit forms ONRR–4292 and ONRR–4293, if they wish to claim allowances on form ONRR–4430; the information that ONRR requests is the minimum necessary to carry out our mission and places the least possible burden on respondents.

B. Geothermal Resources

This ICR also covers some of the information collections for geothermal resources, which ONRR groups by usage (electrical generation, direct use, and byproduct recovery), and by disposition of the resources (arm's-length (unaffiliated) contract sales, non-arm's-length contract sales, and no contract sales) within each use group. ONRR relies primarily on data that payors report on form ONRR–2014 for the majority of our business processes, including geothermal information. In addition to using the data to account for royalties that payors report, ONRR uses the data for monthly distribution of mineral revenues and for audit and compliance reviews.

OMB Approval

We will request OMB approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the loss of royalty payments. We protect the proprietary information that ONRR receives and do not collect items of a sensitive nature. Reporters must submit forms ONRR–4430 and ONRR–4440. Also, ONRR requires that reporters submit forms ONRR–4292 and ONRR–4293 to claim allowances on form ONRR–4430.

II. Data

Title: Solid Minerals and Geothermal Collections—30 CFR parts 1202, 1206, 1210, 1212, 1217, and 1218.

OMB Control Number: 1012–0010.

Bureau Form Number: Forms ONRR–4430, ONRR–4292, ONRR–4293, and ONRR–4440.

Frequency: Monthly, annually, and on occasion.

Estimated Number of Respondents: 100 reporters.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 3,884 hours.

We have not included in our estimates certain requirements that companies perform in the normal course of business and that ONRR considers usual and customary. This 30-day **Federal Register** notice burden chart shows an adjustment increase of +450 burden hours from the previous 60-day notice; this adjustment is based on a new requirement to submit additional information for the sales summaries in form ONRR–4440. We display the estimated annual burden hours by CFR section and paragraph in the following chart.

SUMMARY OF INFORMATION COLLECTIONS

Information collections (and 30 CFR references *)	Requirement to respond	Frequency of response	Number of annual responses	Annual burden hours
1. Reporting Formats	Mandatory	Monthly	3,599	1,557
• Form ONRR–4430, Solid Minerals Production and Royalty Report				
• Associated Data (sales summary, facility data) (1206.257, 1206.259, 1206.262, 1206.264, 1206.265, 1206.456, 1206.463, 1206.464; 1210.201, 1210.203, 1210.204; 1218.201 [1206.457, 1206.460]; 1218.203).				
• Form ONRR–4440, Solid Minerals Sales Summary (1201.202)	Mandatory	Monthly	900	900
2. Allowance Forms:				
• Form ONRR–4292, Coal Washing Allowance Report (1206.458)	Required to obtain a benefit.	Annually	3	4
• Form ONRR–4293, Coal Transportation Allowance Report (1206.461).		On occasion	4	5
3. Geothermal Resources (1206.353, 1206.354, 1206.356, 1206.359, 1206.364; 1210.352; 1218.306).	Mandatory	On occasion	48	62
4. Recordkeeping (1206.253, 1206.254, 1206.257; 1212.200)	Mandatory	As requested	4,880	1,356
Total			9,434	3,884

Note: Audit Process—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because ONRR staff asks non-standard questions to resolve exceptions.

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour'' cost burdens associated with the collection of information.

III. Request for Comments

Section 3506(c)(2)(A) of the PRA requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information that ONRR collects; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on April 14, 2016 (81 FR 22106), announcing that

we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no unsolicited comments in response to the notice.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.)* provides that an agency may not conduct or sponsor—and a person is not required to respond to—a collection of information unless it displays a currently valid OMB control number. If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection, but they may respond after 30 days.

Public Comment Policy: ONRR will post all comments, including names and addresses of respondents at *http://www.regulations.gov.* Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comment(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us, in your comment, to withhold PII from public view, we cannot guarantee that we will be able to do so.

Dated: December 13, 2016.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2016–31063 Filed 12–23–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Gulf of Mexico Central Planning Area Outer Continental Shelf Oil and Gas Lease Sale 247; MMAA104000

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final notice of sale.

SUMMARY: On Wednesday, March 22, 2017, the Bureau of Ocean Energy Management (BOEM) will open and publicly announce bids received for blocks offered in the Gulf of Mexico Central Planning Area (CPA) Lease Sale 247 (CPA Sale 247.. The CPA Sale 247 Final Notice of Sale (NOS) package contains information essential to potential bidders.

DATES: Public Bid reading for CPA Sale 247 will begin at 9:00 a.m. on Wednesday, March 22, 2017, at 1201 Elmwood Park Boulevard, New Orleans, Louisiana. The venue will not be open to the general public, media, or industry. Instead, the bid opening will be available for public viewing on BOEM's Web site at *www.boem.gov* via live-streaming video beginning at 9:00 a.m. on the date of the sale. The use of live-streaming video will provide greater access to a wider national and international audience while ensuring the security of BOEM staff. BOEM will also post the results on its Web site after bid opening and reading are completed. All times referred to in this document are Central Standard Time, unless otherwise specified.

Bid Submission Deadline: BOEM must receive all sealed bids during normal business hours, between 8:00 a.m. and 4:00 p.m. through March 20, 2017, and from 8:00 a.m. to the Bid Submission Deadline of 10:00 a.m. on Tuesday, March 21, 2017, the day before the lease sale. For more information on bid submission, see Section VII, ''Bidding Instructions,'' of this document.

ADDRESSES: Interested parties, upon request, may obtain a compact disc (CD–ROM) containing the Final Notice of Sale (NOS) package by contacting the BOEM Gulf of Mexico (GOM) Region at: Gulf of Mexico Region Public Information Office, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or can download the Final NOS package by visiting the BOEM Web site at *http://www.boem.gov/Sale-247/.*

Table of Contents

This Final NOS includes the following sections:

I. Lease Sale Area
II. Statutes and Regulations
III. Lease Terms and Economic Conditions
IV. Lease Stipulations
V. Information to Lessees
VI. Maps
VII. Bidding Instructions
VIII. Bidding Rules and Restrictions
IX. Forms
X. The Lease Sale
XI. Delay of Sale

I. Lease Sale Area

Blocks Offered for Leasing: BOEM will offer for bid in this lease sale all of the available unleased acreage in the CPA, except those blocks listed in ''Blocks Not Offered for Leasing'' below.

Blocks Not Offered for Leasing: The following whole and partial blocks are not offered for lease in this sale:

Whole and partial blocks deferred by the Gulf of Mexico Energy Security Act of 2006, Public Law 109–432:

Pensacola (OPD NH 16–05)

Whole Blocks: 751 through 754, 793 through 798, 837 through 842, 881 through 886, 925 through 930, and 969 through 975

Destin Dome (OPD NH 16–08)

Whole Blocks: 1 through 7, 45 through 51, 89 through 96, 133 through 140, 177 through 184, 221 through 228, 265 through 273, 309 through 317, 353 through 361, 397 through 405, 441 through 450, 485 through 494, 529 through 538, 573 through 582, 617 through 627, 661 through 671, 705 through 715, 749 through 759, 793 through 804, 837 through 848, 881 through 892, 925 through 936, and 969 through 981

DeSoto Canyon (OPD NH 16–11)

Whole Blocks: 1 through 15, 45 through 59, and 92 through 102

Partial Blocks: 16, 60, 61, 89 through 91, 103 through 105, and 135 through 147

Henderson (OPD NG 16–05)

Partial Blocks: 114, 158, 202, 246, 290, 334, 335, 378, 379, 422, and 423

Blocks that are adjacent to or beyond the United States Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap:

Lund South (OPD NG 16–07)

Whole Blocks: 128, 129, 169 through 173, 208 through 217, 248 through 261, 293 through 305, and 349

Henderson (OPD NG 16–05)

Whole Blocks: 466, 508 through 510, 551 through 554, 594 through 599, 637 through 643, 679 through 687, 722 through 731, 764 through 775, 807 through 819, 849 through 862, 891 through 905, 933 through 949, and 975 through 992

Partial Blocks: 467, 511, 555, 556, 600, 644, 688, 732, 776, 777, 820, 821, 863, 864, 906, 907, 950, 993, and 994

Florida Plain (OPD NG 16–08)

Whole Blocks: 5 through 24, 46 through 67, 89 through 110, 133 through 154, 177 through 197, 221 through 240, 265 through 283, 309 through 327, and 363 through 370

The lease status of the following block is currently under appeal; should the appeal be resolved prior to publishing the Final NOS, the block may be available for lease in the CPA 247 Sale:

West Cameron (Leasing Map LA1) Block 171

II. Statutes and Regulations

In accordance with the provisions of the Outer Continental Shelf Lands Act,

43 U.S.C. 1331–1356, as amended (OCSLA), and the implementing regulations issued pursuant thereto in 30 CFR parts 550 and 556, each lease is issued pursuant to OCSLA and is subject to OCSLA implementing regulations promulgated pursuant thereto, and other applicable statutes and regulations in existence upon the effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease is also subject to amendments to statutes and regulations, including but not limited to OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.,* those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligations under the lease.

III. Lease Terms and Economic Conditions

Lease Terms

OCS Lease Form

BOEM will use Form BOEM–2005 (October 2011) to convey leases resulting from this sale. This lease form may be viewed on the BOEM Web site at *http://www.boem.gov/BOEM-2005/.* The lease form will be amended to conform with the specific terms, conditions, and stipulations applicable to the individual lease. The terms, conditions, and stipulations applicable to this sale are set forth below.

Initial Periods

Initial periods are summarized in the following table:

Water depth (meters)	Initial period
0 to <400	Standard initial period is 5 years; the lessee may earn an additional 3 years (*i.e.,* for an 8-year extended initial period) if a well is spudded targeting hydrocarbons below 25,000 feet True Vertical Depth Subsea (TVD SS) during the first 5 years of the lease.
400 to <800	Standard initial period is 5 years; the lessee will earn an additional 3 years (*i.e.,* for an 8-year extended initial period) if a well is spudded during the first 5 years of the lease.
800 to <1,600	Standard initial period is 7 years; the lessee will earn an additional 3 years (*i.e.,* for a 10-year extended initial period) if a well is spudded during the first 7 years of the lease.
1,600 +	10 years.

(1) The standard initial period for a lease in water depths less than 400 meters issued as a result of this sale is 5 years. If the lessee spuds a well targeting hydrocarbons below 25,000 feet TVD SS within the first 5 years of the lease, then the lessee may earn an additional 3 years, resulting in an 8 year extended initial period. The lessee will earn the 8-year extended initial period when the well is drilled to a target below 25,000 feet TVD SS, or the lessee may earn the 8-year extended initial period in cases where the well targets, but does not reach, a depth below 25,000 feet TVD SS due to mechanical or safety reasons, where sufficient evidence is provided that it did not reach that target for reasons beyond the lessee's control.

In order to earn the 8-year extended initial period, the lessee is required to submit to the BOEM Gulf of Mexico Regional Supervisor for Leasing and Plans, as soon as practicable, but in any instance not more than 30 days after completion of the drilling operation, a letter providing the well number, spud date, information demonstrating a target below 25,000 TVD SS and whether that target was reached, and if applicable, any safety, mechanical, or other problems encountered that prevented the well from reaching a depth below 25,000 feet TVD SS. This letter must request confirmation that the lessee earned the 8-year extended initial period. The extended initial period is not effective unless and until the lessee receives confirmation from BOEM. The Regional Supervisor for Leasing and Plans will confirm in writing, within 30 days of receiving the lessee's letter whether the lessee has earned the extended initial period and update BOEM records accordingly.

A lessee that has earned the 8-year extended initial period by spudding a well with a hydrocarbon target below 25,000 feet TVD SS during the standard 5-year initial period of the lease, will not be granted a suspension for that same period under the regulations at 30 CFR 250.175, because the lease is not at risk of expiring.

(2) The standard initial period for a lease in water depths ranging from 400 to less than 800 meters issued as a result of this sale is 5 years. If the lessee spuds a well within the standard 5-year initial period of the lease, the lessee will earn an additional 3 years, resulting in an 8-year extended initial period.

In order to earn the 8-year extended initial period, the lessee is required to submit to the BOEM Gulf of Mexico Regional Supervisor for Leasing and Plans, as soon as practicable, but in no case more than 30 days after spudding a well, a letter providing the well number and spud date, and requesting confirmation that the lessee earned the 8-year extended initial period. Within 30 days of receipt of the request, the Regional Supervisor for Leasing and Plans will provide written confirmation of whether the lessee has earned the earned the extended initial period and update BOEM records accordingly.

(3) The standard initial period for a lease in water depths ranging from 800 to less than 1,600 meters issued as a result of this sale is 7 years. If the lessee spuds a well within the standard 7-year initial period of the lease, the lessee will earn an additional 3 years, resulting in a 10-year extended initial period.

In order to earn the 10-year extended initial period, the lessee is required to submit to the BOEM Gulf of Mexico Regional Supervisor for Leasing and Plans, as soon as practicable, but in no case more than 30 days after spudding a well, a letter providing the well number and spud date, and requesting confirmation that the lessee earned the 10-year extended initial period. Within 30 days of receipt of the request, the Regional Supervisor for Leasing and Plans will provide written confirmation of whether the lessee has earned the extended initial period and update BOEM records accordingly.

(4) The standard initial period for a lease in water depths 1,600 meters or greater issued as a result of this sale will be 10 years.

Economic Conditions

Minimum Bonus Bid Amounts

- $25.00 per acre or fraction thereof for blocks in water depths less than 400 meters; and
- $100.00 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

BOEM will not accept a bonus bid unless it provides for a cash bonus in an amount equal to, or exceeding, the specified minimum bid of $25.00 per acre or fraction thereof for blocks in water depths less than 400 meters, and $100.00 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

Rental Rates

Annual rental rates are summarized in the following table:

RENTAL RATES PER ACRE OR FRACTION THEREOF

Water depth (meters)	Years 1–5	Years 6, 7, & 8 +
0 to <200	$7.00	$14.00, $21.00, & $28.00
200 to <400	11.00	$22.00, $33.00, & $44.00
400 + ...	11.00	$16.00

Escalating Rental Rates for Leases With an 8-Year Extended Initial Period in Water Depths Less Than 400 Meters

Any lessee with a lease in less than 400 meters water depth who earns an 8-year extended initial period will pay an escalating rental rate as shown above. The rental rates after the fifth year for blocks in less than 400 meters water depth will become fixed and no longer escalate, if another well is spudded targeting hydrocarbons below 25,000 feet TVD SS after the fifth year of the lease, and BOEM concurs that such a well has been spudded. In this case, the rental rate will become fixed at the rental rate in effect during the lease year in which the additional well was spudded.

Royalty Rate

- 18.75%

Minimum Royalty Rate

- $7.00 per acre or fraction thereof per year for blocks in water depths less than 200 meters; and
- $11.00 per acre or fraction thereof per year for blocks in water depths 200 meters or deeper.

Royalty Suspension Provisions

The issuance of leases with Royalty Suspension Volumes (RSVs) or other forms of royalty relief is authorized under existing BOEM regulations at 30 CFR part 560. The specific details relating to eligibility and implementation of the various royalty relief programs, including those involving the use of RSVs, are codified in Bureau of Safety and Environmental Enforcement (BSEE) regulations at 30 CFR part 203. In this sale, the only royalty relief program being offered that involves the provision of RSVs relates to the drilling of ultra-deep wells in water depths of less than 400 meters, as described in the following sections.

Royalty Suspension Volumes on Gas Production From Ultra-Deep Wells

Leases issued as a result of this sale may be eligible for RSVs incentives on gas produced from ultra-deep wells pursuant to 30 CFR part 203. These regulations implement the requirements of the Energy Policy Act of 2005. Under this program, wells on leases in less than 400 meters water depth and completed to a drilling depth of 20,000 feet TVD SS or deeper receive a RSV of 35 billion cubic feet on the production of natural gas. This RSVs incentive is subject to applicable price thresholds set forth in the regulation at 30 CFR part 203.

IV. Lease Stipulations

One or more of the following stipulations may be applied to leases issued as a result of this sale. The detailed text of these stipulations is contained in the ''Lease Stipulations'' section of the Final NOS package.

(1) Topographic Features
(2) Live Bottom
(3) Military Areas
(4) Evacuation
(5) Coordination
(6) Blocks South of Baldwin County, Alabama
(7) United Nations Convention on the Law of the Sea Royalty Payment
(8) Protected Species
(9) Below Seabed Operations
(10) Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico

V. Information to Lessees

The Information to Lessees (ITL) clauses below provide detailed information on certain issues pertaining to this oil and gas lease sale. The detailed text of these ITL clauses is contained in the ''Information to Lessees'' section of the Final NOS package and includes:

(1) Navigation Safety
(2) Ordnance Disposal Areas in the CPA
(3) Communications Towers
(4) Existing and Proposed Artificial Reefs/Rigs-to-Reefs
(5) Lightering Zones
(6) Indicated Hydrocarbons List
(7) Military Areas in the CPA
(8) BSEE Inspection and Enforcement of selected U.S. Coast Guard Regulations
(9) Deepwater Port Applications for Offshore Liquefied Natural Gas Facilities
(10) Ocean Dredged Material Disposal Sites
(11) Potential Sand Dredging Activities in the CPA
(12) Below Seabed Operations
(13) Industrial Waste Disposal Areas
(14) Air Quality Permits
(15) Notice of Arrival on the Outer Continental Shelf
(16) Gulf Islands National Seashore
(17) Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment; Disqualification Due to a Conviction under the Clean Air Act or the Clean Water Act
(18) Protected Species
(19) Proposed Expansion of the Flower Garden Banks National Marine Sanctuary

VI. Maps

The maps pertaining to this lease sale may be found on the BOEM Web site at *http://www.boem.gov/Sale-247/.*

The following maps also are included in the Final NOS package:

Lease Terms and Economic Conditions Map

The lease terms, economic conditions, and the blocks to which these terms and conditions apply are shown on the map entitled, ''Final, Central Planning Area, Lease Sale 247, March 22, 2017, Lease Terms and Economic Conditions,'' which is included in the Final NOS package.

Stipulations and Deferred Blocks Map

The blocks to which one or more lease stipulations may apply are shown on the map entitled, ''Final, Central Planning Area, Lease Sale 247, March 22, 2017, Stipulations and Deferred Blocks Map,'' which is included in the Final NOS package.

VII. Bidding Instructions

Bids may be submitted in person or by mail at the address below in the ''Mailed Bids'' section. Bidders submitting their bid(s) in person are advised to contact Ms. Cindy Thibodeaux at (504) 736–2809, or Mr. Greg Purvis at (504) 736–1729, to schedule a time and provide the names of the company representative(s) to submit the bid(s). Instructions on how

to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and what information must be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid must be submitted in a sealed envelope (as described below) and include the following:

- Total amount of the bid in whole dollars only;
- Sale number;
- Sale date;
- Each bidder's exact name;
- Each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (*e.g.,* 33.33333%);
- Typed name and title, and signature of each bidder's authorized officer;
- Each bidder's qualification number;
- Map name and number or Official Protraction Diagram (OPD) name and number;
- Block number; and
- Statement acknowledging that the bidder(s) understand that this bid legally binds the bidder(s) to comply with all applicable regulations, including payment of one-fifth of the bonus bid amount on all apparent high bids.

The information required on the bid(s) will be specified in the document ''Bid Form'' contained in the Final NOS package. A blank bid form is provided in the Final NOS package for convenience and may be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- ''Sealed Bid for Central Planning Area Oil and Gas Lease Sale 247, not to be opened until 9 a.m. Wednesday, March 22, 2017'';
- Map name and number or OPD name and number;
- Block number for block bid upon; and
- The exact name and qualification number of the submitting bidder only.

The Final NOS package includes a sample bid envelope for reference.

Mailed Bids

If bids are mailed, please address the envelope containing the sealed bid envelope(s) as follows: Attention: Leasing and Financial Responsibility Section, BOEM Gulf of Mexico Region, 1201 Elmwood Park Boulevard WS–266A, New Orleans, Louisiana 70123–2394.

Contains Sealed Bids for CPA Oil and Gas Lease Sale 247, Please Deliver to Ms. Cindy Thibodeaux or Mr. Greg Purvis 2nd Floor, Immediately.

Please Note

Bidders mailing bid(s) are advised to call Ms. Cindy Thibodeaux at (504) 736–2809, or Mr. Greg Purvis at (504) 736–1729, immediately after putting their bid(s) in the mail to ensure receipt of bids prior to the Bid Submission Deadline. If BOEM receives bids later than the Bid Submission Deadline, the BOEM Gulf of Mexico Regional Director (RD) will return those bids unopened to bidders. Please see ''Section XI. Delay of Sale'' regarding BOEM's discretion to extend the Bid Submission Deadline in the case of an unexpected event (*e.g.,* flooding or travel restrictions) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently an OCS oil and gas lease record title holder or designated operator, or those that ever have defaulted on a one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, must guarantee (secure) the payment of the one-fifth bonus bid deposit prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- Amend an area-wide development bond via bond rider;
- Provide a letter of credit; or
- Provide a lump sum payment in advance via EFT.

For more information on EFT procedures, see Section X of this document entitled, ''The Lease Sale.''

Affirmative Action

Prior to bidding, each bidder should file Equal Opportunity Affirmative Action Representation Form BOEM–2032 (October 2011, *http://www.boem.gov/BOEM–2032/*) and Equal Opportunity Compliance Report Certification Form BOEM–2033 (October 2011, *http://www.boem.gov/BOEM–2033/*) with the BOEM Gulf of Mexico Region Adjudication Section. This certification is required by 41 CFR part 60 and Executive Order No. 11246, issued September 24, 1965, as amended by Executive Order No. 11375, issued October 13, 1967, and by Executive Order 13672, issued July 21, 2014. Both forms must be on file for the bidder(s) in the GOM Region Adjudication Section prior to the execution of any lease contract.

Geophysical Data and Information Statement (GDIS)

The GDIS is composed of three parts:

(1) The ''Statement'' page includes the company representatives' information and lists of blocks bid on that used proprietary data and those blocks bid on that did not use proprietary data;

(2) The ''Table'' listing the required data about each proprietary survey used (see below); and

(3) The ''Maps'' being the live trace maps for each survey that are identified in the GDIS statement and table.

Every bidder submitting a bid on a block in CPA Lease Sale 247, or participating as a joint bidder in such a bid, must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS *even if a joint bidder or bidders on a specific block also have submitted a GDIS.* Any speculative data that has been reprocessed externally or ''in-house'' is considered proprietary due to the proprietary processing and is no longer considered to be speculative.

The GDIS must be submitted in a separate and sealed envelope, and must identify all proprietary data; reprocessed speculative data, and/or any Controlled Source Electromagnetic surveys, Amplitude Versus Offset (AVO), Gravity, or Magnetic data; or other information used as part of the decision to bid or participate in a bid on the block. The bidder and joint bidder must also include a live trace map (*e.g.,* .pdf and ArcGIS shape file) for each *proprietary* survey that they identify in the GDIS illustrating the actual areal extent of the *proprietary* geophysical data in the survey (see the ''Example of Preferred Format'' in the Final NOS package for additional information). The shape file *should not* include cultural information; only the live trace map of the survey itself.

The GDIS statement must include the name, phone number, and full address of a contact person and an alternate who are both *knowledgeable about the information and data listed and who are available for 30 days after the sale date.* The GDIS statement also must include a list of all blocks bid upon that did not use proprietary or reprocessed pre- or post-stack geophysical data and information as part of the decision to bid or to participate as a joint bidder in the bid. The GDIS statement must be submitted even if no proprietary geophysical data and information were used in bid preparation for the block.

The GDIS table should have columns that clearly state:

- The sale number; the bidder company's name;

The block area and block number bid on;

The owner of the original data set (*i.e.,* who initially acquired the data);

The industry's original name of the survey (*e.g.,* E Octopus); the BOEM permit number for the survey;

Whether the data set is a fast track version;

Whether the data is speculative or proprietary;

The data type (*e.g.,* 2–D, 3–D, or 4–D; pre-stack or post-stack; and time or depth); and

The migration algorithm (*e.g.,* Kirchhoff Migration, Wave Equation Migration, Reverse Migration, Reverse Time Migration) of the data and the areal extent of the bidder survey (*i.e.,* number of line miles for 2–D or number of blocks for 3–D).

Also, provide the computer storage size, to the nearest gigabyte, of each seismic data and velocity volume used to evaluate the lease block in question. This information will be used in estimating the reproduction costs for each data set, if applicable. The availability of reimbursement of production costs will be determined consistent with 30 CFR 551.13.

Also indicate who reprocessed the data (*e.g.,* external company name or ''in-house'') and when the date of final reprocessing was completed (month and year). If the data was sent to BOEM for bidding in a previous lease sale, list the date the data was processed (month and year) and indicate if AVO data was used in the evaluation. BOEM reserves the right to query about alternate data sets, to quality check, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. An example of the preferred format of the table may be found in the Final NOS package, and a blank digital version of the preferred table may be accessed on the CPA Sale 247 Web page at *http://www.boem.gov/Sale-247.*

The GDIS maps are live trace maps (in .pdf and ArcGIS shape files) that should be submitted for each *proprietary* survey that is identified in the GDIS table. They should illustrate the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' in the Final NOS package for additional information). As previously stated, the shape file *should not* include cultural information; only the live trace map of the survey itself. Pursuant to 30 CFR 551.12 and 30 CFR 556.501, as a condition of the sale, the BOEM Gulf of Mexico RD requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless they are notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data is not required to be submitted to BOEM, and reimbursement will not be provided if such data is submitted by a bidder. The BOEM Gulf of Mexico RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 days of the lease sale. Pursuant to 30 CFR part 551 and 30 CFR 556.501, as a condition of this sale, all bidders that are required to submit data must ensure that the data is received by BOEM no later than the 30th day following the lease sale, or the next business day if the submission deadline falls on a weekend or Federal holiday. The data must be submitted to BOEM at the following address:

Bureau of Ocean Energy Management, Resource Studies, GM 881A, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2304.

BOEM recommends that bidders mark the submission's external envelope as ''Deliver Immediately to DASPU.'' BOEM also recommends that the data be submitted in an internal envelope, or otherwise marked, with the following designation: ''Proprietary Geophysical Data Submitted Pursuant to CPA Lease Sale 247 and used during <Bidder Name's> evaluation of Block <Block Number>.''

In the event a person supplies any type of data to BOEM, that person must meet the following requirements to qualify for reimbursement:

(1) The person must be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM User Account is needed to register or update an entity's records. The Web site for registering is *https://www.sam.gov.*

(2) The persons must be enrolled in the Department of Treasury's Invoice Processing Platform (IPP) for electronic invoicing. The person must enroll in the IPP at *https://www.ipp.gov/.* Access then will be granted to use the IPP for submitting requests for payment. When a request for payment is submitted, it must include the assigned Purchase Order Number on the request.

(3) The persons must have a current On-line Representations and Certifications Application at *https://www.sam.gov.*

Please Note

The GDIS Information Table *must be submitted digitally,* preferably as an Excel spreadsheet, on a CD or DVD along with the seismic data map(s). If bidders have any questions, please contact Ms. Dee Smith at (504) 736–2706, or Mr. John Johnson at (504) 736–2455. Bidders should refer to Section X of this document, ''The Lease Sale: Acceptance, Rejection, or Return of Bids,'' regarding a bidder's failure to comply with the requirements of the Final NOS, including any failure to submit information as required in the Final NOS or Final NOS package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to or at the time of bid submission. The suggested format will be included in the Final NOS package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.107, 30 CFR 556.401, 30 CFR 556.501, and 30 CFR 556.513.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On November 4, 2016, BOEM published the most recent List of Restricted Joint Bidders in the **Federal Register** at 81 FR 76962. Potential bidders are advised to refer to the **Federal Register,** prior to bidding, for the most current List of Restricted Joint Bidders in place at the time of the lease sale. Please refer to the joint bidding provisions at 30 CFR 556.511–515.

Authorized Signatures

All signatories executing documents on behalf of bidder(s) must execute the same in conformance with the BOEM qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of one-fifth of the bonus bid on all high bids. A statement to this effect is included on each bid form (see the document ''Bid Form'' to be contained in the Final NOS package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the Bid Submission Deadline. The withdrawal request must be on company letterhead and must contain the bidder's name, its BOEM

qualification number, the map name/number, and the block number(s) of the bid(s) to be withdrawn. The withdrawal request must be executed in conformance with the BOEM qualification records. Signatories must be authorized to bind their respective legal business entity (*e.g.,* a corporation, partnership, or LLC) and documentation must be on file with BOEM setting forth this authority to act on the business entity's behalf for purposes of bidding and lease execution under OCSLA (*e.g.,* business charter or articles, incumbency certificate, or power of attorney). The name and title of the authorized signatory must be typed under the signature block on the withdrawal request. The BOEM Gulf of Mexico RD, or the RD's designee, will indicate their approval by signing and dating the withdrawal request.

Bid Rounding

Minimum bonus bid calculations, including rounding, for all blocks will be shown in the document ''List of Blocks Available for Leasing'' included in this Final NOS package. The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, BOEM will round up to the next whole acre. The appropriate minimum rate per acre will then be applied to the whole (rounded up) acreage. If this calculation results in a fractional dollar amount, the minimum bonus bid will be rounded up to the next whole dollar amount. The bonus bid amount must be greater than or equal to the minimum bonus bid in whole dollars.

IX. Forms

The Final NOS package includes instructions, samples, and/or the preferred format for the following items. BOEM strongly encourages bidders to use these formats. Should bidders use another format, they are responsible for including all the information specified for each item in the Final NOS package.

(1) Bid Form
(2) Sample Completed Bid
(3) Sample Bid Envelope
(4) Sample Bid Mailing Envelope
(5) Telephone Numbers/Addresses of Bidders Form
(6) GDIS Form
(7) GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the place, date, and hour specified in the Final NOS. The venue will not be open to the public. Instead, the bid opening will be available for the public to view on BOEM's Web site at *www.boem.gov* via live-streaming. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to the Office of Natural Resources Revenue (ONRR) equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid amount may be obtained on the BOEM Web site at *http://www.boem.gov/Sale-247* under the heading ''Notification of EFT ⅕ Bonus Liability'' after 1:00 p.m. on the day of the sale. All payments must be deposited electronically into an interest-bearing account in the U.S. Treasury by 11:00 a.m. Eastern Time the day following the bid reading (no exceptions). Account information is provided in the ''Instructions for Making Electronic Funds Transfer Bonus Payments'' found on the BOEM Web site identified above.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for CPA Lease Sale 247 following the detailed instructions contained on the ONRR Payment Information Web page at *http://www.onrr.gov/FM/PayInfo.htm.* Acceptance of a deposit does not constitute, and will not be construed as acceptance of, any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. No bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(1) The bidder has complied with all requirements of the Final NOS, including those set forth in the documents contained in the Final NOS package, and applicable regulations;

(2) The bid is the highest valid bid; and

(3) The amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not conform to the requirements of the Final NOS and Final NOS package, OCSLA, or other applicable statute or regulation will be rejected and returned to the bidder. The U.S. Department of Justice and the Federal Trade Commission will review the results of the lease sale for antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures for CPA Lease Sale 247

To ensure that the U.S. Government receives a fair return for the conveyance of leases from this sale, high bids will be evaluated in accordance with BOEM's bid adequacy procedures, which are available at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Bid-Adequacy-Procedures.aspx.*

Lease Award

BOEM requires each bidder awarded a lease to:

(1) Execute all copies of the lease (Form BOEM–2005 (October 2011), as amended);

(2) Pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155 and 556.520(a); and

(3) Satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended. ONRR requests that only one transaction be used for payment of the balance of the bonus bid amount and the first year's rental.

XI. Delay of Sale

The BOEM Gulf of Mexico RD has the discretion to change any date, time, and/or location specified in the Final NOS package in case of an event that the BOEM Gulf of Mexico RD deems may interfere with the carrying out of a fair and orderly lease sale process. Such events could include, but are not limited to, natural disasters (*e.g.,* earthquakes, hurricanes, and floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (504) 736–0557, or access the BOEM Web site at *http://www.boem.gov,* for information regarding any changes.

Dated: December 20, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–31218 Filed 12–23–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2016–0069; MMAA104000]

Gulf of Mexico, Outer Continental Shelf, Central Planning Area Oil and Gas Lease Sale 247

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: BOEM is announcing the availability of a Record of Decision (ROD) for the proposed oil and gas Central Planning Area (CPA) Lease Sale 247. This ROD identifies the Bureau's selected alternative for proposed CPA Lease Sale 247, which is analyzed in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2017; Central Planning Area Lease Sale 247; Final Supplemental Environmental Impact Statement* (CPA 247 Supplemental EIS). The ROD and associated information are available on BOEM's Web site at *http://www.boem.gov/nepaprocess/.*

FOR FURTHER INFORMATION CONTACT: For more information on the ROD, you may contact Mr. Greg Kozlowski, Bureau of Ocean Energy Management, Gulf of Mexico Region, 1201 Elmwood Park Boulevard (GM 627A), New Orleans, Louisiana 70123–2394. You may also contact Mr. Kozlowski by telephone at 504–736–2512.

SUPPLEMENTARY INFORMATION: In the CPA 247 Supplemental EIS, BOEM evaluated three alternatives that are summarized below:

Alternative A—The Proposed Action: This alternative would offer for lease all available unleased blocks within the proposed CPA lease sale area for oil and gas operations with the following exceptions: whole and partial blocks deferred by the Gulf of Mexico Energy Security Act of 2006; and blocks that are adjacent or beyond the United States' Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap. This is BOEM's preferred alternative.

All available unleased whole and partial blocks in the CPA that BOEM will offer for leasing in proposed CPA Lease Sale 247 are listed in the document ''List of Blocks Available for Leasing,'' which is included in the Final Notice of Sale for CPA Lease Sale 247. The proposed CPA lease sale area encompasses about 63 million acres of the total CPA area of 66.45 million acres. As of October 2016, approximately 47.72 million acres of the proposed CPA lease sale area were unleased. The estimated amount of resources projected to be developed as a result of the proposed CPA lease sale is 0.460–0.894 billion barrels of oil (BBO) and 1.939–3.903 trillion cubic feet (Tcf) of gas.

Alternative B—Exclude the Unleased Blocks Near the Biologically Sensitive Topographic Features: This alternative would offer for lease all available unleased blocks within the proposed CPA lease sale area, as described for the proposed action (Alternative A), but it would exclude from leasing any available unleased blocks subject to the Topographic Features Stipulation. The estimated amount of resources projected to be developed is 0.460–0.894 BBO and 1.939–3.903 Tcf of gas. The number of blocks that would not be offered under Alternative B represents only a small percentage of the total number of blocks to be offered under Alternative A; therefore, it is assumed that the levels of activity for Alternative B would be essentially the same as those projected for the CPA proposed action.

Alternative C—No Action: This alternative is the cancellation of proposed CPA Lease Sale 247 and is identified as the environmentally preferred alternative.

Lease Stipulations—The CPA 247 Supplemental EIS describes all lease stipulations, which are included in the Final Notice of Sale Package. The 10 lease stipulations for proposed CPA Lease Sale 247 are the Topographic Features Stipulation; the Live Bottom (Pinnacle Trend) Stipulation; the Military Areas Stipulation; the Evacuation Stipulation; the Coordination Stipulation; the Blocks South of Baldwin County, Alabama, Stipulation; the Protected Species Stipulation; the United Nations Convention on the Law of the Sea Royalty Payment Stipulation; the Below Seabed Operations Stipulation; and the Stipulation on the Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico. The stipulations will be added as lease terms, where applicable, and will therefore be enforceable as part of the lease. Appendix A of the CPA 241/EPA 226 Supplemental EIS, from which the CPA 247 Supplemental EIS was tiered, provides a list and description of standard post-lease mitigating measures that may be required by BOEM or the Bureau of Safety and Environmental Enforcement as a result of plan and permit review processes for the Gulf of Mexico Region.

After careful consideration, BOEM has selected the preferred alternative (Alternative A) in the CPA 247 Supplemental EIS. BOEM's selection of the preferred alternative meets the purpose and need for the proposed action, as identified in the CPA 247 Supplemental EIS, and reflects an orderly resource development with protection of the human, marine, and coastal environments while also ensuring that the public receives an equitable return for these resources and that free-market competition is maintained.

Authority: This NOA of a ROD is published pursuant to the regulations (40 CFR 1506.6) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: December 20, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–31222 Filed 12–23–16; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–045]

GOVERNMENT IN THE SUNSHINE ACT MEETING NOTICE

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 10, 2017 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1306 (Final) (Large Residential Washers from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission by January 30, 2017.
5. Vote in Inv. No. 731–TA–1058 (Second Review) (Wooden Bedroom Furniture from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission by January 25, 2017.
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 21, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–31295 Filed 12–22–16; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Index and Description of Major Information Systems and Availability of Records

AGENCY: United States International Trade Commission.

ACTION: Notice announcing availability of public information.

SUMMARY: The United States International Trade Commission (USITC or Commission) provides notice of its index and description of major information systems and availability of its records.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, telephone (202) 205–2000/2595 or Brian R. Battles, Esquire, Office of the General Counsel, United States International Trade Commission, telephone (202) 708–4737. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site at *https://www.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission makes agency records available to the public in a number of ways:

Electronic Document Information System (EDIS). This system provides access to public documents filed in Title VII, Section 337, and other investigations before the Commission. EDIS is available to the public at *https://edis.usitc.gov.* All EDIS users must register and create an account and password to log-in and use EDIS.

Freedom of Information Act (FOIA). Commission records may also be requested under the FOIA (5 U.S.C. 552). These requests may be filed via the agency FOIA web portal at *https://www.usitc.gov/secretary/foia/foiarequests.htm* or with the Secretary at 500 E Street SW., Washington, DC 20436. A written FOIA request shall indicate clearly in the request letter, and on the envelope, that it is a ''Freedom of Information Act Request.'' Commission rules for requesting information under FOIA are set out in 19 CFR 201.17–201.21. Frequently requested FOIA-processed records can be accessed at *https://www.usitc.gov/secretary/foia/foia_freqreqrecords.htm.*

Harmonized Tariff Schedule of the United States (HTS). The USITC maintains and publishes the HTS pursuant to the omnibus Trade and Competitiveness Act of 1988. The Tariff Information Center, providing the current HTS and related materials, is available to the public at *http://www.usitc.gov/tata/hts/index.htm.*

Government Information Locator Service (GILS). The USITC has an entry in the GILS, at *http://www.access.gpo.gov/su_docs/gils/index.html.*

Libraries. The Commission maintains two libraries, its National Library of International Trade (the Commission's main reference library), located on the 3rd floor of the Commission building, and a law library, located on the 6th floor. Both are open to the public during normal business hours of 8:45 a.m. to 5:15 p.m. and are located at 500 E Street SW., Washington, DC 20436. The libraries contain, among other things, complete sets of Commission reports. To determine whether the respective libraries have the information sought, persons seeking information may call the main library at (202) 205–2630, or the law library at (202) 205–3287.

Public Reading Room. The Commission's public reading room is maintained and available for inspection in the Docket Services division of the Office of the Secretary. It is located on the 1st floor of the Commission building located at 500 E Street SW., Washington, DC 20436. Persons having questions regarding availability of records may contact Docket Services staff at (202) 205–1802. Depending on the age of the records requested, the files are available electronically or on microfiche.

Reports. Reports containing the findings and conclusions of Commission investigations and Commissioner opinions are available online at *https://www.usitc.gov.* Questions may be directed to the Office of the Secretary at (202) 205–2000/2595.

Rules. The Commission's Rules of Practice and Procedure set out the procedures used in Commission proceedings. The rules in 19 CFR parts 200–213 are located in the Code of Federal Regulations and available on the Commission's Web site at *https://www.usitc.gov.*

Tariff and Trade DataWeb. The Commission's DataWeb, *https://dataweb.usitc.gov,* provides public access to U.S. tariff and international trade data. Data from 1989 are available and can be retrieved in a number of classification systems.

USITC Web Site. Recent Commission notices, news releases, meeting agendas, general information ''fact sheets,'' Commissioner biographies, schedules of pending investigations (including hearing dates and deadlines for written submissions), reports, information frequently requested under FOIA, and general information about the Commission are available electronically through the Commission's Web site at *https://www.usitc.gov.* Copies of Commission public records can also be obtained from the Secretary.

By order of the Commission.

Issued: December 20, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–31069 Filed 12–23–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1008]

Certain Carbon Spine Board, Cervical Collar, CPR Masks and Various Medical Training Manikin Devices, and Trademarks, Copyrights of Product Catalogues, Product Inserts and Components Thereof; Commission Determination Not To Review an Initial Determination Finding All Respondents in Default; Request for Written Submissions on Remedy, the Public Interest, and Bonding

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'') issued by the presiding administrative law judge (''ALJ'') on November 21, 2016, finding all respondents in default. The Commission requests written submissions, under the schedule set forth below, on remedy, public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. 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 June 24, 2016, based on an amended complaint, as supplemented, filed by Laerdal Medical Corp. of Wappingers Falls, New York, and Laerdal Medical AS of Stavanger, Norway (together, ''Laerdal''). 81 FR 41349–50. The investigation was instituted to determine whether there is a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain carbon spine board, cervical collar, CPR masks, various medical training manikin devices, trademarks, copyrights of product catalogues and products inserts, and components thereof by reason of infringement of one or more of U.S. Patent No. 6,090,058, U.S. Trademark Registration No. 3,476,656, or U.S. Copyright Registration Nos. VA 1–879–023 and VA 1–879–026, or by reason of trade dress misappropriation and infringement. *Id.* at 41349. The Commission's notice of investigation named as respondents Shanghai Evenk International Trading Co., Ltd., Shanghai Honglian Medical Instrument, Development Co., Ltd., and Shanghai Jolly Medical Education Co., Ltd., all of Shanghai, China; Zhangjiagang Xiehe Medical Apparatus & Instruments Co., Ltd., Zhangjiagang New Fellow Med Co., Ltd., Jiangsu Yongxin Medical Equipment Co., Ltd., and Jiangsu Yongxin Medical-Use Facilities Making, Co., Ltd, all of Zhangjiagang City, China; Jiangyin Everise Medical Devices Co., Ltd., of Jiangyin City, China; Medsource International Co., Ltd. and Medsource Factory, Inc. of PuDong, China; and Basic Medical Supply, LLC of Richmond, Texas. *Id.* at 41350. The Office of Unfair Import Investigations (''OUII'') was also named as a party. *Id.*

All respondents were served with a copy of the complaint and notice of investigation. *See* OUII Default Motion Response (Oct. 31, 2016) at 3 and Ex. A. On October 20, 2016, Laerdal filed a motion requesting that the ALJ order all respondents to show cause why they should not be held in default for failing to respond to the complaint and notice of investigation. On October 31, 2016, OUII filed a response in support of Laerdal's motion.

On November 7, 2016, the ALJ ordered all of the respondents to show cause why they should not be held in default, and set a response deadline of November 14, 2016. Order No. 5. No responses were filed. On November 21, 2016, the ALJ issued the subject ID (Order No. 6) finding all respondents in default pursuant to Commission Rules 210.16 and 210.17. No petitions for review of the ID were filed. On December 1, 2016, Laerdal indicated that it was not seeking a general exclusion order.

The Commission has determined not to review the subject ID.

Section 337(g)(1) and Commission Rule 210.16(c) authorize the Commission to order relief against a respondent found in default, unless, after considering the public interest, it finds that such relief should not issue.

In connection with the final disposition of this investigation, the Commission may: (1) Issue an order that could result in the exclusion of articles manufactured or imported by the defaulting respondents; and/or (2) issue cease and desist orders that could result in the defaulting respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors that the Commission will consider include the effect that the exclusion order and/or cease and desists orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Laerdal and OUII are requested to submit proposed remedial orders for the Commission's consideration. Laerdal is also requested to state the HTSUS numbers under which the accused products are imported, and to state the dates that the patents expire. Laerdal is further requested to supply identification information on any known importers.

Written submissions and proposed remedial orders must be filed no later than the close of business on January 5, 2017. Reply submissions must be filed no later than the close of business on January 12, 2017. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit eight true paper copies to the Office of the Secretary pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1008'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).* Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full

statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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: December 20, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–31074 Filed 12–23–16; 8:45 am]

BILLING CODE 7020–02–P

[1] All contract personnel will sign appropriate nondisclosure agreements.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–945]

Certain Network Devices, Related Software and Components Thereof (II); Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order against certain network devices, related software and components thereof imported by and a and cease and desist order against respondent Arista Networks, Inc. of Santa Clara, California. This notice is soliciting public interest comments from the public only.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*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: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on December 9, 2016. Comments should address whether issuance of a limited exclusion order and cease and desist order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended order are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended order;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order within a commercially reasonable time; and

(v) Explain how the limited exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on January 17, 2017. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–945'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices,

and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 20, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–31086 Filed 12–23–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–976]

Certain Woven Textile Fabrics and Products Containing Same; Commission Determination Not To Review an Initial Determination Finding a Violation of Section 337; Request for Written Submissions on Remedy, the Public Interest, and Bonding

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 the initial determination (''ID'') (Order No. 21) issued by the presiding administrative law judge (''ALJ'') on November 10, 2016, granting summary determination that one defaulting respondent has violated section 337 of the Tariff Act of 1930, as amended. The Commission requests written submissions, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *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 December 18, 2015, based on a supplemented and twice-amended complaint filed by AAVN, Inc. of Richardson, Texas (''AAVN''). 80 FR 79094 (December 18, 2015). The complaint alleged 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, or the sale within the United States after importation of certain woven textile fabrics and products containing same, by reason of infringement of claims 1–7 of U.S. Patent No. 9,131,790 (''the '790 patent'') and/or by reason of false advertising. The notice of investigation named fifteen respondents. In the course of the investigation, fourteen of the respondents were terminated from the investigation based upon settlement agreement or consent order. Remaining is Pradip Overseas Ltd. of Ahmedabad, India (''Pradip'').

In the complaint, AAVN accused Pradip of false advertising, specifically alleging that Pradip misrepresented the thread count of sheets manufactured in India, imported into the United Sates, and sold in United States department stores. Second Am. Compl. ¶¶ 39–41, 80 (Nov. 12, 2015); *id.* at Ex. 46 (''800 Thread Count'' sheets measured at 252.7 threads). Pradip expressly defaulted. In particular, although Pradip responded to the complaint, Pradip later terminated its relationship with its attorneys and represented that it would not participate in the remainder of the investigation. *See* Order No. 14 at 1 (Apr. 19, 2016).

On September 2, 2016, AAVN moved for leave to file a summary determination motion. The summary determination motion that was appended argued, *inter alia,* that Pradip had violated section 337 by falsely advertising the thread count of its imported sheets, that the false advertising was deceptive, material, and injurious to AAVN. AAVN sought a general exclusion order and 100 percent bond during the Presidential review period. *See* 19 U.S.C. 1337(d)(2), (j)(3). On September 15, 2016, the Commission investigative attorney responded in support of the motion for leave and the accompanying summary determination motion including its proposed relief.

On November 10, 2016, the ALJ granted the motion for summary determination as the subject ID (Order No. 21). The ALJ found that AAVN had shown a violation of section 337 by reason of false advertising under section 43 of the Lanham Act, 15 U.S.C. 1125(a)(1)(B). Order No. 21 at 7–9, 13–15. As to remedy, citing 19 U.S.C. 1337(d)(2), which sets forth the test for issuance of a general exclusion order, *id.* at 16, the ALJ found that ''the evidence shows a widespread pattern of violation of Section 337,'' *id.* at 17. The ALJ also found that ''the evidence shows that it is difficult to identify the source and manufacturers of the falsely advertised products,'' because ''U.S. retailers fail to identify the manufacturer, importer or seller of the textile products at the point of sale.'' *Id.* at 18. Nor do import records ''reveal the names of the original manufacturers of the materials used to construct the imported products.'' *Id.* Accordingly, the ALJ found ''that the evidence shows that it is difficult, if not impossible, to identify the sources of the falsely advertised goods.'' *Id.* Based on these findings the ALJ recommended the issuance of a general exclusion order. *Id.* In the alternative, the ALJ recommended the issuance of a limited exclusion order. *Id.* at 19. The ALJ recommended that bond be set at 100 percent of the entered value of the falsely advertised products. *Id.*

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for

[1] All contract personnel will sign appropriate nondisclosure agreements.

purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the HTSUS subheadings under which the accused products are imported, and provide identification information for all known importers of the subject articles.

Written submissions and proposed remedial orders must be filed no later than close of business on January 6, 2017. Reply submissions, if any, must be filed no later than the close of business on January 13, 2017. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 21. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA 976'') in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary ((202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes (all contract personnel will sign appropriate nondisclosure agreements). All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determinations 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: December 20, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–31085 Filed 12–23–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[Docket No. ODAG 167]

National Commission on Forensic Science Solicitation of Applications for Additional Statistician Commission Membership

AGENCY: Department of Justice.

ACTION: Solicitation of applications for additional Commission membership with subject matter expertise in statistics for the National Commission on Forensic Science.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, this notice announces the solicitation of applications for additional Commission membership on the National Commission on Forensic Science specifically to fill a current statistician Commissioner vacancy.

DATES: Applications must be received on or before January 11, 2017.

ADDRESSES: All applications should be submitted to: Jonathan McGrath, Designated Federal Officer, 810 7th Street NW., Washington, DC 20531, by email at *Jonathan.McGrath@usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Designated Federal Officer, 810 7th Street NW., Washington, DC 20531, by email *Jonathan.McGrath@usdoj.gov,* or by phone at (202) 514–6277.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. App.), this notice announces the solicitation of applications for additional Commission membership on the National Commission on Forensic Science to fill a current Commissioner vacancy with expertise in statistics.

The National Commission on Forensic Science was chartered on April 23, 2013 and the charter was renewed on April 23, 2015. The Commission is co-chaired by the Department of Justice and National Institute of Standards and Technology. The Commission provides recommendations and advice to the Department of Justice concerning national methods and strategies for: Strengthening the validity and reliability of the forensic sciences (including medico-legal death investigation); enhancing quality assurance and quality control in

forensic science laboratories and units; identifying and recommending scientific guidance and protocols for evidence seizure, testing, analysis, and reporting by forensic science laboratories and units; and identifying and assessing other needs of the forensic science communities to strengthen their disciplines and meet the increasing demands generated by the criminal and civil justice systems at all levels of government. Commission membership includes Federal, State, and Local forensic science service providers; research scientists and academicians; prosecutors, defense attorneys, and judges; law enforcement; and other relevant backgrounds. The Commission reports to the Attorney General, who through the Deputy Attorney General, shall direct the work of the Commission in fulfilling its mission.

The duties of the Commission include: (a) Recommending priorities for standards development; (b) reviewing and recommending endorsement of guidance identified or developed by subject-matter experts; (c) developing proposed guidance concerning the intersection of forensic science and the courtroom; (d) developing policy recommendations, including a uniform code of professional responsibility and minimum requirements for training, accreditation and/or certification; and (e) identifying and assessing the current and future needs of the forensic sciences to strengthen their disciplines and meet growing demand.

Members will be appointed by the Attorney General in consultation with the Director of the National Institute of Standards and Technology and the vice-chairs of the Commission. Additional members will be selected to fill vacancies to maintain a balance of perspective and diversity of experiences, including Federal, State, and Local forensic science service providers; research scientists and academicians; Federal, State, Local prosecutors, defense attorneys and judges; law enforcement; and other relevant stakeholders. DOJ encourages submissions from applicants with respect to diversity of backgrounds, professions, ethnicities, gender, and geography. The Commission shall consist of approximately 30 voting members. Members will serve without compensation. The Commission generally meets four times each year at approximately three-month intervals. The next Commission meetings will be held on January 9–10, 2017 and April 10–11, 2017 in Washington, DC. Additional information regarding the Commission can be found at: *http://www.justice.gov/ncfs.*

Note: The Commission is developing a draft Views document on Statistical Statements in Forensic Testimony, and it is anticipated that the additional Commissioner member will contribute to the Commission's discussions on this topic, as well as all other Commission activities. On December 12, 2016, the Department of Justice published in the **Federal Register** a Notice announcing the January 9–10, 2017, Federal Advisory Committee Meeting of the National Commission on Forensic Science (81 FR 89509). That Notice also announced that comments on draft work products can be submitted through *www.regulations.gov* starting on December 23, 2016. Any comments should be posted to *www.regulations.gov* no later than January 25, 2017.

Applications: Any qualified person may apply to be considered for appointment to this advisory committee. Each application should include: (1) A resume or curriculum vitae; (2) a statement of interest describing the applicant's relevant experience; and (3) a statement of support from the applicant's employer. Potential candidates may be asked to provide detailed information as necessary regarding financial interests, employment, and professional affiliations to evaluate possible sources of conflicts of interest. The application period will remain open through January 11, 2017. The applications must be sent in one complete package, by email, to Jonathan McGrath (contact information above) with the subject line of the email entitled, ''NCFS Membership 2017.'' Other sources, in addition to the **Federal Register** notice, may be utilized in the solicitation of applications.

Dated: December 20, 2016.

Victor Weedn,

Senior Forensic Advisor to the Deputy Attorney General, U.S. Department of Justice.

[FR Doc. 2016–31232 Filed 12–23–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Judgment Under the Safe Drinking Water Act

On December 20, 2016, the Department of Justice lodged a proposed Consent Judgment with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States* v. *State of New York, et al.,* Civil Action No. 2:16–cv–6989.

The United States filed a complaint in this action on the same day that the Consent Judgment was lodged with the Court. The Defendants are the State of New York; New York State Office of Parks, Recreation and Historic Preservation (''OPRHP'') (offices at 625 Broadway, Albany, New York 12238); and the Palisades Interstate Park Commission (''Commission'') (offices at Administration Building, Bear Mountain State Park, Bear Mountain, New York 10911–0427). The complaint arises out of Defendants' operation of Large Capacity Cesspools (''LCCs''). The complaint alleges that Defendants owned and operated 54 LCCs at various OPRHP and Commission parks (''the Prohibited LCCs'') in violation of the Safe Drinking Water Act (''SDWA''), 42 U.S.C. 300h, EPA's underground injection control (''UIC'') program, specifically the program's Class V UIC regulations found at 40 CFR 144.80 to 144.89. Pursuant to 40 CFR 144.82(b) and 144.88(a), owners and operators of ''existing'' (*i.e,* operational or under construction by April 5, 2000) large-capacity cesspools were required to close them by April 5, 2005 (''Class V Rule'').

The complaint alleges claims for relief based on the following violation: The Prohibited LCCs were not closed by April 5, 2005, as required by the Class V Rule, 40 CFR 144.82(b) and 144.88(a), and the Prohibited LCCs, primarily located at Defendants' comfort stations, continued to operate after April 5, 2005.

The Consent Judgment provides for Defendants to pay a $150,000 civil penalty and to perform injunctive relief, including closing the Prohibited LCCs or otherwise converting them to lawful non-LCC uses by July 2019. Prohibited LCCs that are located on Long Island will be closed by September 2018, with most of the Long Island Prohibited LCCs being closed by September 2017.

The Defendants implemented some injunctive relief before the lodging of the Consent Judgment, including closing six of the Prohibited LCCs and submitting closure plans for 29 of the remaining Prohibited LCCs.

The Consent Judgment further requires Defendants to implement Supplemental Environmental Projects (SEPs) at seven of Defendants' Long Island parks The SEPS have a total estimated value of $1,020,000. All SEPs must be completed within three years after the Effective Date of the Consent Judgment. Each of the SEPs is intended to reduce the quantity of nutrients harmful to water quality, including nitrogen, from entering the local groundwater.

The Consent Judgment resolves the civil claims of the United States for the violations alleged in the complaint

through the date of lodging of the Consent Judgment.

The publication of this notice opens a period for public comment on the Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *State of New York,* D.J. Ref. No. 90–5–1–1–11400. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Judgment may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Judgment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $10.25.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–31142 Filed 12–23–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Information Advisory Council (WIAC)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of virtual meeting.

SUMMARY: Notice is hereby given that the Workforce Information Advisory Council (WIAC) will meet February 8, 2017, at 2:00 p.m. Eastern Standard Time (EST). The meeting will take place virtually at *http://coffey.adobeconnect.com/wiac080217/* or call 866–530–3818 and use conference code 2956449540. The meeting will be open to the public.

DATES: The meeting will take place on Wednesday, February 8, 2017 at 2:00 p.m. EST and conclude no later than 5:00 p.m. EST. Public statements and requests for special accommodations or to address the Advisory Council must be received by February 1, 2017.

ADDRESSES: The meeting will be held virtually at *http://coffey.adobeconnect.com/wiac080217/* or call 866–530–3818 and use conference code 2956449540. If problems arise accessing the meeting, please call 301–907–0900 ext. 225.

FOR FURTHER INFORMATION CONTACT: Steven Rietzke, Chief, Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4510, 200 Constitution Ave. NW., Washington, DC 20210; Telephone: 202–693–3912. Mr. Rietzke is the Designated Federal Officer for the WIAC.

SUPPLEMENTARY INFORMATION:

Background: The WIAC is an important component of the Workforce Innovation and Opportunity Act. The WIAC is a Federal Advisory Committee of workforce and labor market information experts representing a broad range of national, State, and local data and information users and producers. The purpose of the WIAC is to provide recommendations to the Secretary of Labor, working jointly through the Assistant Secretary for Employment and Training and the Commissioner of Labor Statistics, to address: (1) The evaluation and improvement of the nationwide workforce and labor market information (WLMI) system and statewide systems that comprise the nationwide system; and (2) how the Department and the States will cooperate in the management of those systems. These systems include programs to produce employment-related statistics and State and local workforce and labor market information. The WIAC was established in accordance with provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.) and will act in accordance with the applicable provisions of FACA and its implementing regulation at 41 CFR 102–3. The WIAC is meeting pursuant to Section 308 of the Workforce Innovation and Opportunity Act of 2014 (WIOA) (Pub. L. 113–128), which amends section 15 of the Wagner-Peyser Act of 1933 (29 U.S.C. 491–2).

The Department of Labor anticipates the WIAC will accomplish its objectives by: (1) Studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training, and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development. Additional information is available at *www.doleta.gov/wioa/wiac/.*

Purpose: The WIAC is currently in the process of identifying and reviewing issues and aspects of the WLMI system and statewide systems that comprise the nationwide system and how the Department and the States will cooperate in the management of those systems. As part of this process, the Advisory Council meets to gather information and to engage in deliberative and planning activities to facilitate the development and provision of its recommendations to the Secretary in a timely manner.

Agenda: Beginning at 2:00 p.m. on February 8, 2017, the Advisory Council will briefly review the minutes of the previous meeting held January 11, 2017. The Advisory Council will then discuss the informational report it is creating to document the current status of the WLMI systems from a national and state perspective for the Secretary of Labor. The goal of this discussion is the formal approval of the informational report for submission to the Secretary of Labor.

The Advisory Council will open the floor for public comment once the discussion of the informational report is completed, which is expected to be 3:00 p.m. EST; however, that time may change at the WIAC chair's discretion. Once the informational report discussion, the public comment period, and discussion of next steps and new business has concluded, the meeting will adjourn. The WIAC does not anticipate the meeting lasting past 5:00 p.m. EST.

The full agenda for the meeting, and changes or updates to the agenda, will be posted on the WIAC's Web page, *www.doleta.gov/wioa/wiac/.*

Attending the meeting: Members of the public who require reasonable accommodations to attend the meeting may submit requests for accommodations by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the

subject line ''February 2017 WIAC Meeting Accommodations'' by the date indicated in the **DATES** section. Please include a specific description of the accommodations requested and phone number or email address where you may be contacted if additional information is needed to meet your request.

Public statements: Organizations or members of the public wishing to submit written statements may do so by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''February 2017 WIAC Meeting Public Statements'' by the date indicated in the **DATES** section. Submitters may include their name and contact information in a cover letter for mailed statements or in the body of the email for statements transmitted electronically. Relevant statements received before the date indicated in the **DATES** section will be included in the record of the meeting. No deletions, modifications, or redactions will be made to statements received, as they are public records. Please do not include personally identifiable information (PII) in your public statement.

Requests to Address the Advisory Council: Members of the public or representatives of organizations wishing to address the Advisory Council should forward their requests to the contact indicated in the **FOR FURTHER INFORMATION CONTACT** section, or contact the same by phone, by the date indicated in the **DATES** section. Oral presentations will be limited to 10 minutes, time permitting, and shall proceed at the discretion of the Council chair. Individuals with disabilities, or others, who need special accommodations, should indicate their needs along with their request.

Portia Wu,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 2016–31137 Filed 12–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 26, 2017.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2016–008–M.

Petitioner: Martin Marietta Materials, Inc., 11405 N. Pennsylvania St., Suite 250, Carmel, Indiana 46032.

Mine: Kokomo Mine, MSHA I.D. No. 12–02105, located in Howard County, Indiana.

Regulation Affected: 30 CFR 49.2(c) (Availability of mine rescue teams).

Modification Request: The petitioner requests a modification of the existing standard for the Martin Marietta, Indiana District Mine Rescue Team stationed at the Kokomo Mine, to use two additional firefighters from the Kokomo Fire Department located in Howard County, Indiana. The two firefighters are in addition to the proposed team of five experienced miners from the Kokomo mine, North Indianapolis mine, Noblesville Stone mine and Kentucky Avenue mine.

The petitioner states that:

(1) The firefighters are in close proximity to the mine, and will receive the required MSHA training.

(2) The members of the fire department have had extensive training in firefighting, evacuation and rescue.

(3) The additional firefighters will receive underground training and become familiar with the mines where they will be providing mine rescue service. The team will have more rescue training than existing 30 CFR 49.8 requires and will train underground with apparatus at each mine where they provide a service.

The petitioner asserts that the alternative method will at all times provide the same measure of protection as the existing standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2016–31138 Filed 12–23–16; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0143]

Proposed Extension of Information Collection; Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN).

DATES: All comments must be received on or before February 27, 2017.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2016–0036.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, Section 101(a) of the Mine Act, 30 U.S.C. 811 authorizes the Secretary to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

MSHA issues certifications, qualifications and approvals to the nation's miners to conduct specific work within the mines. Miners requiring qualification or certification from MSHA will register for an ''MSHA Individual Identification Number'' (MIIN). MSHA uses this unique number in place of individual Social Security numbers (SSNs) for all MSHA collections. The MIIN identifier fulfills Executive Order 13402, Strengthening Federal Efforts Against Identity Theft, which requires Federal agencies to better secure government held data.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0143.

Affected Public: Business or other for-profit.

Number of Respondents: 9,000.

Frequency: On occasion.

Number of Responses: 9,000.

Annual Burden Hours: 750 hours.

Annual Respondent or Recordkeeper Cost: $84.60.

MSHA Forms: MSHA Form 5000–46, Request for MSHA Individual Identification Number (MIIN).

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2016–31139 Filed 12–23–16; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–092)]

NASA Advisory Council; Science Committee Earth Science Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific

and technical information relevant to program planning.

DATES: Tuesday, January 10, 2017, 8:30 a.m.–5:30 p.m., and Wednesday, January 11, 2017, 8:30 a.m.–1:00 p.m., Local Time.

ADDRESSES: NASA Kennedy Space Center, Visitor Complex, Debus Conference Facility, State Road 405, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the meeting room. This meeting is also available telephonically. You must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free number 1–888–323–9729 or toll number 1–630–395–0190, passcode 9350886, for both days. The agenda for the meeting includes the following topics:

—Earth Science Division update
—Discussion on small satellites and constellations
—Approaches for articulating the value of Earth science and reviewing annual research program accomplishments

Attendees will be provided a pass to enter the NASA Kennedy Space Center Visitor Complex, and then will be requested to sign a register before access to the meeting. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–31141 Filed 12–23–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974: System of Records

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of a New System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the National Credit Union Administration (NCUA) is proposing to establish a new system of records.

DATES: This action will be effective without further notice on February 6, 2017 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments to NCUA by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name]—Comments on NCUA 20 SORN'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Martha Ninichuk, Deputy Director of the Office of Small Credit Union Initiatives, NCUA, 1775 Duke Street, Alexandria, VA 22314, or telephone: (703) 518–1581, or Linda Dent, Senior Agency Official for Privacy, Office of General Counsel, NCUA, 1775 Duke Street, Alexandria, Virginia 22314, or telephone: (703) 518–6567.

SUPPLEMENTARY INFORMATION:

NCUA Is Proposing To Establish a New System of Records. In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, NCUA is issuing public notice of its intent to establish a new system of records, Small Credit Union Learning Center, NCUA–20. The system of records described in this notice will maintain records related to NCUA's Office of Small Credit Union Initiatives' online training courses for credit union elected officials and employees. For convenience, the proposed new system of records, ''Small Credit Union Learning Center, NCUA–20,'' is published below.

National Credit Union Administration.

Gerard Poliquin,

Secretary of the Board.

SYSTEM NAME AND NUMBER:

Small Credit Union Learning Center—NCUA 20.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

NCUA, 1775 Duke Street, Alexandria, VA 22314; PowerTrain, 8201 Corporate Drive, Suite 580, Landover, MD 20785; OPM, 1900 E Street NW., Suite 4439–AB, Washington, DC 20415.

SYSTEM MANAGER(S):

Deputy Director, Office of Small Credit Union Initiatives, NCUA, 1775 Duke Street, Alexandria, VA 22314.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1751.

PURPOSE(S) OF THE SYSTEM:

To provide and manage online training courses for credit union elected officials and employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Credit union elected officials and employees who complete the training course(s).

CATEGORIES OF RECORDS IN THE SYSTEM:

Training records, which may include name, email address, username, password, credit union name, charter number, course name, and date of completion of the training course(s).

RECORD SOURCE CATEGORIES:

Individuals who complete the training course(s).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside NCUA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows, and:

1. NCUA's Standard Routine Uses apply to this system of records.

2. At the request of a specific credit union, records pertaining to individuals associated with the requesting credit union may be shared with that credit union.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic form.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by any one or more of the following: name, username, email address, credit union name, charter number, course name, and month or year of completion of a training course.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in accordance with the General Records Retention Schedules issued by the National

Archives and Records Administration (NARA) or a NCUA records disposition schedule approved by NARA.

Records existing on computer storage media are destroyed according to the applicable NCUA media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

NCUA has adopted appropriate administrative, technical, and physical controls in accordance with NCUA's information security policies to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

RECORD ACCESS PROCEDURES:

Individuals wishing access to their records should submit a written request to the Privacy Officer, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment to their records should submit a written request to the Privacy Officer, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Privacy Officer, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

[FR Doc. 2016–31209 Filed 12–23–16; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference as follows:

DATES: All meetings are Eastern time and ending times are approximate:

Literature (review of applications): This meeting will be closed.

Date and time: January 19, 2017—1:30 p.m. to 3:00 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC, 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506—*plowitzk@arts.gov,* or call 202–682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: December 21, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2016–31191 Filed 12–23–16; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On November 18, 2016 the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on December 20, 2016 to:

1. Prash Karnik, Permit No. 2017–027
2. James Droney, Permit No. 2017–028

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–31154 Filed 12–23–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 671 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 26, 2017. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. *Applicant*, Permit Application: 2017–037, Daniel McGrath, Resident Scientist, Earth Vision Institute, 2334 Broadway St, Suite D, Boulder, CO 80304

Activity for Which Permit Is Requested

Waste management. The applicant requests a permit for waste management activities associated with the continued operation of a network of time-lapse cameras installed in the Antarctic Peninsula region. The applicant will continue to maintain up to 12 cameras (nine currently installed at five visitor sites) with no more than two cameras installed at any one site. Cameras are placed in such a way so as to not disrupt wildlife. Cameras are secured using 6–8 rock bolts drilled into rock outcrops. Each camera is powered by a 10w solar panel and a sealed 12 volt 55 AH gel battery. The batteries are housed in a leak proof plastic case. The cameras will remain deployed for an additional 4 years and will be completely removed (including bolts and power sources) at before the permit expires. Each camera is visited every 1–2 years to retrieve data, make necessary repairs, and remove non-functioning equipment. The Earth Vision Institute has an established collaboration with Lindblad Expeditions for installation and maintenance of the cameras. The cameras are used to measure ice velocity and monitor the calving front of numerous outlet glaciers. The data will help advance scientific knowledge on the mechanics and pace of glacial retreat. Images gained from the cameras will also be used in global outreach campaigns to educate the public about the speed of climate change's impact on the earth.

Location

Neko Harbor, Orne Harbor, Cierva Cove, Brown Bluff, Amsler Island, Western Antarctic Peninsula.

Dates

April 1, 2017–March 31, 2021.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–31153 Filed 12–23–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATE: December 26, 2016, January 2, 9, 16, 23, 30, 2017.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 26, 2016

There are no meetings scheduled for the week of December 26, 2016.

Week of January 2, 2017—Tentative

There are no meetings scheduled for the week of January 2, 2017.

Week of January 9, 2017—Tentative

Friday, January 13, 2017

9:00 a.m. Briefing on Operator Licensing Program (Public Meeting) (Contact: Nancy Salgado: 301–415–1324)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of January 16, 2017—Tentative

There are no meetings scheduled for the week of January 16, 2017.

Week of January 23, 2017—Tentative

Monday, January 23, 2017

10:00 a.m. Discussion of Management and Personnel Issues (Closed Ex. 2 & 6)

Week of January 30, 2017—Tentative

There are no meetings scheduled for the week of January 30, 2017.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0981 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: December 22, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–31329 Filed 12–22–16; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATE: Week of December 19, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of December 19, 2016—Tentative

Friday, December 23, 2016

9:55 a.m. Affirmation Session (Public Meeting) (Tentative).

Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility) —Petitions for Review of LBP–15–16 and Related Interlocutory Decisions (Tentative).

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

Additional Information

By a vote of 3–0 on December 22, 2016, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on December 23, 2016.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: December 22, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–31348 Filed 12–22–16; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–58 and CP2017–86; Order No. 3677]

Postal Rate and Related Classification Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing announcing its intention to change rates not of general applicability for Inbound Parcel Post (at Universal Postal Union (UPU) Rates) and related classification changes. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 28, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Contents of Filing
III. Proposed Classification Change
IV. Commission Action
V. Ordering Paragraphs

I. Introduction

On December 19, 2016, the Postal Service filed notice announcing its intention to change rates not of general applicability for Inbound Parcel Post (at Universal Postal Union (UPU) Rates) effective January 1, 2017.[1] The Postal Service also filed proposed changes to the Mail Classification Schedule (MCS). Notice at 1–2.

II. Contents of Filing

To accompany its Notice, the Postal Service filed the following materials:

- Attachment 1—an application for non-public treatment of materials filed under seal;
- Attachment 2—a redacted copy of UPU International Bureau (IB) Circular 169, which contains the new rates;
- Attachment 3—a redacted copy of UPU IB Circular 168, which contains the new rates;
- Attachment 4—a copy of the certification required under 39 CFR 3015.5(c)(2);
- Attachment 5—redacted documentation sent by the Postal Service to the UPU to justify its bonus payments;
- Attachment 6—documentation in support of inflation-linked adjustment for inward land rates;
- Attachment 7—a redacted copy of Governors' Decision No. 14–04;
- Attachment 8—a redacted copy of Governors' Decision No. 11–6; and
- Attachment 9—proposed changes to the text of the MCS Notice, Attachments 1–9.

The Postal Service also filed supporting financial workpapers, unredacted copies of Governors' Decision No. 14–04 and Governors' Decision No. 11–6, an unredacted copy of the new rates, and related financial information under seal.

In accordance with Order Nos. 2102[2] and 2310,[3] the Postal Service has: (1) Provided documentation supporting the inflation-linked adjustment as Attachment 6; (2) updated its advisory delivery information in a timely manner in the UPU's online compendium to justify bonus payments; (3) provided the date that the UPU advised the United States of the Inward Land Rate, and provided the calculation of the rate for the pertinent year, in UPU IB Circulars 169 and 168 as Attachments 2 and 3, respectively; (4) provided the special drawing rights (SDR) conversion rate of 1 SDR to $1.35 U.S. dollars used for the cost coverage analysis; and (5) provided the estimated cost coverage for Inbound Parcel Post (at UPU rates) for the pertinent year. Notice at 8–9.

III. Proposed Classification Change

The Postal Service proposed a classification change in its Notice and attached proposed revisions to the MCS. *Id.* at 3–6, *see id.* Attachment 9. The Postal Service stated that it will begin accepting Inbound Parcel Post mailpieces under the UPU's e-commerce parcel delivery option, known as ECOMPRO, on or after January 22, 2017. Notice at 4. The Postal Service proposed MCS revisions to clarify that the ECOMPRO rates are ''fixed by the UPU after notification by the Postal Service.'' *Id.* at 6. In addition, the Postal Service proposed that any future bilateral agreements that offer discounted rates for ECOMPRO Inbound Parcel Post mailpieces be filed in this docket rather than separate dockets. *Id.* at 6–7.

IV. Commission Action

The Commission establishes Docket Nos. MC2017–58 and CP2017–86 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound Parcel Post (at UPU Rates), Change in Mail Classification Schedule, and Application for Non-Public Treatment, December 19, 2016, at 1–2 (Notice).

[2] Docket No. CP2014–52, Order Accepting Price Changes for Inbound Air Parcel Post (at UPU Rates), June 26, 2014, at 6 (Order No. 2102).

[3] Docket No. CP2015–24, Order Accepting Changes in Rates for Inbound Parcel Post (at UPU Rates), December 29, 2014, at 4 (Order No. 2310).

consistent with 39 U.S.C. 3632, 3633, and 39 CFR part 3015. Comments are due no later than December 28, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in these dockets.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2017–58 and CP2017–86 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than December 28, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–31075 Filed 12–23–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79611; File No. SR–NYSEMKT–2016–99]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending Rule 104—Equities To Delete Subsection (g)(i)(A)(III) Prohibiting Designated Market Makers From Establishing a New High (Low) Price on the Exchange in a Security the DMM Has a Long (Short) Position During the Last Ten Minutes Prior to the Close of Trading

December 20, 2016.

On October 27, 2016, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') 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 amend Rule 104—Equities to delete subsection (g)(i)(A)(III) prohibiting Designated Market Makers (''DMMs'') from establishing a new high (low) price on the Exchange in a security the DMM has a long (short) position during the last ten minutes prior to the close of trading. The proposed rule change was published for comment in the **Federal Register** on November 17, 2016.[3] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 1, 2017. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so as to allow additional time to consider the proposal. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates February 15, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEMKT–2016–99).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31103 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79283 (November 10, 2016), 81 FR 81210 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79612; File No. SR–NYSE–2016–71]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending Rule 104 To Delete Subsection (g)(i)(A)(III) Prohibiting Designated Market Makers From Establishing a New High (Low) Price on the Exchange in a Security the DMM Has a Long (Short) Position During the Last Ten Minutes Prior to the Close of Trading

December 20, 2016.

On October 27, 2016, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 104 to delete subsection (g)(i)(A)(III) prohibiting Designated Market Makers (''DMMs'') from establishing a new high (low) price on the Exchange in a security the DMM has a long (short) position during the last ten minutes prior to the close of trading. The proposed rule change was published for comment in the **Federal Register** on November 17, 2016.[3] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 1, 2017. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so as to allow additional time to consider the proposal. Accordingly, the Commission, pursuant

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79284 (November 10, 2016), 81 FR 81222 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

to Section 19(b)(2) of the Act,[5] designates February 15, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2016–71).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31104 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79613; File No. SR–BOX–2016–50]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Rule 5050 Series of Options Contracts Open for Trading To Provide for the Listing and Trading on the Exchange of RealDay™ Options Pursuant to a Pilot Program

December 20, 2016.

On October 26, 2016, BOX Options Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading on the Exchange of RealDay™ Options pursuant to a pilot program. The proposed rule change was published for comment in the **Federal Register** on November 15, 2016.[3] The Commission has received one comment letter on the proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is December 30, 2016.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act [6] and for the reasons stated above, the Commission designates February 13, 2017, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BOX–2016–50).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31105 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79614; File No. SR–Phlx–2016–121]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 3317 (Compliance With Regulation NMS Plan To Implement a Tick Size Pilot)

December 20, 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 December 13, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 3317 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot) relating to the handling to certain Order Types in Test Group Three Pilot Securities in connection with the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'').[3] Relatedly, the Exchange also proposes to delete Commentary .14, which addresses the current handling of those Order Types. Finally, Phlx proposes to add language to Rule 3317(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH or FIX protocols.

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

On September 7, 2016, the Exchange filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change (''Proposal'') to adopt paragraph (d) and Commentary .12 to Exchange Rule 3317 to describe changes to system functionality necessary to implement the Plan. The Exchange also proposed amendments to Rule 3317(a) and (c) to clarify how the Trade-at exception may be satisfied. The SEC published the Proposal in the **Federal Register** for notice and

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[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79258 (November 8, 2016), 81 FR 80125.

[4] *See* Letter from Edward T. Tilly, Chief Executive Officer, Chicago Board Options Exchange, Incorporated, to Brent J. Fields, Secretary, Commission, dated December 6, 2016, *available at https://www.sec.gov/comments/sr-box-2016-50/box201650-1.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

comment on September 20, 2016.[4] Phlx subsequently filed three Partial Amendments to clarify aspects of the Proposal. The Commission approved the Proposal, as amended, on October 7, 2016.[5]

In SR–Phlx–2016–92, Phlx had initially proposed a re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities.[6] Phlx subsequently determined that it would not offer this re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Group Three Pilot Securities. As part of Partial Amendment No. 2 to SR–Phlx–2016–92, Phlx proposed to delete the relevant language from Rule 3317 related to this re-pricing functionality.

In that amendment, Phlx noted that this change would only impact the treatment of Price to Comply Orders, Non-Displayed Orders, and Post-Only orders that are submitted through the OUCH and FLITE protocols in Test Group Three Pilot Securities, as these types of Orders that are currently submitted to Phlx through the RASH or FIX protocols are already subject to this re-pricing functionality and will remain subject to this functionality under the Pilot.

In the Amendment, Phlx further noted that its systems are currently programmed so that Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities may be adjusted repeatedly to reflect changes to the NBBO and/or the best price on the Phlx book. Phlx stated that it was re-programming its systems to remove this functionality for Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities. In the Amendment, Phlx stated that it anticipated that this re-programming shall be completed no later than November 30, 2016. If it appeared that this functionality would remain operational by October 17, 2016, Phlx indicated that it would file a proposed rule change with the SEC and will provide notice to market participants sufficiently in advance of that date to provide effective notice. The rule change and the notice to market participants would describe the current operation of the Phlx systems in this regard, and the timing related to the re-programming.

On October 17, 2016, Phlx filed a proposal to extend the date by which it would complete the re-programing of its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols.[7] In that proposal, Phlx stated that it anticipated that this re-programming shall be complete on or before October 31, 2016.[8] As Phlx continued to re-program its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols, it extended the date by which the re-programming shall be complete to the current date of December 12, 2016.[9]

Phlx has now completed re-programming its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols. However, as a result of removing the re-pricing functionality, there are instances, due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable Phlx protocols, where the behavior of certain Order Types entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities will differ from the behavior of those Order Types as set forth in Rule 3317; specifically, the behavior of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols when the Order locks or crosses a Protected Quotation. Phlx is therefore amending Rule 3317 to clarify these differences. Although the changes made to Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE reflect the different functionality of the OUCH and FLITE protocols in comparison with the other Phlx protocols, the proposed changes treat Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through OUCH and FLITE protocols in Test Group Three Securities as consistently as possible with such orders entered through OUCH and FLITE in Control Group Securities, and Test Group One and Test Group Two Securities. These changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO.

Price To Comply Orders

Currently, Rule 3317(d)(2) states that a Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(1) except as provided under this paragraph. If a Price to Comply Order for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of NBBO.

Phlx proposes to augment this provision to clarify the behavior of Price to Comply Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a

[4] *See* Securities Exchange Act Release No. 78835 (September 14, 2016), 81 FR 64552 (September 20, 2016) (SR–Phlx–2016–92).

[5] *See* Securities Exchange Act Release No. 79074 (October 7, 2016) (SR–Phlx–2016–92).

[6] As originally proposed, Rule 3317(d)(2) stated that Price to Comply Orders in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price. Rule 3317(d)(3) stated that, if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. Rule 3317(d)(4) stated that, if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Phlx Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

[7] *See* Securities Exchange Act Release No. 79156 (October 25, 2016) (SR–Phlx–2016–106).

Subsequent to the approval of SR–Phlx–2016–92, Phlx become aware that this re-pricing functionality also applies to Price to Display Orders that are entered through the OUCH and FLITE protocols in Test Group Three Securities, and amended Commentary .14 to indicate that Price to Display Orders will be treated in the same manner as Price to Comply Orders under the re-pricing functionality. *Id.*

[8] *Id.*

[9] *See* Securities Exchange Release Nos. 79261 (November 8, 2016), 81 FR 80134 (November 15, 2016) (SR–Phlx–2016–110) (extending current re-pricing functionality to November 14, 2016); 79407 (November 28, 2016), 81 FR 87089 (December 2, 2016) (SR–Phlx–2016–114) (extending current re-pricing functionality to December 12, 2016).

Price to Comply Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Phlx Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Price to Comply Order will be adjusted to rank and display at its original entered limit price.[10]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Price to Comply Order, based on the participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the Phlx Book, the non-displayed price of a Price to Comply Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Price to Comply Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Price to Comply Order will be cancelled.[11]

Non-Displayed Orders

Currently, Rule 3317(d)(3) states that a Non-Displayed Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(3) except as provided under this paragraph. A resting Non-Displayed Order in a Test Group Three Pilot security cannot execute at the price of a Protected Quotation of another market center unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 3317(c)(3)(D). If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will be ranked on the Exchange Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). For a Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX, if after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp. For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant.

Phlx proposes to amend this provision to clarify the behavior of Non-Displayed Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Phlx Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price would no longer lock a Protected Quotation, the Non-Displayed Order will be adjusted to rank at its original entered limit price.[12]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed.[13]

If entered at a price that locked or crossed a Protected Quotation, and if the NBBO changes such that it cannot be ranked at the price of the Protected Quotation it locked or crossed but can be ranked closer to its original limit price, the Non-Displayed Order will be adjusted to the new midpoint of the NBBO.[14]

If, after being posted on the Phlx Book, the Non-Displayed Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Non-Displayed Order will be cancelled.[15]

Post-Only Orders

Currently, Rule 3317(d)(4) states that a Post-Only Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(4) except as provided under this paragraph. For orders that are not attributable, if the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

Phlx proposes to augment this provision to clarify the behavior of Post-Only Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Attributable Post-Only Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Phlx Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Post-Only Order will be adjusted to rank

[10] Phlx notes that a Price to Comply Order will always be adjusted in this scenario, regardless of its port setting.

[11] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Price to Comply Order to buy at $10.15 is entered, the Price to Comply Order will be displayed at $10.05 and ranked at $10.075. If the National Best Offer then changes to $10.15, the Price to Comply Order will be adjusted to rank at $10.10, and will remain displayed at $10.05. If the National Best Offer subsequently changes to $10.10, the Price to Comply Order will be cancelled.

Phlx notes that a Price to Comply Order, Non-Displayed Order, or Post-Only Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would only cancel if the resting order is crossed (not locked) by a Protected Quotation due to a change in the NBBO.

[12] Phlx notes that a Non-Displayed Order will always be adjusted in this scenario, regardless of its port setting.

[13] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.15 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Offer then changes to $10.15, the Non-Displayed Order may either be adjusted to rank at $10.10, or may be cancelled back to the Participant.

[14] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.10 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Bid then changes to $10.05, the price of the Non-Displayed Order will be adjusted to $10.075.

Phlx notes that a Non-Displayed Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would be ranked at the locking price upon entry.

[15] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.10 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Offer then changes to $10.05, the Non-Displayed Order will be cancelled back to the Participant.

and display at its original entered limit price.[16]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Post-Only Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the Phlx Book, the non-displayed price of a resting Post-Only Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Post-Only Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Post-Only Order will be cancelled.

Commentary .14

In removing the current re-pricing functionality, Commentary .014 [sic], which addresses the behavior of current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities, is no longer necessary.[17] The Exchange therefore proposes to delete this Commentary from the Rule.

Finally, Phlx proposes to add language to Rule 3317(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH or FIX protocols. Specifically, subject to the provisions set forth in the remainder of Rule 3317(d), if the entered limit price of an Order in a Test Group Three Pilot Security, entered through RASH or FIX, locked or crossed a Protected Quotation and the NBBO changes so that the Order can be ranked closer to its original entered limit price, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO. Phlx is proposing to make this change to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH or FIX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] 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.

The Exchange believes that the proposed rule change is consistent with the Act because it clarifies the changes the Exchange is making to the handling of certain Order Types necessary to implement the requirements of the Plan on its System and, in the case of the changes of Rule 3317(d)(1), to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH or FIX.

As a result of removing the current re-pricing functionality that applies to certain Order Types in Test Group Three Securities entered through the OUCH and FLITE protocols, and due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable Phlx protocols, these Order Types will behave differently than is currently set forth in Rule 3317 when entered through the OUCH or FLITE protocols in certain instances. As noted above, these changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO. These changes also will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE in scenarios where the subsequent movement of the NBBO implicates the Trade-at prohibition with respect to the resting order.

By clarifying the behavior of certain Order Types in Test Group Three Pilot Securities entered through the OUCH or FLITE protocols, the proposal will help allow market participants to continue to trade NMS Stocks, within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

More generally, Phlx also notes that the Plan, which was approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act,[20] provides the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Finally, Phlx believes that the proposal is consistent with the Act because the proposed functionality will more closely align the handling of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols for Test Group Three Pilot Securities with the handling of such Orders entered through the OUCH or FLITE protocols for Control Group, Test Group One and Test Group Two Securities than the current functionality in place for these Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other

[16] Phlx notes that a Post-Only Order will always be adjusted in this scenario, regardless of its port setting.

[17] Under Commentary .14, the current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities is as follows:

Until December 12, 2016, the treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities shall be as follows:

Following entry, and if market conditions allow, a Price to Comply Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Price to Display Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Display Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.

Following entry, and if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1.

equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan, and must take the same steps that the Exchange has to conform its existing rules to the requirements of the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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 [21] and subparagraph (f)(6) of Rule 19b–4 thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6) [23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In this filing, the Exchange has asked that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

The Exchange notes the proposed rule is intended to clarify the differences in the handling of certain orders entered into the system by different protocols. The Exchange notes that orders will be treated as consistently as possible across the Test Groups and the Control Group while complying with each grouping's varied quoting and trading requirements. Additionally, the Exchange proposed to remove Commentary .14 because it is no longer necessary.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal clarifies the Exchange's rules and provides transparency to members with regards to the handling of certain orders entered via OUCH and FLITE as well as RASH or FIX protocols for locked or crossed orders in Test Group Three Pilot Securities. The Commission notes that the Exchange proposed to remove the functionality described in Commentary .14 and make the necessary corresponding systems changes in Partial Amendment No. 2 to Phlx–2016–92, which the Commission approved.[25] The Exchange notes that it was able to implement the systems changes and that they became fully operational on the December 14, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on December 14, 2016.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*);or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–121 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–2016–121. 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–2016–121 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31106 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

[23] *Id.*

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See supra* note 5

[26] 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).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79624; File No. SR–ISEMercury–2016–24]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Mercury Rule 803 at Supplementary Material .02 in Connection With Business Continuity and Disaster Recovery Plans

December 20, 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 December 12, 2016, ISE Mercury, LLC (''ISE Mercury'' 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 ISE Mercury Rule 803 at Supplementary Material .02 in connection with business continuity and disaster recovery plans (''BC/DR Plans'') testing requirements for certain Members in connection with Regulation Systems Compliance and Integrity (''Regulation SCI'').[3]

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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 ISE Mercury Rule 803 at Supplementary Material .02 to conform the current rule text regarding BC/DR Plans testing requirements with that of NASDAQ PHLX LLC (''Phlx'') Rule 926,[4] The NASDAQ Stock Market LLC (''Nasdaq'') Rule 1170[5] and NASDAQ BX, Inc. (''BX'') Rule 1170.[6]

Background

As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (''ATSs''), plan processors, and exempt clearing agencies (collectively, ''SCI entities''), and requires these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain ''[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.''[7] The Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR Plans consistent with the Rule.

With respect to an SCI entity's BC/DR Plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: ''[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.''[8] Paragraph (b) of Rule 1004 of Regulation SCI further requires each SCI entity to ''[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.''[9]

Proposal

As set forth below, in connection with Regulation SCI, the Exchange is proposing to amend ISE Mercury Rule 803 at Supplementary Material .02 to conform with Phlx Rule 926, Nasdaq Rule 1170 and BX Rule 1170. Phlx Rule 926, Nasdaq Rule 1170 and BX Rule 1170 are similar to ISE Mercury Rule 803 at Supplementary Material.02, which incorporates the requirements of Rule 1004 of Regulation SCI as part of the Exchange's rules, and sets forth the notice, selection criteria and obligations of Members with respect to BC/DR Plans testing.

The Exchange proposes to adopt rule text from Phlx Rule 926(a), Nasdaq Rule 1170(a) and BX Rule 1170(a), which will set forth the Exchange's obligations with respect to the selection of Members for testing. Specifically, the proposed rule will require the Exchange to ''[e]stablish standards for the designation of those Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.'' The proposed rule further provides that ''[s]uch standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by the Exchange.'' Lastly, the proposed rule will require the Exchange to provide public notice of the standards that it adopts.

The Exchange is proposing to revise Rule 803 at Supplementary Material .02, which will set forth the obligations of the Exchange and its Members with respect to testing, similar to Phlx Rule 926(b), Nasdaq Rule 1170(b) and BX Rule 1170(b). Specifically, the proposed rule will require the Exchange to ''designate Members pursuant to the standards established in paragraph (a) of this rule and require participation by such designated Members in scheduled functional and performance testing of the operation of such plans, in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (''SCI Adopting Release'').

[4] Phlx Rule 926 is titled ''The Exchange's Business Continuity and Disaster Recovery Plan Testing Requirements for Member Organizations and PSX Participants Pursuant to Regulation SCI.''

[5] Nasdaq Rule 1170 is titled ''Nasdaq's Business Continuity and Disaster Recovery Plan Testing Requirements for Members and Options Participants Pursuant to Regulation SCI.''

[6] BX Rule 1170 is titled ''The Exchange's Business Continuity and Disaster Recovery Plan Testing Requirements for Members and Options Participants Pursuant to Regulation SCI.''

[7] 17 CFR 242.1001(a)(2)(v).

[8] 17 CFR 242.1004(a).

[9] 17 CFR 242.1004(b).

manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months.'' Moreover, the proposed rule will require the Exchange to provide at least 6 months prior notice to Members that are designated for mandatory testing. Lastly, the proposed rule will provide notice that participation in testing is a condition of membership for Members that are designated for testing.

Today, ISE Mercury's Rule similarly sets forth the Exchange's obligations with respect to the selection of Members for testing. Like the proposed rule change, these standards for the designation of those Members must be reasonably determined by the Exchange, when taken as a whole, to have the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. ISE Mercury's Rule requires the Exchange to provide public notice of the standards that it adopts. Further, ISE Mercury's Rule requires Primary Market Makers (''PMMs'') to participate in scheduled functional and performance testing of the operation of such plans with a frequency of not less than once every 12 months. These standards remain substantially the same under the proposed rule change.

Today, ISE Mercury's Rule requires that at least 3 months prior to a scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans, the Exchange publishes the criteria to be used by the Exchange to determine which PMMs will be required to participate in such testing, and notifies those PMMs that are required to participate based on such criteria. The Phlx, Nasdaq and BX rules require at least 6 months prior notice to Members that are designated for mandatory testing. This change would expand the notice period. Also, ISE Mercury has specific provisions for PMMs with respect to selection for testing. Today, ISE Mercury provides that PMMs that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis, will be required to participate in scheduled functional and performance testing. The Exchange may also consider other factors in determining the PMMs that will be required to participate in scheduled functional and performance testing, including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or PMMs who collectively account for a certain percentage of market share on the Exchange. The proposed rule text does not require a different treatment for PMMs as compared to other market participants. Today, Phlx, Nasdaq and BX select market participants based on volume and/or market share, regardless of market making activity. The proposed rule text would not specifically mandate PMMs however, given the importance of market makers on the Exchange and the volume they traditionally trade, they are likely to be required to participate in business continuity and disaster recovery plans under the proposed rule change as they are today.

The Exchange would continue to encourage all Members to connect to the Exchange's backup systems and to participate in testing of such systems; [10] however, certain Members will be obligated to participate in BC/DR Plans testing. In adopting the rule text of Phlx Rule 926, Nasdaq Rule 1170 and BX Rule 1170, the Exchange will require mandatory participation in BC/DR Plans testing by those Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans on the Exchange. The Exchange believes that using overall participation on its markets (by volume and/or market share) as a measure to select Members for mandatory participation in BC/DR Plans testing is a reasonable means by which it can determine which Members are necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. For each BC/DR Plans test cycle, the Exchange will select the top five Members on the Exchange based on the Exchange's measure of overall participation. The Exchange notes that when considering volume, it will exclude contracts traded on PrecISE®.[11] The Exchange has provided notice of the initial selection criteria and measurement period to its Members.[12] All notices concerning BC/DR Plans testing will be posted on the Exchange's Web site.

The Exchange is proposing to initially select Members with the highest levels of trading volume on the Exchange over four calendar months (''Measurement Period'') as mandatory testing for Members [sic].[13] Specifically, the Measurement Period will be the four calendar months of trading immediately prior to the Exchange's announcement of the next BC/DR Plans test date. The Measurement Period will always begin at a point after the Exchange announces the criteria to be used in the next BC/DR Plans test. By way of example, if on October 6, 2017 the Exchange announced the BC/DR Plans test selection criteria and on March 2, 2018 the Exchange announced a BC/DR Plans test date of September 8, 2018, the Measurement Period used to select Member subject to mandatory testing would be November 2017 through February 2018. Members not obligated to participate that wish to participate in this test must inform the Exchange no later than September 1, 2018, based on the aforementioned timeline.[14]

The proposed rule change is intended to provide consistency across the six options exchanges operated by Nasdaq, Inc. in regard to the standards established for the designation of Members that are required to participate in the Exchange's business continuity and disaster recovery testing. In turn, participants that are Members on multiple exchanges operated by Nasdaq, Inc. will be provided greater uniformity and ease of testing with the establishment of consistent standards across the multiple Nasdaq exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal will ensure that the Members necessary to ensure the maintenance of fair and orderly markets are properly designated consistent with

[10] In this regard, the Exchange will allow any Member to participate in the testing of the Exchange's BC/DR Plans, which is consistent with the BC/DR Plans. *See* SCI Adopting Release, *supra* note 3 at 72350. The Exchange will provide instructions on how a Member must inform the Exchange of its interest in participating in an upcoming BC/DR Plans test via the announcement of the test date. A Member must provide the Exchange notice of its interest to participate at least a week prior to the test date and must have the appropriate connection for testing in place.

[11] PrecISE is [sic] front-end order and execution management system for trading options and stock-option combinations.

[12] *See* ISE Mercury Circular 2016–16.

[13] The Exchange may change the total number of Members selected from time to time.

[14] *See supra* note 10.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

Rule 1004 of Regulation SCI. Specifically, the proposal will adopt clear and objective criteria with respect to the designation of Members that are required to participate in the testing of the Exchange's BC/DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, ''SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [17] The Exchange believes that this proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange's compliance with Regulation SCI.

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 [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISEMercury–2016–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISEMercury–2016–24. 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–ISEMercury–2016–24 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31116 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[17] *See* SCI Adopting Release, *supra* note 3 at 72350.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 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.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79617; File No. SR–NASDAQ–2016–168]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange Data Fees at Rule 7052

December 20, 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 December 12, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's data fees at Rule 7052 to replace the current $500 per month fee for both internal and external distribution of short sale data with two separate fees: (1) A $750 monthly fee for the distribution of short sale data to internal users, and (2) a $1,250 monthly fee for the distribution of short sale data to external users, as described further below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2017.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to replace the current $500 per month fee for both internal and external distribution of short sale data with two separate fees: (1) A $750 monthly fee for the distribution of short sale data to internal users, and (2) a $1,250 monthly fee for the distribution of short sale data to external users.

Daily and Monthly Short Sale Files

Nasdaq distributes two types of short sale data: (1) Daily Short Sale Volume files, and (2) Monthly Short Sale Transaction files.

The Daily Short Sale Volume files reflect the aggregate number of shares executed on the Nasdaq market during regular trading hours on a daily basis. At the security level, these files show the volume for executed short sales and the total trading volume for the Nasdaq market. The files include data for Nasdaq, NYSE and regional exchange-listed securities.

The Monthly Short Sale Transaction files provide a trade-by-trade record of all short sales executed on the Nasdaq execution system and reported to a consolidated tape in Nasdaq, NYSE and regional exchange-listed securities. The records include the transaction time, price and number of shares for every short sale transaction. The files are provided on a monthly basis, separated into daily files. Historical files are available from August 2005.

The current fee for internal and external distribution of the Daily Short Sale Volume and Monthly Short Sale Transaction files is $500 per month.

Proposed Changes

The Exchange proposes to replace the current $500 per month fee for both internal and external distribution of short sale data with two separate fees: (1) a $750 monthly fee for the distribution of short sale data to internal users, and (2) a $1,250 monthly fee for the distribution of short sale data to external users.

The purpose of the proposed rule change is to create a pricing system that better reflects the value of the product to our customers. External Distributors, unlike Internal Distributors, are typically compensated for the distribution of short sale data through subscription fees or other mechanisms. Some External Distributors incorporate short sale data into their own proprietary products, which they sell to downstream users. These distributors may not charge separately for the Nasdaq short sale data, but nevertheless gain value from the data by incorporating it into their product. The price increase for External Distributors reflects the additional value these distributors gain from the product.

In addition, the value of the short sale data has increased over time for all distributors that have purchased short sale data over a long period of time. Short sale data is frequently used to develop trading models, conduct analyses and assess long-term risks. As time passes, long-term distributors are able to accrue a larger database, rendering the data more valuable. The proposed price increases reflect the growing value of the data over time.

Purchases of the Daily Short Sale Volume and Monthly Short Sale Transaction files are entirely optional. These reports are not necessary to execute trades, but rather are typically used to develop trading models, conduct analyses and assess long-term risks. This type of activity is entirely at the discretion of the subscriber.

The proposed changes do not impact or raise the cost of any other Nasdaq product. Short sale reports from the Nasdaq BX and PSX Exchanges will continue to be provided free of charge, as they have been since 2010.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [5]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [6] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[7] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [8]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [9]

The Exchange believes that the proposal to replace the current fee of $500 per month for the internal and

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[6] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[7] *See NetCoalition,* at 534–535.

[8] *Id.* at 537.

[9] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

external distribution of short sale data with a monthly fee of $750 per month for the distribution of short sale data to internal users, and a monthly fee of $1,250 for the distribution of short sale data to external users, is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, it is reasonable for external distributors to bear a higher proportion of the cost because they receive greater value from the product, and it is reasonable for Nasdaq to increase a fee for a product that has become more valuable over time. Moreover, short sale data fees, like all proprietary data fees, are constrained by the Exchange's need to compete for order flow, and are subject to competition from other products, such as the short sale data products produced by NYSE and BATS.

The Exchange believes that the proposed change is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly-situated distributors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed fees replace the current fee of $500 per month for the internal and external distribution of short sale data with a monthly fee of $750 per month for distribution to internal users, and a monthly fee of $1,250 for distribution to external users. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Specifically, market forces constrain fees for Daily Short Sale Volume files and Monthly Short Sale Transaction files in three respects. First, all fees related to short sale data are constrained by competition among exchanges and other entities attracting order flow. Firms make decisions regarding short sale data and other proprietary data based on the total cost of interacting with the Exchange, and order flow would be harmed by the supracompetitive pricing of any proprietary data product. Second, prices for short sale data are constrained by the sale of short sale data by other exchanges. Third, competition among Distributors will constrain the cost of short sale data.

Competition for Order Flow

Fees related to short sale data are constrained by competition among exchanges and other entities seeking to attract order flow. Order flow is the ''life blood'' of the exchanges. Broker-dealers currently have numerous alternative venues for their order flow, including self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs, which may readily reduce costs by directing orders toward the lowest-cost trading venues.

The level of competition and contestability in the market for order flow is demonstrated by the numerous examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume. For a variety of reasons, competition from new entrants, especially for order execution, has increased dramatically over the last decade.

Each SRO, TRF, ATS, and BD that competes for order flow is permitted to produce proprietary data products. Many currently do or have announced plans to do so, including NYSE, NYSE Amex, NYSE Arca, BATS, and IEX. This is because Regulation NMS deregulated the market for proprietary data. While BDs had previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Order routers and market data vendors can facilitate production of proprietary data products for single or multiple BDs. The potential sources of proprietary products are virtually limitless.

The markets for order flow and proprietary data are inextricably linked: a trading platform cannot generate market information unless it receives trade orders. As a result, the competition for order flow constrains the prices that platforms can charge for proprietary data products. Firms make decisions on how much and what types of data to consume based on the total cost of interacting with Nasdaq and other exchanges. Data fees are but one factor in a total platform analysis. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. A supracompetitive increase in the fees charged for either transactions or proprietary data has the potential to impair revenues from both products. In this manner, the competition for order flow will constrain prices for proprietary data products.

Substitute Products

The price of short sale data from Nasdaq is constrained by the availability of short sale data from other exchanges, such as NYSE and BATS. Short sale data is used to support various analytical tools, and Distributors would not pay an excessive price for such data when similar information is available from other sources.

Competition Among Distributors

Distributors provide another form of price discipline for proprietary data products. Distributors are in competition for users, and can simply refuse to purchase any proprietary data product that fails to provide sufficient value for the price. If the price of short sale data were set above competitive levels, Distributors purchasing such data would be at a disadvantage relative to their competitors, and would therefore either purchase a substitute or

forego the product altogether. This competition for customers provides another check on the price for short sale data.

In summary, market forces constrain the price of short sale data through competition for order flow, competition from substitute products, and in the competition among distributors for customers. For these reasons, the Exchange has provided a substantial basis demonstrating that the fee is equitable, fair, reasonable, and not unreasonably discriminatory, and therefore consistent with and in furtherance of the purposes of the Exchange Act.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–168 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–168. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–168 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31109 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79626; File No. SR–ISEGemini–2016–24]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules in Connection With Business Continuity and Disaster Recovery Plans Testing Requirements

December 20, 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 December 15, 2016, ISE Gemini, LLC (''ISE Gemini'' 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 ISE Gemini Rule 803 at Supplementary Material .02 in connection with business continuity and disaster recovery plans (''BC/DR Plans'') testing requirements for certain Members in connection with Regulation Systems Compliance and Integrity (''Regulation SCI'').[3]

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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 ISE Gemini Rule 803 at Supplementary Material .02 to conform the current rule text regarding BC/DR Plans testing requirements with that of NASDAQ PHLX LLC (''Phlx'') Rule 926,[4] The NASDAQ Stock Market LLC (''Nasdaq'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (''SCI Adopting Release'').

[4] Phlx Rule 926 is titled ''The Exchange's Business Continuity and Disaster Recovery Plan Testing Requirements for Member Organizations and PSX Participants Pursuant to Regulation SCI.''

Rule 1170[5] and NASDAQ BX, Inc. (''BX'') Rule 1170.[6]

Background

As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (''ATSs''), plan processors, and exempt clearing agencies (collectively, ''SCI entities''), and requires these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain ''[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.''[7] The Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR Plans consistent with the Rule.

With respect to an SCI entity's BC/DR Plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: ''[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.''[8] Paragraph (b) of Rule 1004 of Regulation SCI further requires each SCI entity to ''[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.''[9]

Proposal

As set forth below, in connection with Regulation SCI, the Exchange is proposing to amend ISE Gemini Rule 803 at Supplementary Material .02 to conform with Phlx Rule 926, Nasdaq Rule 1170 and BX Rule 1170. Phlx Rule 926, Nasdaq Rule 1170 and BX Rule 1170 are similar to ISE Gemini Rule 803 at Supplementary Material .02, which incorporates the requirements of Rule 1004 of Regulation SCI as part of the Exchange's rules, and sets forth the notice, selection criteria and obligations of Members with respect to BC/DR Plans testing.

The Exchange proposes to adopt rule text from Phlx Rule 926(a), Nasdaq Rule 1170(a) and BX Rule 1170(a), which will set forth the Exchange's obligations with respect to the selection of Members for testing. Specifically, the proposed rule will require the Exchange to ''[e]stablish standards for the designation of those Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.'' The proposed rule further provides that ''[s]uch standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by the Exchange.'' Lastly, the proposed rule will require the Exchange to provide public notice of the standards that it adopts.

The Exchange is proposing to revise Rule 803 at Supplementary Material .02, which will set forth the obligations of the Exchange and its Members with respect to testing, similar to Phlx Rule 926(b), Nasdaq Rule 1170(b) and BX Rule 1170(b). Specifically, the proposed rule will require the Exchange to ''designate Members pursuant to the standards established in paragraph (a) of this rule and require participation by such designated Members in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months.'' Moreover, the proposed rule will require the Exchange to provide at least 6 months prior notice to Members that are designated for mandatory testing. Lastly, the proposed rule will provide notice that participation in testing is a condition of membership for Members that are designated for testing.

Today, ISE Gemini's Rule similarly sets forth the Exchange's obligations with respect to the selection of Members for testing. Like the proposed rule change, these standards for the designation of those Members must be reasonably determined by the Exchange, when taken as a whole, to have the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. ISE Gemini's Rule requires the Exchange to provide public notice of the standards that it adopts. Further, ISE Gemini's Rule requires Primary Market Makers (''PMMs'') to participate in scheduled functional and performance testing of the operation of such plans with a frequency of not less than once every 12 months. These standards remain substantially the same under the proposed rule change.

Today, ISE Gemini's Rule requires that at least 3 months prior to a scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans, the Exchange publishes the criteria to be used by the Exchange to determine which PMMs will be required to participate in such testing, and notifies those PMMs that are required to participate based on such criteria. The Phlx, Nasdaq and BX rules require at least 6 months prior notice to Members that are designated for mandatory testing. This change would expand the notice period. Also, ISE Gemini has specific provisions for PMMs with respect to selection for testing. Today, ISE Gemini provides that PMMs that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis, will be required to participate in scheduled functional and performance testing. The Exchange may also consider other factors in determining the PMMs that will be required to participate in scheduled functional and performance testing, including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or PMMs who collectively account for a certain percentage of market share on the Exchange. The proposed rule text does not require a different treatment for PMMs as compared to other market participants. Today, Phlx, Nasdaq and BX select market participants based on volume and/or market share, regardless of market making activity. The proposed rule text would not specifically mandate PMMs however, given the importance of market makers on the Exchange and the volume they traditionally trade, they are likely to be required to participate in business continuity and disaster recovery plans under the proposed rule change as they are today.

The Exchange would continue to encourage all Members to connect to the Exchange's backup systems and to

[5] Nasdaq Rule 1170 is titled ''Nasdaq's Business Continuity and Disaster Recovery Plan Testing Requirements for Members and Options Participants Pursuant to Regulation SCI.''

[6] BX Rule 1170 is titled ''The Exchange's Business Continuity and Disaster Recovery Plan Testing Requirements for Members and Options Participants Pursuant to Regulation SCI.''

[7] 17 CFR 242.1001(a)(2)(v).

[8] 17 CFR 242.1004(a).

[9] 17 CFR 242.1004(b).

participate in testing of such systems;[10] however, certain Members will be obligated to participate in BC/DR Plans testing. In adopting the rule text of Phlx Rule 926, Nasdaq Rule 1170 and BX Rule 1170, the Exchange will require mandatory participation in BC/DR Plans testing by those Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans on the Exchange. The Exchange believes that using overall participation on its markets (by volume and/or market share) as a measure to select Members for mandatory participation in BC/DR Plans testing is a reasonable means by which it can determine which Members are necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. For each BC/DR Plans test cycle, the Exchange will select the top five Members on the Exchange based on the Exchange's measure of overall participation. The Exchange notes that when considering volume, it will exclude contracts traded on PrecISE®.[11] The Exchange has provided notice of the initial selection criteria and measurement period to its Members.[12] All notices concerning BC/DR Plans testing will be posted on the Exchange's Web site.

The Exchange is proposing to initially select Members with the highest levels of trading volume on the Exchange over four calendar months (''Measurement Period'') as mandatory testing for Members [sic].[13] Specifically, the Measurement Period will be the four calendar months of trading immediately prior to the Exchange's announcement of the next BC/DR Plans test date. The Measurement Period will always begin at a point after the Exchange announces the criteria to be used in the next BC/DR Plans test. By way of example, if on October 6, 2017 the Exchange announced the BC/DR Plans test selection criteria and on March 2, 2018 the Exchange announced a BC/DR Plans test date of September 8, 2018, the Measurement Period used to select Member subject to mandatory testing would be November 2017 through February 2018. Members not obligated to participate that wish to participate in this test must inform the Exchange no later than September 1, 2018, based on the aforementioned timeline.[14]

The proposed rule change is intended to provide consistency across the six options exchanges operated by Nasdaq, Inc. in regard to the standards established for the designation of Members that are required to participate in the Exchange's business continuity and disaster recovery testing. In turn, participants that are Members on multiple exchanges operated by Nasdaq, Inc. will be provided greater uniformity and ease of testing with the establishment of consistent standards across the multiple Nasdaq exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal will ensure that the Members necessary to ensure the maintenance of fair and orderly markets are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, the proposal will adopt clear and objective criteria with respect to the designation of Members that are required to participate in the testing of the Exchange's BC/DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, ''SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.''[17] The Exchange believes that this proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange's compliance with Regulation SCI.

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[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[10] In this regard, the Exchange will allow any Member to participate in the testing of the Exchange's BC/DR Plans, which is consistent with the BC/DR Plans. *See* SCI Adopting Release, *supra* note 3 at 72350. The Exchange will provide instructions on how a Member must inform the Exchange of its interest in participating in an upcoming BC/DR Plans test via the announcement of the test date. A Member must provide the Exchange notice of its interest to participate at least a week prior to the test date and must have the appropriate connection for testing in place.

[11] PrecISE is [sic] front-end order and execution management system for trading options and stock-option combinations.

[12] *See* ISE Gemini Circular 2016–08.

[13] The Exchange may change the total number of Members selected from time to time.

[14] *See supra* note 10.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] *See* SCI Adopting Release, *supra* note 3 at 72350.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 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.

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–ISEGemini–2016–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISEGemini–2016–24. 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–ISEGemini–2016–24 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31117 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79610; File No. SR–CBOE–2016–090]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Compression of S&P 500(R) Index Options Positions

December 20, 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 December 15, 2016, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 6.56 regarding ''compression forums.'' The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule 6.56 (Compression Forums) to describe the Exchange's ''compression forum'' process. Under proposed Rule 6.56, the Exchange would facilitate closing-only transactions in series of S&P 500(R) Index (''SPX'') options on the final three trading days of each calendar month as described below.

Background

The Exchange's proposal is intended to provide a procedure for Trading Permit Holders (''TPHs'') to efficiently reduce open positions in series of SPX options at the end of each calendar month in order to mitigate the effects of capital constraints on market participants and help ensure continued depth of liquidity in the SPX options market.

SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital Rules'') requires that every registered broker-dealer maintain certain specified minimum levels of capital.[3] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[4]

All Options Clearing Corporation (''OCC'') clearing members are subject to the Net Capital Rules. However, a subset of clearing members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S. bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd–Frank Wall Street Reform and Consumer Protection Act.[5] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c3–1.

[4] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.* vertical spreads).

[5] H.R. 4173 (amending section 3(a) of the Act) (15 U.S.C. 78c(a)).

have approved a comprehensive regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[6] Generally, these rules impose higher minimum capital requirements, more restrictive capital eligibility standards, and higher asset risk weights than were previously mandated for clearing members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not permit deductions for hedged securities or offsetting options positions.[7] Rather, capital charges under these standards are based on the aggregate notional value of short positions regardless of offsets. As a result, Clearing Trading Permit Holders (''CTPHs'') generally must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules. The impact of these regulatory capital rules are compounded in the SPX options market due to the large notional value of SPX contracts.

The Exchange believes that these regulatory capital requirements could impede efficient use of capital and undermine the critical liquidity role that Market-Makers play in the SPX options market by limiting the amount of capital CTPHs can allocate to clearing member transactions. Specifically, the rules may cause CTPHs to impose stricter position limits on their clearing members. These stricter position limits may impact the liquidity Market-Makers might supply in the SPX market, and this impact may be compounded when a CTPH has multiple Market-Maker client accounts, each having largely risk-neutral portfolio holdings.[8]

The Exchange believes that permitting TPHs to reduce open interest in offsetting SPX options positions would have a beneficial effect on the bank regulatory capital requirements of CTPHs' parent companies without adversely affecting the quality of the SPX options market. Accordingly, the Exchange seeks to codify a process in the rules to encourage the compression of open interest in SPX at the end of each calendar month. The Exchange believes that periodic reductions in open interest would likely contribute additional liquidity and continued competitiveness to the SPX market. In addition, the Exchange believes that the proposed rule change will promote more efficient capital deployment in light of the regulatory capital requirements rules and help ensure depth of liquidity in the SPX options market.

Proposal

Currently, TPHs seeking to reduce open interest in SPX options for regulatory capital purposes could simply trade out of positions at the end of each month as they would trade any open positions. However, the Exchange believes that wide-scale reduction of open interest in SPX options in such a manner is burdensome. First, the range of positions held by different TPHs in SPX varies greatly. In some cases, a TPH may hold positions in thousands of series of SPX. With no way of efficiently determining whether opposite (long/short) open interest is present in the trading crowd or whether there is counterparty interest for a particular closing transaction across multiple series, in order to close a position, a TPH would need to represent an order and wait for a response, if any. Second, given that there are more than 10,000 series of SPX held by numerous TPHs, attempting to close positions during normal trading is inefficient and sometimes ineffective. Accordingly, the Exchange proposes to adopt a procedure to facilitate these types of transactions on the Exchange in proposed Rule 6.56. The Exchange believes that its proposal would allow TPHs seeking to close positions in SPX options to more easily identify counterparty interest and efficiently conduct closing transactions in SPX options on the Exchange without interfering with normal SPX trading.

In general, the process described in proposed Rule 6.56 would permit TPHs to submit lists of open positions to the Exchange that they wish to close against opposing (long/short) positions of other TPHs, which the Exchange would then aggregate into a single list that would allow TPHs to more easily identify those positions with counterparty interest on the Exchange. The Exchange would then provide a forum in the SPX trading crowd during which TPHs could conduct closing-only transactions in series of SPX options.

The procedure for conducting a compression forum would be set forth in paragraph (a) to proposed Rule 6.56. Under paragraph (a)(1), prior to the close of Regular Trading Hours on the fourth to last business day of each calendar month, in a manner and format determined by the Exchange, a TPH could provide the Exchange with a list of open SPX options positions with either a required capital charge equal to the minimum capital charge pursuant to the risk-based haircut (''RBH'') calculator in OCC's rules[9] or comprised of option series with a delta of ten[10] (*i.e.*

[6] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[7] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by market-makers and institutions, are risk-limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying assets), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined. Whereas regulatory capital requirements have historically reflected the risk-limited nature of carrying offsetting positions, these positions may now be subject to large regulatory capital requirements. Various factors, including administration costs; transaction fees; and limited market demand or counterparty interest, however, discourage market participants from closing these positions even though many market participants likely would prefer to close the positions rather than carry them to expiration.

[8] Several TPHs have indicated to the Exchange that these rules could hamper their ability to provide consistent liquidity in the SPX options market unless they reduce their positions in SPX by the end of the year.

[9] Under OCC rules, the required capital charge is equal to either the minimum capital charge or an amount equal to the largest potential loss pursuant to OCC's RBH calculator. The RBH methodology may be used to calculate theoretically based capital charges as set forth within the SEC net capital rule *http://apps.theocc.com/pmc/pmc.do*. For example, a Market-Maker has the following eight-leg position: Long 1000 Jan 1000 SPX calls, short 1000 Jan 2000 SPX calls, short 842 Jan 2500 SPX calls, short 89 Jan 2600 SPX calls, long 200 Jan 700 puts, short 200 Jan 750 SPX puts, short 1000 Jan 1000 SPX puts, and long 1000 Jan 2000 SPX puts. Under OCC rules, the minimum capital charge for this position is $128,435. Using the RBH calculator, there is no potential loss that is greater than this amount; in fact, under each of the 10 equidistant theoretical valuation points of the underlying index, this strategy would net a profit. Therefore, the clearing firm incurs a charge of $128,435. However, as the RBH calculator values demonstrate, this is essentially a riskless position for which there is a minimal chance that a theoretical loss of $128,435 could ever occur. Therefore, this position is eligible for submission to the Exchange as a compression-list position, because the OCC theoretical minimum capital charge is larger than any potential loss that may result within the range of an 8% decrease to a 6% increase in the underlying index value. Alternatively, a Market-Maker has the following five-leg strategy position: Short 892 Jan 1400 SPX calls, short 80 Jan 1500 SPX calls, long 200 Jan 1950 SPX puts, short 200 Jan 2000 SPX puts, and long 165 Jan 2100 SPX puts. Under OCC rules, the minimum capital charge for this position is $38,425. Using the RBH calculator, an increase in the underlying index value of 6% could cause this position to lose $12,801,718 (which is the highest potential loss under each of the 10 equidistant theoretical valuation points of the underlying index). Because this potential loss is larger than the theoretical minimum charge, the actual capital requirement is this amount of $12,801,718. This position is therefore not eligible for submission to the Exchange as a compression-list position, as there is a risk of a potential large loss on this position.

[10] Delta is the ratio comparing the change in the price of the underlying asset to the corresponding change in the price of a derivative. For example, if a stock option has a delta value of 0.65, this means that if the underlying stock increases in price by $1, the option will rise by $0.65, all else equal. Delta values can be positive or negative depending on the type of option. For example, the delta for a call option always ranges from 0 to 1, because as the underlying asset increases in price, call options increase in price. Put option deltas always range

0.1 or −0.1) or less that it would like to close during the compression forum for that calendar month (''compression-list positions''). Compression-list positions may consist of multi-legged positions in series of SPX options, which satisfy the conditions set forth in this paragraph of the proposed rule. The Exchange proposes to limit compression-list positions to those positions, the closing of which the Exchange believes would have the greatest impact on bank regulatory capital requirements and which also have little economic risk associated with them.[11] The Exchange believes compression of these positions would improve market liquidity by freeing capital currently tied up in positions for which there is a minimal chance that a significant loss would occur.[12]

Under paragraph (a)(1) to proposed Rule 6.56, TPHs may also permit their CTPHs or the Clearing Corporation to submit a list of these positions to the Exchange on their behalf.[13] The Exchange recognizes that a CTPH or OCC may more easily identify all of the positions that are held across a TPH firm as well as those that will have the largest impact with respect to regulatory capital reductions. The Exchange believes that such assistance would help to facilitate the compression forum process further.

Under paragraph (a)(2) of proposed Rule 6.56, prior to the open of Regular Trading Hours on the third to last business day of each calendar month, the Exchange would make available[14] to all TPHs an aggregate two-sided (long/short) list of compression-list positions for which open interest has been submitted to the Exchange on both sides pursuant to paragraph (a)(1), including the aggregate size of open interest on each side of each series (''compression-list positions file'').[15] This aggregate two-sided list may also include multi-legged positions of SPX options with opposite open interest submitted to the Exchange according to the parameters described in paragraph (a)(1) to proposed Rule 6.56. This would allow the Exchange to identify multi-leg strategy orders with opposing interest of particular TPHs in the various series of the strategy (*e.g.* vertical spreads, calendar spreads, butterflies, iron condors). The Exchange believes that a list containing such multi-leg or complex positions may help facilitate a more efficient forum by facilitating closing transactions in multiple series at a time.

Under paragraph (a)(3) to proposed Rule 6.56, in addition to making the compression-list positions file available to all TPHs, the Exchange would electronically send the compression-list positions file to the TPHs that submitted compression-list positions to the Exchange pursuant to paragraph (a)(1), including a list of those TPHs that contributed to the compression-list positions file. The list will not include the name of any TPH that requests its name be excluded from this list. Pursuant to paragraph (a)(3), TPHs would be identified as having contributed to the list only and would not be identified as holding any specific position. The Exchange believes this process to identify TPHs that seek to close compression-list positions in advance of a compression forum will increase opportunities for TPHs to ultimately close compression-list positions during a compression forum while, at the same time, providing the opportunity for anonymity. TPHs that do not want to be listed as having contributed compression-list positions may inform the Exchange and will not be included in the listed TPHs.

Under paragraph (a)(4) of proposed Rule 6.56, the Exchange would conduct an open outcry ''compression forum'' in which all TPHs may participate[16] on each of the last three business days of every calendar month at a location on the trading floor determined by the Exchange. Compression forums would be held for four (4) hours during Regular Trading Hours on each of the last three business days of every calendar month, or three (3) hours if any of those days is an abbreviated trading day (such as the day before a holiday), at times determined by the Exchange. All such notices would be provided to TPHs reasonably in advance of any forum as announced via Regulatory Circular in accordance with paragraph (d) to proposed Rule 6.56 discussed below. The Exchange believes that multiple hours across multiple trading days will allow TPHs to close as many positions as possible during this process without interfering with normal SPX trading. In some cases, an appropriate counterparty may not be present in the crowd at [sic] particular time on a particular day when a TPH with an opposite position represents the position in the crowd. In other cases, a TPH may wish to break up a complex order into single legs after trying unsuccessfully to close the multi-leg positions or may have residual positions that could not be closed in full. Additionally, news may be reported causing a high amount of activity preventing TPHs for [sic] participating in the forum at certain times. The Exchange believes that the three-day format will provide TPHs sufficient time to close these positions in a forum without interfering with normal trading.

Under paragraph (b) of proposed Rule 6.56, trades executed during compression forums would be subject to trading rules applicable to trading in SPX during Regular Trading Hours, including manner of bids and offers and allocation and priority rules, except: (1) Only closing transactions in SPX options (including compression-list positions) may be executed during a compression forum; and (2) the minimum increment for all series will be $0.01 during a compression forum. In other words, although trades executed during a compression forum may only be closing transactions and may be in penny increments within a specified timeframe and at a specific location on the trading floor, trades executing during a compression forum will occur in the same manner as all other open outcry SPX trades, including in accordance with systemization requirements under Rule 6.24, and order allocation and priority rules under Rule 6.45B(b). The purpose of the compression forum would simply be to facilitate closing transactions in series of SPX options so that TPHs would have the opportunity to free up capital and eliminate riskless and low delta positions that they may otherwise hold until expiration.

Notably, TPHs would not be required to submit a list of positions to the Exchange pursuant to paragraph (a)(1) in order to participate in a compression forum, and positions SPX series other

from −1 to 0 because as the underlying security increases, the value of put options decrease. For example, if a put option has a delta of −0.33, if the price of the underlying asset increases by $1, the price of the put option will decrease by $0.33. Generally speaking, an at-the-money option usually has a delta of approximately 0.5 or −0.5.

[11] As further discussed below, positions on this list as well as other open SPX positions may be closed during a compression forum.

[12] This definition of compression-list positions is similar to the transaction fee rebate described in SR–CBOE–2015–117, which was adopted for reasons similar to those underlying this proposal. *See* Securities Exchange Act Release No. 76842 (January 6, 2016), 81 FR 1455 (January 12, 2016) (Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule) (SR–CBOE–2015–117).

[13] The Exchange notes that while CTPHs may request that their clients holding the out-of-the-money and riskless positions permit the CTPHs to attempt to close these positions out, firms are not required to do so (*i.e.,* these transactions are voluntary and within the discretion of the CTPHs' clients).

[14] The Exchange expects to publish this list on its Web site.

[15] This list would not identify which TPH holds these positions.

[16] As compression forums will be conducted in open outcry, TPHs that may participate include Floor Brokers and Market-Makers with SPX appointments.

than compression-list positions may be closed during a compression forum, as long as it involves only closing transactions. The compression forums will be limited to closing only transactions, because if opening transactions were permitted during a compression forum, it would defeat the purpose of the proposed rule, which is to encourage the closing of positions that are creating high bank regulatory capital requirements, often with positions that are of low economic benefit and risk and could otherwise be offset. Similarly, the minimum increment for series traded during a compression forum will be $0.01 to further encourage closing of these positions. Because many series the Exchange expects to trade during the compression forum will be out-of-the-money, and essentially worthless, TPHs may not otherwise close positions in these series if a higher minimum increment causes the price to be too much higher than the option's value.

Under paragraph (c) to proposed Rule 6.56, and as noted above in the example, TPHs would be permitted to communicate with other TPHs to determine: A TPH's open single-legged or multi-legged SPX positions and/or (2) whether a TPH anticipates participating in a compression forum at a particular date and time. During these communications, TPHs may not discuss the price of a potential transaction involving these positions during a compression forum. Trades executed during a compression forum pursuant to proposed Rule 6.56 and otherwise in compliance with the Rules would not be deemed prearranged trades in violation of the Rules.[17] The purpose of the compression forum process is to facilitate closing transactions in series of SPX options between counterparties holding opposite open positions. The proposed rule is intended to help counterparties find one another so they can more efficiently trade out of open positions at the end of each calendar month. Communications between one another as to what positions they hold and when they will be available to potentially trade out of such positions will provide this efficiency and increase opportunities for TPHs to close these positions. Without communications regarding these logistics, it would be left to chance whether TPH with opposite positions would be present to close those positions during a compression forum, making it more difficult to close these positions. As long as communications are limited to which positions are held and timing of participation in a compression forum and do not include discussions of other elements of a potential trade, such as the price, the Exchange would not deem such communications to form the basis of a prearranged trade. The Exchange notes again all orders placed during a compression forum must be represented in the crowd and executed against the best responsive bid or offer, as they would during normal trading. Additionally, as noted above, all TPHs that are able to trade SPX on the trading floor may participate in a compression forum in accordance with the proposed procedure. TPHs participating in a compression forum must continue to comply with all other trading rules.

Finally, paragraph (d) to proposed Rule 6.56 states the Exchange will announce to TPHs determinations it makes pursuant to the proposed rule via Regulatory Circular with reasonable notice.

The following is an example of how the compression forum process would work under paragraph (a) of proposed Rule 6.56. On December 20, 2016, the Exchange issues a regulatory circular stating a compression forum will be held on December 28 and 29 between 10:00 a.m. and 2:00 p.m. each day, and on December 30 between 9:00 a.m. and 12:00 p.m. The circular and [sic] invites all TPHs to submit a password protected .CSV file containing SPX positions with either a required capital charge equal to the minimum capital charge under Clearing Corporation rules risk-based haircut calculator and/or positions in series of SPX options with a delta of ten (10) or less via email with appropriate security measures containing the following fields: MARKET PARTICIPANT; SYMBOL, EXPIRATION DATE, STRIKE, CALL/PUT (either call or put), and SIZE (negative size denoting short size). The circular notes that all submissions must be received by the Exchange no later than December 27, 2016 at 3:15 p.m. Additionally, the circular notes a TPH should state in its email to CBOE if it does not want its name with the other submitting TPHs. Additionally, each submitting TPH must designate a point person.

Prior to 3:15 p.m. on December 27, 2016, the Exchange receives the following .CSV files: XYZ closing postions.csv; ABC closing trades.csv; and 123 compression.csv.[18]

Market participant	Symbol	Expiration date	Strike	Call/put	Size
XYZ TRADING	SPXW	12/30/2016	1500	C	−125
XYZ TRADING	SPXW	12/30/2016	1505	P	25
XYZ TRADING	SPX	1/20/2017	1610	P	−75
XYZ TRADING	SPX	1/20/2017	1700	P	−166
XYZ TRADING	SPXW	1/8/2016	1800	C	250
XYZ TRADING	SPXW	1/8/2016	1850	C	500
XYZ TRADING	SPXW	1/8/2016	1900	C	250
XYZ TRADING	SPXW	12/30/2016	2350	C	−652
XYZ TRADING	SPXW	12/30/2016	2460	C	−1425

[17] Under Section 9(a)(1) of the Act, it shall be unlawful for any member of a national securities exchange, for the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties. Prearranged trading could result in also result in [sic] a violation of CBOE Rule 4.1, which prohibits conduct inconsistent with just and equitable principles of trade, Rule 6.45A or 6.45B which addresses the priority of bids and offers, and/or Rule 10b–5 of the Act, which prohibits any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security, respectively. *See* Regulatory Circular RG16–190 (Prearranged Trades) (December 6, 2016).

[18] For purposes of this example, it is assumed that all the positions submitted to the Exchange by XYZ Trading, ABC Trading, and 123 Trading are either positions with a delta of ten or less or positions with a required capital charge equal to the minimum capital charge under the risk-based haircut calculator in the Clearing Corporation rules.

Market participant	Symbol	Expiration date	Strike	Call/put	Size
ABC TRADING	SPXW	12/30/2016	1500	C	−76
ABC TRADING	SPXW	12/30/2016	1505	P	−105
ABC TRADING	SPX	2/17/2017	1850	P	−166
ABC TRADING	SPXW	12/30/2016	2350	C	−62
ABC TRADING	SPXW	12/30/2016	2460	C	322
ABC TRADING	SPX	2/17/2017	2500	P	−50

Market participant	Symbol	Expiration date	Strike	Call/put	Size
123 TRADING	SPXW	12/30/2016	1500	C	50
123 TRADING	SPX	1/20/2017	1610	P	−105
123 TRADING	SPXW	1/8/2016	1800	C	−200
123 TRADING	SPXW	1/8/2016	1850	P	−400
123 TRADING	SPX	2/17/2017	1850	C	−107
123 TRADING	SPXW	1/8/2016	1900	C	−200
123 TRADING	SPXW	12/30/2016	2350	P	−62
123 TRADING	SPXW	12/30/2016	2460	C	25
123 TRADING	SPXW	12/30/2017	2500	P	−300

The email identify the following point people: XYZ Trading Firm—John Smith; ABC Trading Firm—Jane Doe; and 123 Trading Company—Sam Jones. No TPH requests to remain anonymous.

The Exchange then aggregates the closing positions and publishes the aggregated position data on its Web site for series of SPX options with two-sided compression-list positions submitted to the Exchange. Additionally, it distributes the list, as well as the TPHs that submitted individual position lists, to those TPHs:

Symbol	Expiration date	Strike	Call/put	Long size	Short size
SPXW	12/30/2016	1500	C	50	−201
SPXW	12/30/2016	1505	P	25	−105
SPXW	1/8/2016	1800	C	250	−200
SPXW	1/8/2016	1850	P	500	−400
SPXW	1/8/2016	1900	C	250	−200
SPXW	12/30/2016	2350	P	0	−62
SPXW	12/30/2016	2460	C	347	−1425

Market participants	Designated lead
XYZ TRADING	John Smith
ABC TRADING	Jane Doe
123 TRADING	Sam Jones

Following the dissemination of the .CSV file, TPHs discuss the positions included in the disseminated .CSV file with the designated leads in order to determine when each intended to participate in an upcoming compression forum. Each TPH coordinates with another TPH that holds an opposite position when they will be present at one of the upcoming compression forums. During the compression forums held on December 28 through 30, these three TPHs conducted the following trades: [19]

1. 123 Trading sells 25 SPXW 12/30/16 1500 C to each of ABC Trading and XYZ Trading.

2. XYZ Trading sells 25 SPXW 12/30/16 1505 P to ABC Trading.

3. XYZ Trading sells 200 butterflies consisting of 200 SPXW 1/8/2016 1800 C, 400 SPXW 1/8/2016 1850 C, and 200 SPXW 1/8/16 1900 C to 123 Trading.

4. 123 Trading sells 12 SPXW 12/30/2016 2460 C to each of ABC Trading and XYZ Trading (and the parties determine which of ABC Trading and XYZ Trading receive the extra contract).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with

[19] This example assumes: (1) No customer orders are on the book at the same or better price of the compression forum transaction; (2) if two TPHs respond to an order represented in the compression forum, they do so at the same price and time and, thus, the order is allocated equally among them; and (3) no other TPHs enter the compression forum to attempt to participate in the trades.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change is reasonable, equitable, and does not unfairly discriminate against any market participants. The Exchange notes that all TPHs with open SPX positions may participate in a compression forum in accordance with the proposed procedure. Other market participants with open SPX positions may participate through CBOE floor brokers, as they would for any other SPX trading. Participation in compression forums, as well as advanced submission of compression-list positions, is optional, and TPHs may continue to attempt to trade open SPX positions during normal trading.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to limit compression-list positions to certain riskless and low delta positions and trading in compression forums to closing only transactions because these types of positions and transactions will result in large bank regulatory capital requirements impacts for CTPHs even though there is minimal chance for large losses to occur. The Exchange notes that if opening transactions were permitted during a compression forum, it would defeat the purpose of the proposed rule, which is to encourage the closing of positions that are creating high bank regulatory capital requirements, often with positions that are of low economic benefit and risk and could otherwise be offset. The Exchange notes that there are other circumstances involving liquidity concerns in which the Exchange limits transactions in particular securities to closing only transactions. For example, the Exchange [sic] transactions in restricted option classes to [sic] closing only (subject to certain exceptions).[23] Additionally, cabinet trades are limited to closing only (subject to certain exceptions).[24] Similarly, the minimum increment for series traded during a compression forum will be $0.01 to further encourage closing of these positions. Because many series the Exchange expects to trade during the compression forum will be out-of-the-money, and essentially worthless, TPHs may not otherwise close positions in these series if a higher minimum increment causes the price to be too much higher than the option's value.

In addition, the Exchange believes it's reasonable, equitable and not unfairly discriminatory to limit the compression forum process to SPX options (including SPXW and SPXPM) because SPX has a substantially higher notional value than other options classes. As such, open interest in SPX has a much greater effect on a bank's regulatory capital requirements. Compressing out-of-the-money and riskless SPX option positions therefore has a greater impact on reducing a bank regulatory capital requirement.

Furthermore, the Exchange believes that its proposal is consistent with the Act in that it seeks to mitigate the potentially negative effects of the bank capital requirements on liquidity in the SPX options market. As described above, the Exchange believes that the new regulatory capital requirements could potentially impede efficient use of capital and undermine the critical liquidity role that Market-Makers play in the SPX options market by limiting the amount of capital CTPHs an [sic] allocate to clearing member transactions. Specifically, the rules may cause CTPHs to impose stricter position limits on their clearing members. In turn, this could force Market-Makers to reduce the size of their quotes in SPX and result in reduced liquidity in the market. The Exchange believes that permitting TPHs to reduce open interest in offsetting SPX options positions would likely contribute to the availability of liquidity in the SPX options market and help ensure that the SPX options market retains its competitive balance. The Exchange believes that the proposed rule would serve to protect investors by helping to ensure consistent continued depth of liquidity in the SPX options market.

The Exchange also believes the proposed rule change is consistent with the Act, because the proposed procedure is consistent with its current rules. The proposed rule would direct that all trading during compression forums be conducted in accordance with normal SPX trading rules and thus, all transactions that would occur during compression forums would occur in the same manner as transactions during normal SPX trading, except transactions must be closing only and may be in penny increments. This process is narrowly tailored for a for [sic] the specific purpose of facilitating the closing of positions in the SPX options market, which the Exchange believes will serve to protect investors by helping to ensure continued depth of liquidity in the SPX options market. The Exchange also notes the proposed provisions regarding the position lists are optional procedures to help facilitate compression transactions. Submission of lists of positions for compression is completely voluntary, open to all TPHs, and non-binding, in that submission of a list does not require a TPH to trade any position or even represent any position in a trading crowd. Furthermore, the list of positions will be made available to all market participants and contain very limited information regarding open interest in positions in SPX. The list will not advantage or disadvantage any TPH, but rather simply alert TPHs to certain SPX positions that other TPHs are interested in closing at the end of each calendar month.

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 intramarket competition that is not necessary or appropriate in furtherance of the Act because it applies to all market participants in the same manner with positions that meet the eligible criteria. The proposed change would encourage the closing of positions that needlessly result in burdensome capital requirements, which, once closed, would alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain unwanted SPX positions. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies only to the trading of SPX options, which are exclusively-listed on CBOE. To the extent that the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants. Furthermore, as stated in Item 3(b) above, submission of lists of positions for compression is completely voluntary, open to all TPHs, and non-binding, in that submission of a list does not require a TPH to trade any position or even represent any position in a trading crowd. Lists of positions will be made available to all TPHs and contain very limited information regarding open interest in positions in SPX. The list will simply alert TPHs to certain SPX positions that other TPHs are interested in closing at the end of each calendar month.

[22] *Id.*

[23] *See* Rule 5.4.

[24] *See* Rule 6.54.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [25] and Rule 19b–4(f)(6) thereunder.[26] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay to allow the compression forum process to begin in December 2016 and trading to take place on the final three days of trading in 2016. The Exchange stated that it is requesting this waiver because it believes that bank capital requirements will have substantial adverse consequences on some CTPHs if TPHs are not able to sufficiently reduce their open interest in SPX by the end of the year. The Exchange understands that bank-imposed capital limits for TPHs, measured at the end of the year and based on the aggregate notional value of short positions regardless of offsets, may impact CTPHs and the firms for which they clear depending on the open interest they hold. CBOE believes, as it explained above, that the impact of these rules uniquely affects the SPX options market due to the large notional value of SPX contracts. In response, CTPHs may impose stricter position limits on the firms for which they clear and, to the extent they do so, it may effectively limit the amount of liquidity that some TPHs, notably Market-Makers, will be able to provide in SPX options. The Exchange believes that it is in the best interest of investors to use this new compression forum process to help foster continued liquidity in the SPX options market by allowing firms to free up capital by finding opportunities to trade out of relatively worthless positions.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because this waiver will enable the Exchange to hold compression forums for SPX options prior to the end of the year, thereby helping to facilitate transactions and remove impediments to year-end trading in SPX options, through a limited process designed to protect investors and the public interest. The Commission notes that CBOE's compression forum rule is limited in its application, involves no material changes to how trading is conducted on the Exchange, creates a process in which participation is voluntary and open to all, and is provided as a means to help Market Makers and other market participants, as well as their clearing brokers, avoid the need to limit their activities as a result of out-of-the-money positions on SPX options that such firms wish to exit. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[27]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [28] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–090 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–090. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–090, and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31102 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78s(b)(2)(B).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79623; File No. SR–BatsBYX–2016–39]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Market Data Section of Its Fee Schedule To Adopt Fees for BYX Summary Depth and Amend Fees for BYX Depth

December 20, 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 December 14, 2016, Bats BYX Exchange, Inc. (''BYX'' or the ''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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to: (i) Adopt fees for a new market data product called BYX Summary Depth; and (ii) amend the fees for BYX Depth.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to: (i) Adopt fees for a new market data product called BYX Summary Depth; and (ii) amend the fees for BYX Depth.

BYX Summary Depth

BYX Summary Depth is a data feed that will provide aggregated two-sided quotations for all displayed orders entered into the System[5] for up to five (5) price levels for securities traded on the Exchange and for which the Exchange reports quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[6] BYX Summary Depth will also contain the individual last sale information, Market Status, Trading Status, and Trade Break messages. The individual last sale information will include the price, size, and time of execution. The last sale message will also include the cumulative number of shares executed on the Exchange for that trading day. The Exchange intends to begin to offer BYX Summary Depth on January 3, 2017.[7]

The Exchange now proposes to amend its fee schedule to incorporate fees for distribution of BYX Summary Depth to subscribers.[8] The proposed fees include the following, each of which are described in detail below: (i) Distribution Fees for both Internal and External Distributors;[9] (ii) Usage Fees for both Professional[10] and Non-Professional[11] Users; (iii) an Enterprise Fee; and (iv) a Digital Media Enterprise Fee.

Distribution Fees. As proposed, each Internal Distributor that receives BYX Summary Depth shall pay a fee of $2,500 per month. The Exchange does not propose to charge any User fees for BYX Summary Depth where the data is received and subsequently internally distributed to Professional or Non-Professional Users. In addition, the Exchange proposes to charge also External Distributors that receive BYX Summary Depth a fee of $2,500 per month.

User Fees. The Exchange proposes to charge External Distributors that redistribute BYX Summary Depth different fees for their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of $2.50 per User. Non-Professional Users will be assessed a monthly fee of $0.10 per User. The Exchange does not propose to charge per User fees to Internal Distributors.

External Distributors that receive BYX Summary Depth will be required to count every Professional User and Non-Professional User to which they provide BYX Summary Depth, the requirements for which are identical to that currently in place for other market data products offered by the Exchange.[12] Thus, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b-4(f)(2).

[5] ''System'' is defined as the ''the electronic communications and trading facility designated by the Board through which securities orders of Users Are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(aa).

[6] *See* Exchange Rule 11.22(k).

[7] *See Reminder: Bats Global Markets to Introduce Bats Summary Depth Feeds on January 3, 2017, http://cdn.batstrading.com/resources/release_notes/2017/Reminder-Bats-Global-Markets-to-Introduce-Bats-Summary-Depth-Feeds-on-Jan-3–2017.pdf.*

[8] The Exchange notes that its affiliated exchanges, Bats EDGX Exchange, Inc. (''EDGX''), Bats EDGA Exchange, Inc. (''EDGA'') and Bats BZX Exchange, Inc. (''BZX'', together with the Exchange, EDGX and EDGA, the ''Bats Exchanges''), also intent to file proposed rule changes with Commission to adopt similar fees for their respective Summary Depth market data product.

[9] A ''Distributor'' is defined as ''any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.'' *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.* An ''Internal Distributor'' is defined as ''a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity.'' *Id.* An ''External Distributor'' is defined as ''a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.'' *Id.*''

[10] A ''Professional User'' is defined as ''any User other than a Non-Professional User.'' *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.*

[11] A ''Non-Professional User'' is defined as ''a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.'' *Id.*

[12] *See* Securities Exchange Act Release Nos. 74284 (February 18, 2015); 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09) (proposing fees for the Bats One Feed); 75407 (July 9, 2015), 80 FR

External Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. External Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of BYX Summary Depth, the Distributor should count as one User each unique User that the Distributor has entitled to have access to BYX Summary Depth. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to BYX Summary Depth, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to BYX Summary Depth (*e.g.,* a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.
- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distribution Fee for BYX Summary Depth equal to the amount of its monthly Usage Fees up to a maximum of the Distribution Fee for BYX Summary Depth. For example, an External Distributor will be subject to a $2,500 monthly Distribution Fee where they receive BYX Summary Depth. If that External Distributor reports User quantities totaling $2,500 or more of monthly usage of BYX Summary Depth, it will pay no net Distribution Fee, whereas if that same External Distributor were to report User quantities totaling $1,500 of monthly usage, it will pay a net of $1,000 for the Distribution Fee. External Distributors will remain subject to the per User fees discussed above.

Enterprise Fee. The Exchange also proposes to establish a $20,000 per month Enterprise Fee that will permit a recipient firm who receives BYX Summary Depth from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 15,000 Professional Users who each receive BYX Summary Depth at $2.50 per month, then that recipient firm will pay $37,500 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $20,000 for an unlimited number of Professional and Non-Professional Users for BYX Summary Depth. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls the display of BYX Summary Depth if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. Lastly, the proposed Enterprise Fee would be counted towards the Distribution Fee credit described above, under which an External Distributor receives a credit towards its Distribution Fee equal to the amount of its monthly BYX Summary Depth User fees.

Digital Media Enterprise Fee. The Exchange proposes to adopt a Digital Media Enterprise Fee of $5,000 per month for BYX Summary Depth. As an alternative to proposed User fees discussed above, a recipient firm may purchase a monthly Digital Media Enterprise license to receive BYX Summary Depth from an External Distributor to distribute to an unlimited number of Professional and Non-Professional Users for viewing via television, Web sites, and mobile devices for informational and non-trading purposes only without having to account for the extent of access to the data or the report the number of Users to the Exchange. Lastly, the proposed Digital Media Enterprise Fee would be counted towards the Distribution Fee credit described above, under which an External Distributor receives a credit towards its Distribution Fee equal to the amount of its monthly BYX Summary Depth User fees.

BYX Depth

BYX Depth is an uncompressed market data feed that provides depth-of-book quotations and execution information based on equity orders entered into the System.[13] Currently, the Exchange charges fees for both internal and external distribution of BYX Depth. The cost of BYX Depth for an Internal Distributor is currently $1,000 per month. The Exchange also separately charges an External Distributor of BYX Depth a flat fee of $2,500 per month. The Exchange does not currently charge Internal and External Distributors separate display User fees. The Exchange also charges a fee for Non-Display Usage[14] by Trading Platforms[15] by which subscribers to BYX Depth are charged a fee of $2,000 per months. This fee is assessed in addition to existing Distribution fees. The Exchange now proposes to amend its fee schedule to incorporate Usage Fees for both Professional and Non-Professional Users and an Enterprise Fee for BYX Depth. Each of these changes are described in detail below.

User Fees. The Exchange proposes to charge Internal and External Distributors that redistribute BYX Depth different fees for their Professional Users and Non-Professional Users.[16] The Exchange will assess a monthly fee for Professional Users of $10.00 per User. Non-Professional Users will be assessed a monthly fee of $1.00 per User. Distributors that receive BYX Depth will be required to count every Professional User and Non-Professional User to which they provide BYX Depth, the requirements for which are identical to that set forth above for BYX Summary Depth and as currently in place for other market data products offered by the Exchange.[17]

Enterprise Fee. The Exchange also proposes to establish a $25,000 per month Enterprise Fee that will permit an Internal Distributor, External Distributor, or a recipient firm who receives BYX Depth from an External Distributor to receive the data for an

41532 (July 15, 2015) (SR–BYX–2015–30) (proposing user fees for the BYX Top and Last Sale data feeds); *and* 75786 (August 28, 2015), 80 FR 53353 (September 3, 2015) (SR–BYX–2015–36) (proposing fees for BYX Book Viewer).

[13] *See* Exchange Rule 11.22(a) and (c).

[14] The term ''Non-Display Usage'' is defined as ''any method of accessing a Market Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.'' *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.*

[15] The term ''Trading Platform'' is defined as ''any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).'' *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.*

[16] The Exchange notes that, unlike as proposed for BYX Summary Depth described above, both Internal and External Distributors of BYX Depth would be charged the same User fee for their Professional and Non-Professional Users.

[17] *See supra* note 12 and accompanying text.

unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 15,000 Professional Users who each receive BYX Depth at $10.00 per month, then that recipient firm will pay $150,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $25,000 for an unlimited number of Professional and Non-Professional Users for BYX Depth. Like proposed above for BYX Summary Depth, a recipient firm must pay a separate Enterprise Fee for each External Distributor that controls the display of BYX Depth if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users.

Implementation Date

The Exchange intends to implement the proposed fee change on January 3, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[18] in general, and furthers the objectives of Section 6(b)(4),[19] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. The Exchange also believes it is reasonable to charge different rates for BYX Depth and BYX Summary Depth as both products different levels of content (*e.g.,* BYX Depth contains quotations for all individual orders while BYX Summary Depth contains the aggregation quotation information for all orders up to five (5) price levels). Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[20] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[21] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. BYX Summary Depth and BYX Depth are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to BYX Summary Depth and BYX Depth further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to consolidate and distribute BYX Summary Depth and BYX Depth, prospective Users likely would not subscribe to, or would cease subscribing to, BYX Summary Depth and BYX Depth.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[22]

BYX Summary Depth

Distribution Fee. The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution. The Exchange believes that the Distribution Fees for BYX Summary Depth are reasonable and fair in light of alternatives offered by other market centers. For example, BYX Summary Depth provides investors with

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78k–1.

[21] 17 CFR 242.603.

[22] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

alternative market data and competes with similar market data product currently offered by the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'').[23] Specifically, the NYSE charges an access fee of $5,000 per month for NYSE OpenBook,[24] which is more than the External Distribution fee proposed herein for BYX Summary Depth.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for BYX Summary Depth are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for BYX Summary Depth is reasonable because it provides an additional method for retail investors to access BYX Summary Depth data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the Bats One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[25] Offering BYX Summary Depth to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE and Nasdaq. Specifically, NYSE offers NYSE OpenBook for a monthly fee of $60.00 per professional subscriber and $15 per non-professional subscriber.[26] Nasdaq offers Nasdaq TotalView-Aggregated for a monthly fee of $70.00 per professional subscriber and $14 per non-professional subscriber.[27] The Exchange's proposed per User Fees for BYX Summary Depth are less than the NYSE and Nasdaq fees.

Enterprise Fee. The proposed Enterprise Fee for BYX Summary Depth is equitable and reasonable as the fees proposed are less than the enterprise fees currently charged for Nasdaq TotalView-Aggregated. Nasdaq charges an enterprise fee of $100,000 per month for Nasdaq TotalView-Aggregated,[28] which is far greater than the proposed Enterprise Fee of $20,000 per month for BYX Summary Depth. In addition, the Enterprise Fee proposed by the Exchange could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of BYX Summary Depth, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute BYX Summary Depth, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

Digital Media Enterprise Fee. The Exchange believes that the proposed Digital Media Enterprise Fee for BYX Summary Depth provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. In establishing the Digital Media Enterprise Fee, the Exchange recognizes that there is demand for a more seamless and easier-to-administer data distribution model that takes into account the expanded variety of media and communication devices that investors utilize today. The Exchange believes the Digital Media Enterprise Fee will be easy to administer because data recipients that purchase it would not be required to differentiate between Professional and Non-Professional Users, account for the extent of access to the data, or report the number of Users. This is a significant reduction on a recipient firm's administrative burdens and is a significant value to investors. For example, a television broadcaster could display BYX Summary Depth data during market-related programming and on its Web site or allow viewers to view the data via their mobile devices, creating a more seamless distribution model that will allow investors more choice in how they receive and view market data, all without having to account for and/or measure who accesses the data and how often they do so.

The proposed Digital Media Enterprise Fee is equitable and reasonable because it will also enable recipient firms to more widely distribute data from BYX Summary Depth to investors for informational purposes at a lower cost than is available today. For example, a recipient firm may purchase an Enterprise license in the amount of $20,000 per month for to receive BYX Summary Depth from an External Distributor for an unlimited number of Professional and Non-Professional Users, which is greater than the proposed Digital Media Enterprise Fee. The Exchange also believes the amount of the Digital Media Enterprise Fee is reasonable as compared to the existing enterprise fees discussed above because the distribution of BYX Summary Depth data is limited to television, Web sites, and mobile devices for informational purposes only, while distribution of BYX Summary Depth data pursuant to an Enterprise license contains no such limitation. The Exchange also believes that the

[23] *See* Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView is a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). *See also* Nasdaq Book Viewer, a description of which is *available at https://data.nasdaq.com/Book* Viewer.aspx. *See* NYSE OpenBook *available at http://www.nyxdata.com/openbook* (providing real-time view of the NYSE limit order book).

[24] *See* NYSE Market Data Pricing dated November 2016 *available at http://www.nyxdata.com/.* Nasdaq charges distribution fees ranging from $375 for 1–39 subscribers to $75,000 for more than 250 subscribers. *See* Nasdaq Rule 7023(b)(4).

[25] *See* Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); *and* 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09) (''Initial BATS One Feed Fee Filings''). *See also, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); *and* Nasdaq Rules 7023(b), 7047.

[26] *See* NYSE Market Data Pricing dated November 2016 *available at http://www.nyxdata.com/.*

[27] *See* Nasdaq Rule 7023(b)(2).

[28] *See* Nasdaq Rule 7023(c)(2) (stating that a distributor that is also a broker-dealer pays a monthly fee of $100,000 for the right to provide Nasdaq TotalView and for display usage for internal distribution, or for external distribution to both professional and non-professional subscribers with whom the firm has a brokerage relationship.) Nasdaq also charges an enterprise fee of $25,000 to provide Nasdaq TotalView to an unlimited number of non-professional subscribers only. *See* Nasdaq Rule 7023(c)(1).

proposed Digital Media Enterprise Fee is equitable and reasonable because it is less than similar fees charged by other exchanges.[29]

BYX Depth

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for BYX Depth are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for BYX Depth is reasonable because it provides an additional method for retail investors to access BYX Depth data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[30] Offering BYX Depth to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. The Exchange also believes it is equitable, reasonable, and not unfairly discriminatory to charge User fees to Internal Distributors, as such fees are currently charged by NYSE and Nasdaq.[31]

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE and Nasdaq. Specifically, NYSE offers NYSE OpenBook Ultra for a monthly fee of $60.00 per professional subscriber and $15 per non-professional subscriber.[32] Nasdaq offers Nasdaq TotalView-ITCH for a monthly fee of $70.00 per professional subscriber and $14 per non-professional subscriber.[33] The Exchange's proposed per User Fees for BYX Depth are less than the NYSE and Nasdaq fees.

Enterprise Fee. The proposed Enterprise Fee for BYX Depth is equitable and reasonable as compared to the enterprise fees currently charged for Nasdaq TotalView-ITCH. Nasdaq charges an enterprise fee of $100,000 per month for Nasdaq TotalView-ITCH,[34] which is greater than the proposed Enterprise Fee of $25,000 per month for BYX Depth. In addition, the Enterprise Fee proposed by the Exchange could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of BYX Depth, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute BYX Depth, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price BYX Depth and BYX Summary Depth is constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities (''TRF'') that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, BYX Summary Depth and BYX Depth compete with a number of alternative products. For instance, BYX Summary Depth and BYX Depth do provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks (''ECN'') that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to BYX last sale and depth-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to BYX Depth and BYX Summary Depth, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set

[29] Nasdaq offers proprietary data products for distribution over the internet and television under alternative fee schedules that are subject to maximum fee of $50,000 [sic] per month. *See* Nasdaq Rule 7039(b). The NYSE charges a Digit Media Enterprise fee of $40,000 per month for the NYSE Trade Digital Media product. *See* Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR–NYSE–2013–23).

[30] *See supra* note 24.

[31] *See supra* notes 24 and 25 (not limiting the application of user fees to external distribution only).

[32] *See supra* note 25.

[33] *See supra* note 26.

[34] *See supra* note 27.

unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Lastly, the Exchange represents that the increase in pricing of BYX Depth and the proposed pricing of the BYX Summary Feed would continue to enable a competing vendor to create a competing product to the Exchange's Bats One Feed on the same price and latency basis as the Exchange. The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on each of the Bats Exchanges and for the Bats Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the ''Bats One Summary Feed''). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels (''Bats One Premium Feed'').[35] The Exchange uses the following data feeds to create the Bats One Feed, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX Depth, and the BZX Depth.

When adopting the Bats One Feed, the Exchange represented that a vendor could create a competing product based in the data feed used to construct the Bats One Feed on the same cost and latency basis as the Exchange.[36] Therefore, the Exchange designed the pricing of these products so that their aggregate cost is not greater than the Bats One Feed, thereby enabling a vendor to create a competing product to the Bats One Feed on the same cost basis as the Exchange. However, the Exchange now proposes to increase the cost of BYX Depth, which when combined with the proposed increases by its affiliates for their depth products, would cause their aggregate cost to be higher than the Bats One Premium Feed.[37] However, to ensure that a vendor could continue to create a competing product to the Bats One Premium Feed at no greater cost, that vendor could now utilize BYX Summary Depth, as well as the Summary Depth feeds of BZX, EDGA, and EDGX to create a competing product to the Bats One Premium Feed for less cost and on the same latency basis as the Exchange.[38] The Exchange has designed the content and pricing of BYX Summary Depth, and related products by its affiliates, so that a vendor could utilize those feeds, in lieu of the Bats Exchange's existing depth-of-book products, to construct a competing product on the same cost and latency basis as the Exchange. The pricing the Exchange and its affiliates propose to charge for Summary Depth feeds would be lower than the cost to obtain the Bats One Premium Feed.[39] Such pricing would continue to enable a vendor to receive each of the Bats Exchange's Summary Depth feeds and offer a similar product to the Bats One Premium Feed on a competitive basis and at no greater cost than the Exchange.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[40] and paragraph (f) of Rule 19b–4 thereunder.[41] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsBYX–2016–39 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–BatsBYX–2016–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2016–39, and should be submitted on or before January 17, 2017.

[35] *See* Exchange Rule 11.22(i). *See also* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) (''Bats One Approval Order'').

[36] *Id.*

[37] The Exchange notes that a vendor seeking to create a product to compete with the Bats One Summary Feed may continue to utilize each of the Bats Exchange's Top and Last Sale data feeds, the aggregate cost of which is less than the Bats One Summary Feed.

[38] While the proposed BYX Summary Depth feed does not contain the symbol summary or consolidated volume data included in the Bats One Feed, a vendor could include this information in a competing product as this information is easily derivable from the proposed feeds or can be obtained from the securities information processors on the same terms as the Exchange.

[39] While the aggregate cost of each of the Bats Exchange's Summary Depth Products equals the cost of the Bats One Premium Feed, the cost of the Bats One Feed continues to be greater because subscribers are required to pay an additional $1,000 aggregation fee. *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.*

[40] 15 U.S.C. 78s(b)(3)(A).

[41] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31115 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79615; File No. SR–BX–2016–069]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4770 (Compliance With Regulation NMS Plan To Implement a Tick Size Pilot)

December 20, 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 December 13, 2016, NASDAQ BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4770 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot) relating to the handling to certain Order Types in Test Group Three Pilot Securities in connection with the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'').[3] Relatedly, BX also proposes to delete Commentary .14, which addresses the current handling of those Order Types. Finally, BX proposes to add language to Rule 4770(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH or FIX protocols.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.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

On September 7, 2016, the Exchange filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change (''Proposal'') to adopt paragraph (d) to Exchange Rule 4770 to describe changes to system functionality necessary to implement the Plan. The Exchange also proposed amendments to Rule 4770(a) and (c) to clarify how the Trade-at exception may be satisfied. The SEC published the Proposal in the **Federal Register** for notice and comment on September 20, 2016.[4] BX subsequently filed three Partial Amendments to clarify aspects of the Proposal. The Commission approved the Proposal, as amended, on October 7, 2016.[5]

In SR–BX–2016–050, BX had initially proposed a re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Group Three Pilot Securities.[6] BX subsequently determined that it would not offer this re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot securities. As part of Partial Amendment No. 2 to SR–BX–2016–050, BX proposed to delete the relevant language from Rule 4770 related to this re-pricing functionality.

In that amendment, BX noted that this change would only impact the treatment of Price to Comply Orders, Non-Displayed Orders, and Post-Only orders that are submitted through the OUCH and FLITE protocols in Test Group Three Pilot Securities, as these types of Orders that are currently submitted to BX through the RASH or FIX protocols are already subject to this re-pricing functionality and will remain subject to this functionality under the Pilot.

In the Amendment, BX further noted that its systems are currently programmed so that Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities may be adjusted repeatedly to reflect changes to the NBBO and/or the best price on the BX book. BX stated that it was re-programming its systems to remove this functionality for Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities. In the Amendment, BX stated that it anticipated that this re-programming shall be completed no later than November 30, 2016. If it appeared that this functionality would remain operational by October 17, 2016, BX indicated that it would file a proposed rule change with the SEC and will provide notice to market participants sufficiently in advance of that date to provide effective notice. The rule change and the notice to market participants will describe the current operation of the BX systems in this regard, and the timing related to the re-programming.

On October 17, 2016, BX filed a proposal to extend the date by which it would complete the re-programing of its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols.[7] In that proposal, BX stated

[42] 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. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[4] *See* Securities Exchange Act Release No. 78838 (September 14, 2016), 81 FR 64566 (September 20, 2016) (Notice of filing of SR–BX–2016–050).

[5] *See* Securities Exchange Act Release No. 79076 (October 7, 2016) (Order approving SR–BX–2016–050).

[6] As originally proposed, Rule 4770(d)(2) stated that Price to Comply Orders in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price. Rule 4770(d)(3) stated that, if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. Rule 4770(d)(4) stated that, if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the BX Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

[7] *See* Securities Exchange Act Release No. 79154 (October 25, 2016), 81 FR 75468 (October 31, 2016) (SR–BX–2016–054).

Subsequent to the approval of SR–BX–2016–050, BX become aware that this re-pricing functionality

that it anticipated that this re-programming shall be complete on or before October 31, 2016.[8] As BX continued to re-program its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols, it extended the date by which the re-programming shall be complete to the current date of December 12, 2016.[9]

The Exchange has now completed the re-programming its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols. However, as a result of removing the re-pricing functionality, there are instances, due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable Exchange protocols, where the behavior of certain Order Types entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities will differ from the behavior of those Order Types as set forth in Rule 4770; specifically, the behavior of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols when the Order locks or crosses a Protected Quotation. As discussed below, BX is therefore amending Rule 4770 to clarify these differences. Although the changes made to Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE reflect the different functionality of the OUCH and FLITE protocols in comparison with the other BX protocols, the proposed changes treat Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through OUCH and FLITE protocols in Test Group Three Securities as consistently as possible with such orders entered through OUCH and FLITE in Control Group Securities, and Test Group One and Test Group Two Securities. These changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO.

Price to Comply Orders

Currently, Rule 4770(d)(2) states that a Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(1) except as provided under this paragraph. If a Price to Comply Order for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

BX proposes to augment this provision to clarify the behavior of Price to Comply Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Price to Comply Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the BX Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Price to Comply Order will be adjusted to rank and display at its original entered limit price.[10]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Price to Comply Order, based on the participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the BX Book, the non-displayed price of a Price to Comply Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Price to Comply Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Price to Comply Order will be cancelled.[11]

Non-Displayed Orders

Currently, Rule 4770(d)(3) states that a Non-Displayed Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(3) except as provided under this paragraph. A resting Non-Displayed Order in a Test Group Three Pilot security cannot execute at the price of a Protected Quotation of another market center unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 4770(c)(3)(D). If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will be ranked on the Exchange Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). For a Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX, if after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp.[12] For

also applies to Price to Display Orders that are entered through the OUCH and FLITE protocols in Test Group Three Securities, and amended Commentary .14 to indicate that Price to Display Orders will be treated in the same manner as Price to Comply Orders under the re-pricing functionality. *Id.*

[8] *Id.*

[9] *See* Securities Exchange Act Release Nos. 79262 (November 8, 2016), 81 FR 80123 (November 15, 2016) (SR–BX–2016–153) (extending current re-pricing functionality to November 14, 2016); 79409 (November 28, 2016), 81 FR 87091 (December 2, 2016) (SR–BX–2016–061) (extending current re-pricing functionality to December 12, 2016).

[10] BX notes that a Price to Comply Order will always be adjusted in this scenario, regardless of its port setting.

[11] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Price to Comply Order to buy at $10.15 is entered, the Price to Comply Order will be displayed at $10.05 and ranked at $10.075. If the National Best Offer then changes to $10.15, the Price to Comply Order will be adjusted to rank at $10.10, and will remain displayed at $10.05. If the National Best Offer subsequently changes to $10.10, the Price to Comply Order will be cancelled.

BX notes that a Price to Comply Order, Non-Displayed Order, or Post-Only Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would only cancel if the resting order is crossed (not locked) by a Protected Quotation due to a change in the NBBO.

[12] As part of this proposal, BX also proposes to clarify the operation of this provision so that it is structurally consistent with provisions in the descriptions of Price to Comply and Post-Only Orders. Specifically, BX will amend this language to provide that, if a resting Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan, the Non-Displayed Order will be repriced to

Continued

a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant.

BX proposes to amend this provision to clarify the behavior of Non-Displayed Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the BX Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price would no longer lock a Protected Quotation, the Non-Displayed Order will be adjusted to rank at its original entered limit price.[13]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed.[14]

If entered at a price that locked or crossed a Protected Quotation, and if the NBBO changes such that it cannot be ranked at the price of the Protected Quotation it locked or crossed but can be ranked closer to its original limit price, the Non-Displayed Order will be adjusted to the new midpoint of the NBBO.[15]

If, after being posted on the BX Book, the Non-Displayed Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Non-Displayed Order will be cancelled.[16]

Post-Only Orders

Currently, Rule 4770(d)(4) states that a Post-Only Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(4) except as provided under this paragraph. For orders that are not attributable, if the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

BX proposes to augment this provision to clarify the behavior of Post-Only Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Attributable Post-Only Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the BX Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Post-Only Order will be adjusted to rank and display at its original entered limit price.[17]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Post-Only Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the BX Book, the non-displayed price of a resting Post-Only Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Post-Only Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Post-Only Order will be cancelled.

Commentary .14

In removing the current re-pricing functionality, Commentary .014 [sic], which addresses the behavior of current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities, is no longer necessary.[18] The Exchange therefore proposes to delete this Commentary from the Rule.

Finally, BX proposes to add language to Rule 4770(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH or FIX protocols. Specifically, subject to the provisions set forth in the remainder of Rule 4770(d), if the entered limit price of an Order in a Test Group Three Pilot Security, entered through RASH or FIX, locked or crossed a Protected Quotation and the NBBO changes so that the Order can be ranked closer to its original entered limit price, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO. BX is proposing to make this change to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH or FIX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp.

[13] BX notes that a Non-Displayed Order will always be adjusted in this scenario, regardless of its port setting.

[14] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.15 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Offer then changes to $10.15, the Non-Displayed Order may either be adjusted to rank at $10.10, or may be cancelled back to the Participant.

[15] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.10 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Bid then changes to $10.05, the price of the Non-Displayed Order will be adjusted to $10.075.

BX notes that a Non-Displayed Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would be ranked at the locking price upon entry.

[16] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.10 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Offer then changes to $10.05, the Non-Displayed Order will be cancelled back to the Participant.

[17] BX notes that a Post-Only Order will always be adjusted in this scenario, regardless of its port setting.

[18] Under Commentary .14, the current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities is as follows:

Following entry, and if market conditions allow, a Price to Comply Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Price to Display Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Display Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.

Following entry, and if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] 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.

The Exchange believes that the proposed rule change is consistent with the Act because it clarifies the changes the Exchange is making to the handling of certain Order Types necessary to implement the requirements of the Plan on its System and, in the case of the changes of Rule 4770(d)(1), to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH or FIX.

As a result of removing the current re-pricing functionality that applies to certain Order Types in Test Group Three Securities entered through the OUCH and FLITE protocols, and due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable BX protocols, these Order Types will behave differently than is currently set forth in Rule 4770 when entered through the OUCH or FLITE protocols in certain instances. As noted above, these changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO. These changes also will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE in scenarios where the subsequent movement of the NBBO implicates the Trade-at prohibition with respect to the resting order.

By clarifying the behavior of certain Order Types in Test Group Three Pilot Securities entered through the OUCH or FLITE protocols, the proposal will help allow market participants to continue to trade NMS Stocks, within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

More generally, BX also notes that the Plan, which was approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act,[21] provides the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Finally, BX believes that the proposal is consistent with the Act because the proposed functionality will more closely align the handling of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols for Test Group Three Pilot Securities with the handling of such Orders entered through the OUCH or FLITE protocols for Control Group, Test Group One and Test Group Two Securities than the current functionality in place for these Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan, and must take the same steps that the Exchange has to conform its existing rules to the requirements of the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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[22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In this filing, the Exchange has asked that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

The Exchange notes the proposed rule is intended to clarify the differences in the handling of certain orders entered into the system by different protocols. The Exchange notes that orders will be treated as consistently as possible across the Test Groups and the Control Group while complying with each grouping's varied quoting and trading requirements. Additionally, the Exchange proposed to remove Commentary .14 because it is no longer necessary.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal clarifies the Exchange's rules and provides transparency to members with regards to the handling of certain orders entered via OUCH and FLITE as well as RASH or FIX protocols for locked or crossed orders in Test Group Three Pilot Securities. The Commission notes that the Exchange proposed to remove the functionality described in Commentary .14 and make the necessary corresponding systems changes in Partial Amendment No. 2 to BX–2016–050, which the Commission approved.[26] The Exchange notes that it was able to implement the systems changes and that they became fully operational on the December 14, 2016. Therefore, the

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1.

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] *Id.*

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See supra* note 5.

Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on December 14, 2016.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–069 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–BX–2016–069. 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–BX–2016–069 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31107 Filed 12–23–16; 8:45 am]

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[27] 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).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79621; File No. SR–CBOE–2016–089]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Credit Option Margin Pilot Program Through July 18, 2017

December 20, 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 December 14, 2016, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rule 12.3 by extending the Credit Option Margin Pilot Program through July 18, 2017.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 2, 2011, the Commission approved the Exchange's proposal to establish a Credit Option Margin Pilot Program (''Program'').[5] The proposal became effective on a pilot basis to run on a parallel track with Financial Industry Regulatory Authority (''FINRA'') Rule 4240 that similarly operates on an interim pilot basis.[6]

On January 17, 2012, the Exchange filed a rule change to, among other things, decouple the Program with the FINRA program and to extend the expiration date of the Program to January 17, 2013.[7] The Program, however, continues to be substantially

[5] *See* Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) order approving (SR–CBOE–2010–106). To implement the Program, the Exchange amended Rule 12.3(l), *Margin Requirements,* to make CBOE's margin requirements for Credit Options consistent with Financial Industry Regulatory Authority (''FINRA'') Rule 4240, *Margin Requirements for Credit Default Swaps.* CBOE's Credit Options (*i.e.,* Credit Default Options and Credit Default Basket Options) are analogous to credit default swaps.

[6] *See* Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; SR–FINRA–2009–012).

[7] *See* Securities Exchange Act Release No. 66163 (January 17, 2012), 77 FR 3318 (January 23, 2012) (SR–CBOE–2012–007).

similar to the provisions of the FINRA program. Subsequently, the Exchange filed rule changes to extend the program until January 17, 2014, January 16, 2015, January 15, 2016, and January 17, 2017, respectively.[8] The Exchange believes that extending the expiration date of the Program further will allow for further analysis of the Program and a determination of how the Program should be structured in the future. Thus, the Exchange is now currently proposing to extend the duration of the Program for an additional six months until July 18, 2017.

Additionally, the Exchange believes that it is in the public interest to extend the expiration date of the Program because it will continue to allow the Exchange to list Credit Options for trading. As a result, the Exchange will remain competitive with the Over-the-Counter Market with respect to swaps and security-based swaps. In the future, if the Exchange proposes an additional extension of the Credit Option Margin Pilot Program or proposes to make the Program permanent, then the Exchange will submit a filing proposing such amendments to the Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change will further the purposes of the Act because, consistent with the goals of the Commission at the initial adoption of the Program, the margin requirements set forth by the proposed rule change will help to stabilize the financial markets. In addition, the proposed rule change is substantially similar to existing FINRA Rule 4240.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–089 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–089. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[8] *See* Securities Exchange Act Release Nos. 68539 (December 27, 2012), 78 FR 138 (January 2, 2013) (SR–CBOE–2012–125), 71124 (December 18, 2013), 78 FR 77754 (December 24, 2013) (SR–CBOE–2013–123), 73837 (December 15, 2014), 79 FR 75850 (December 19, 2014) (SR–CBOE–2014–091), and 76824 (January 5, 2016), 81 FR 1255 (January 11, 2016) (SR–CBOE–2015–118).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] 15 U.S.C. 78s(b)(3)(A).

[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, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

available publicly. All submissions should refer to File Number SR–CBOE–2016–089 and should be submitted on or before January 17,2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31113 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79608; File No. SR–CHX–2016–16]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt the CHX Liquidity Taking Access Delay

December 20, 2016.

I. Introduction

On September 6, 2016, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt the CHX Liquidity Taking Access Delay (''LTAD''). The proposed rule change was published for comment in the **Federal Register** on September 22, 2016.[3] On November 1, 2016, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received 20 comments on the proposed rule change, including a response to certain comment letters by the Exchange.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act[7] to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposal

A. Description

The LTAD would require all new incoming orders[8] received during the Open Trading State[9] that could immediately execute against one or more resting orders on the CHX book, as well as certain related cancel messages, to be intentionally delayed for 350 microseconds before such delayed messages would be processed[10] by the Matching System.[11] All other messages, including liquidity providing orders (*i.e.,* orders that would not immediately execute against resting orders) and cancel messages for resting orders, would be immediately processed without delay.

Each delayable message would be diverted into the LTAD queue and would remain delayed until it is released for processing. A delayed message would become releasable 350 microseconds after initial receipt by the Exchange (''Fixed LTAD Period''), and would be processed only after the Matching System has evaluated and processed, if applicable, all messages in the security received by the Exchange during the Fixed LTAD Period for the delayed message.[12] A message may be delayed for longer than the Fixed LTAD Period depending on the then-current messaging volume in the security, according to the Exchange.[13]

B. Purpose of the LTAD

The Exchange states that it designed and proposed the LTAD to respond to declines in CHX volume and size at the national best bid or offer (''NBBO'') in the SPDR S&P 500 trust exchange-traded fund (''SPY'') between January 2016 and July 2016, which it attributes to latency arbitrage activity in SPY.[14] CHX defines ''latency arbitrage'' as the practice of exploiting disparities in the price of a security or related securities that are being traded in different markets by taking advantage of the time it takes to access and respond to market information.[15]

The Exchange asserts that much of the CHX liquidity in SPY and other S&P 500-correlated securities is provided as part of an arbitrage strategy between CHX and the futures markets, whereby liquidity providers utilize, among other things, proprietary algorithms to price and size resting orders on CHX to track index market data from a derivatives market (*e.g.,* E-Mini S&P traded on the Chicago Mercantile Exchange's Globex trading platform).[16] According to the Exchange, prior to the beginning of the SPY latency arbitrage activity, which CHX first observed in January of 2016, CHX volume and liquidity in SPY

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78860 (September 16, 2016), 81 FR 65442 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 79216, 81 FR 78228 (November 7, 2016). The Commission designated December 21, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] *See* letters from: (1) Douglas A. Cifu, Chief Executive Officer, Virtu Financial, dated September 21, 2016 (''Virtu Letter''); (2) R.T. Leuchtkafer, dated September 29, 2016 (''Leuchtkafer Letter 1''); (3) Adam Nunes, Head of Business Development, Hudson River Trading LLC, dated October 6, 2016 (''Hudson River Trading Letter''); (4) Beste Bidd, Trader, dated October 9, 2016 (''Beste Bidd Letter''); (5) Joanna Mallers, Secretary, FIA Principal Traders Group, dated October 13, 2016 (''FIA PTG Letter''); (6) John L. Thornton, Co-Chair, Hal S. Scott, Director, and R. Glenn Hubbard, Co-Chair, Committee on Capital Markets Regulation, dated October 13, 2016 (''Committee on Capital Markets Letter''); (7) Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated October 13, 2016 (''Citadel Letter''); (8) Tyler Gellasch, Executive Director, Healthy Markets Association, dated October 13, 2016 (''HMA Letter''); (9) Eric Budish, Professor of Economics, University of Chicago Booth School of Business, dated October 13, 2016 (''Budish Letter''); (10) Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, dated October 14, 2016 (''NYSE Letter''); (11) James J. Angel, Associate Professor, McDonough School of Business, Georgetown University, dated October 16, 2016 (''Angel Letter''); (12) Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated October 25, 2016 (''Bats Letter''); (13) Eric Pritchett, Chief Executive Officer, Potamus Trading LLC, dated October 26, 2016 (''Potamus Letter''); (14) James Ongena, Executive Vice President and General Counsel, CHX, dated October 28, 2016 (''CHX Response''); (15) Steve Crutchfield, Head of Market Structure, CTC Trading Group, L.L.C., dated November 1, 2016 (''CTC Letter''); (16) Boris Ilyevsky, Brokerage Director, Interactive Brokers LLC, dated November 7, 2016 (''IB Letter''); (17) Alex Jacobson, dated November 9, 2016 (''Jacobson Letter''); (18) Brian Donnelly, Founder and Chief Executive Officer, Volant Trading, dated November 28, 2016 (''Volant Letter''); (19) R.T. Leuchtkafer, dated December 14, 2016 (''Leuchtkafer Letter 2''); and (20) Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 16, 2016 (''SIFMA Letter''). All of the comment letters are available at: *https://www.sec.gov/comments/sr-chx-2016-16/chx201616.shtml.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] ''New incoming orders'' are orders received by the Matching System for the first time. The LTAD would not apply to other situations where existing orders or portions thereof are treated as incoming orders, such as (1) resting orders that are price slid into a new price point pursuant to the CHX Only Price Sliding or Limit Up-Limit Down Price Sliding Processes and (2) unexecuted remainders of routed orders released into the Matching System. *See* Notice, *supra* note 3, 81 FR at 65443, n.5.

[9] ''Open Trading State'' means the period of time during the regular trading session when orders are eligible for automatic execution. *See* CHX Article 1, Rule 1(qq).

[10] ''Processed'' means executing instructions contained in a message, including, but not limited to, permitting an order to execute within the Matching System pursuant to the terms of the order or cancelling an existing order. *See* Notice, *supra* note 3, 81 FR at 65443, n.7.

[11] ''Matching System'' means the automated order execution system, which is part of CHX's ''Trading Facilities'' as defined under CHX Article 1, Rule 1(z). *See id.* at 65443, n.8.

[12] *See id.* at 65444.

[13] *See id.* at 65444, text accompanying n.35.

[14] *See id.* at 65443.

[15] *See id.* at 65443, n.3.

[16] *See id.* at 65443, n.10.

constituted a material portion of overall volume and liquidity in SPY market-wide. Specifically, CHX states that: (1) Its market share in SPY as a percentage of total volume decreased from 5.73% in January 2016 to 0.57% in July 2016, while certain control securities (''Control Securities'') did not experience similar declines;[17] and (2) the time-weighted average CHX size at the NBBO in SPY relative to the total NMS size at the NBBO in SPY decreased from 44.36% in January 2016 to 3.39% of the total NMS size at the NBBO in SPY in July 2016, while the Control Securities did not experience similar declines.[18]

The Exchange asserts that the LTAD would enhance displayed liquidity and price discovery in NMS securities without adversely affecting the ability of virtually all market participants, other than latency arbitrageurs, to access liquidity at CHX.[19] In support of this conclusion, CHX offers an analysis of cancel activity in SPY at CHX for the period starting in May 2016 through July 2016, and asserts that, if the LTAD had been implemented during that time period, out of a total of 18,316 at least partially-executed orders in SPY, only 20 liquidity taking orders not attributed to latency arbitrage activity would have not been executed.[20]

III. Summary of Comments

Commenters both supportive of and opposing the proposed rule change have opined on a number of aspects of the proposed rule change and whether the proposal is consistent with the requirements of the Exchange Act and the rules thereunder.

Some commenters question whether latency arbitrage as asserted by CHX is to blame for the decline in CHX's market share and whether the LTAD would solve the purported problem.[21] Other commenters assert that the proposed rule change is overbroad because the proposed LTAD is a systemic solution to a problem—namely a decline in CHX's market share in one security—that CHX has not demonstrated to be market-wide.[22] One commenter states that based on CHX's assertion that latency arbitrage is a market-wide issue caused by a structural bias, the Commission should not address the issue in isolation, but should instead consider a market-wide solution.[23]

One commenter asserts that the LTAD might enable latency arbitrage among correlated instruments by applying its speed bump to some but not all related securities.[24] Another commenter states that applying the LTAD on a security-by-security basis would add unnecessary market complexity and give CHX unreasonable flexibility while requiring market participants to develop symbol specific routing strategies to meet their obligations under Rule 611 of Regulation NMS.[25]

One commenter asserts that what CHX describes as latency arbitrage could be another firm or firms engaging in a similar arbitrage strategy between CHX and the futures markets that are faster and/or more skilled than CHX's liquidity providers.[26] CHX responds by insisting that utilization of algorithms by liquidity *providers* to price and size resting orders on CHX to track index market data from a derivatives market is different than latency arbitrage and provides additional data that it asserts supports that conclusion.[27] Another commenter questions whether CHX could address what it perceives as latency arbitrage by improving its technology to reduce the time to cancel for liquidity providers.[28]

A number of commenters assert that the proposed LTAD would increase displayed liquidity.[29] One commenter, however, asserts that, while the LTAD would enhance displayed liquidity, the increased liquidity would be more conditional and less accessible.[30] Another commenter argues that the Investors Exchange LLC (''IEX'') delay, which the Commission approved, also makes protected quotes less accessible.[31]

Commenters also opined on the competitive effect of the LTAD. Some commenters assert that the LTAD would unduly burden competition among CHX's members and among national securities exchanges.[32] Alternatively, other commenters assert that approval of the proposal would introduce greater competition among the national securities exchanges, and that the Commission should regard the LTAD as an innovation that could allow CHX to better compete with other exchanges.[33] Additionally, another commenter asserts that the LTAD would lower the cost of entry for new liquidity providers because they would not have to invest in technology to be faster than the fastest latency arbitrageur.[34]

Commenters disagree about whether the LTAD would be unfairly discriminatory. A number of commenters state that the LTAD would be unfairly discriminatory because it would delay only liquidity taking orders.[35] Another commenter states that the LTAD is unfairly discriminatory because it would provide CHX liquidity providers with a ''last look'' whereby they could back away from their displayed quotations, and may result so that liquidity takers would be unable to reliably access quotations provided by

[17] CHX states that it designated DIA, IWM, and QQQ as Control Securities because they share the following similarities to SPY: (1) Highly correlated in price movements with a well-known equity market index; (2) ETFs; (3) traded in CHX's Chicago data center; (4) actively traded in the NMS; and (5) highly correlated with a futures contract traded electronically on the Globex trading platform. *See id.* at 65448, n.59 and accompanying text.

[18] *See id.* at 65443, n.11.

[19] *See id.* at 65456.

[20] *See id.* at 65444, n.19.

[21] *See* Hudson River Trading Letter, *supra* note 6, at 2; HMA Letter, *supra* note 6, at 5.

[22] *See* Citadel Letter, *supra* note 6, at 11; HMA Letter, *supra* note 6, at 4.

[23] *See* SIFMA Letter, *supra* note 6, at 5.

[24] *See* Leuchtkafer Letter 1, *supra* note 6, at 2; Leuchtkafer Letter 2, *supra* note 6, at 5.

[25] *See* SIFMA Letter, *supra* note 6, at 4.

[26] *See* Hudson River Trading Letter, *supra* note 6, at 2.

[27] *See* CHX Response, *supra* note 6, at 6. Specifically, CHX submits the following additional data regarding SPY for the period of May through July 2016: (1) Latency arbitrage resulted in no liquidity in SPY at CHX as all orders that CHX attributes to latency arbitrage were Immediate Or Cancel orders; and (2) while 77% of the trades that CHX attributes to latency arbitrage were followed by late cancel messages for the provide order soon after the execution, only 2.7% of the trades the CHX does not attribute to latency arbitrage were followed by late cancel messages from the liquidity provider.

[28] *See* SIFMA Letter, *supra* note 6, at 4–5.

[29] *See, e.g.,* Virtu Letter, *supra* note 6, at 2 (the LTAD would improve price discovery in NMS securities on lit, protected exchanges); Potamus Letter, *supra* note 6, at 1; Beste Bidd Letter, *supra* note 6 (the proposal would enhance liquidity in the public markets by helping market-makers and long-term investors meet on-exchange); Jacobson Letter, *supra* note 6, at 2; Volant Letter, *supra* note 6, at 1; Angel Letter, *supra* note 6, at 2 (the proposal would incentivize market makers to post more liquidity, which would lead to deeper quotes and tighter bid-ask spreads); Budish Letter, *supra* note 6, at 2. Another commenter states that the LTAD has the potential to enhance liquidity. *See* Bats Letter, *supra* note 6, at 2.

[30] *See* Hudson River Trading Letter, *supra* note 6, at 3. Similarly, another commenter states that the proposal has the potential to distort the market view of available liquidity if such liquidity proves to be ephemeral. *See* Bats Letter, *supra* note 6, at 2.

[31] *See* Volant Letter, *supra* note 6, at 2.

[32] *See* Hudson River Trading Letter, *supra* note 6, at 3; FIA PTG Letter *supra* note 6, at 4–5; Citadel Letter, *supra* note 6, at 10–11.

[33] *See* Angel Letter, *supra* note 6, at 2; CTC Trading Letter, *supra* note 6, at 4–5; Potamus Letter, *supra* note 6, at 2.

[34] *See* Volant Letter, *supra* note 6, at 3.

[35] *See, e.g.,* Citadel Letter, *supra* note 6, at 6–8; Hudson River Trading Letter, *supra* note 6, at 2–3; FIA PTG Letter, *supra* note 6, at 3. *See also* SIFMA Letter, *supra* note 6, at 3 (asserting that any intentional delay should be universally applied to all market participants in a non-discriminatory manner). Another commenter asserts that intentionally delaying the orders of only some market participants could distort markets and may not be beneficial for long-term investors, and that any intentional delays should be equally applied to all market participants. *See* Committee on Capital Markets Letter, *supra* note 6, at 2.

CHX liquidity providers.[36] One commenter asserts that the LTAD would unfairly discriminate in favor of market makers who have the resources to respond to price changes on the futures market ahead of all other market participants.[37]

Supporters of the proposed rule change assert that, because all liquidity taking orders would be treated the same, the LTAD would not be unfairly discriminatory.[38] The Exchange asserts that the LTAD is narrowly tailored to address latency arbitrage by giving liquidity providers a tiny head start to cancel stale quotes in the race to react to symmetric public information, and that it could not effectively address latency arbitrage without distinguishing between liquidity taking and liquidity providing orders.[39] One commenter states that the LTAD could benefit *any* market participant who posts an order to the extent they would otherwise be traded against by another participant with identical information but a slightly faster data feed.[40] The commenter argues that the LTAD's discrimination is necessary to disincentivize a technological arms race that is contrary to investor protection and the public interest.[41] Both the commenter and the Exchange assert that the proposed discrimination is fair because it would make the market structure fairer by leveling the playing field, which currently is tilted against liquidity providers.[42]

One commenter asserts that the LTAD would damage the efficiency of the market by undermining the ability of exchange-traded fund (''ETF'') market makers' ability to engage in arbitrage transactions.[43] In response, the Exchange states that no evidence has been offered to support the conclusion that the LTAD would negatively impact ETF trading, and that the LTAD would not have a material impact on liquidity taking orders that are not submitted as part of a latency arbitrage strategy.[44]

Commenters disagree about whether the LTAD would be consistent with Rule 602 of Regulation NMS (''Quote Rule''). Two commenters assert that adoption of the LTAD may be inconsistent with the Quote Rule.[45] Two other commenters state that the LTAD could violate the Quote Rule because it is designed to allow liquidity providers to back away from their quotes.[46]

Another commenter and the Exchange, however, argue that the LTAD would not violate the Quote Rule. They argue that, under the rule, the duty of a broker or dealer to stand behind its quote would not vest because the LTAD would prevent the liquidity provider from receiving (*i.e.,* being presented with) a marketable contra-side order.[47]

Commenters also disagree about whether adoption of the LTAD would be consistent with CHX's protected quotation status under Regulation NMS.[48] One commenter asserts that allowing some market participants to have an advantage over others frustrates the purposes of Rule 611 of Regulation NMS by impairing fair and efficient access to an exchange's quotations.[49] Another commenter argues that exchanges with asymmetric access delays should not be considered to have ''protected quotations'' under Rule 611 of Regulation NMS.[50] Other commenters assert that the LTAD would impair a market participant's ability to fairly and efficiently access a quote, and therefore it is inconsistent with the goals of Rule 611.[51]

In response, the Exchange argues that the LTAD is consistent with Rule 611 of Regulation NMS because the Commission does not interpret ''immediate'' to prohibit implementation of a *de minimis* intentional access delay, and the delay imposed by the LTAD would not impair fair and efficient access to the Exchange's quotations because: (1) The LTAD would apply to all liquidity taking orders submitted by any CHX participant and would only delay such orders by 350 microseconds, the same length as the IEX speed bump; (2) the 350-microsecond delay is so short that it would only neutralize a structural bias that permits latency arbitrageurs to profit from symmetric public information; (3) it would not provide an incremental advantage to a liquidity provider other than to neutralize the structural bias to latency arbitrageurs; and (4) the LTAD is narrowly-tailored to address latency arbitrage strategies at CHX.[52]

Certain commenters assert that the LTAD would result in unfair allocation of SIP market data revenue by generating an increase in quoting, but not necessarily trading, on the Exchange.[53] The Exchange responds that the LTAD would not encourage non-bona fide quote activity for the purpose of earning rebates because quotes cancelled within the 350-microsecond LTAD would not be eligible for market data revenue rebates, and cancellation of such quotes could result in the CHX participant being assessed an order cancellation fee.[54]

One commenter asserts that the LTAD may encourage spoofing by decreasing the risk of executions.[55] Another commenter states that the LTAD would facilitate market manipulation by allowing liquidity providers a means for setting the NBBO with a quotation that they do not intend to honor.[56] In response, the Exchange states that the LTAD would be too short to introduce any incremental risk of manipulative practices, and that the Exchange has in place surveillances to detect, and rules to deter, these practices.[57]

Two commenters assert that the LTAD would confer special benefits on market participants without imposing any new obligation or responsibility to contribute to market quality.[58] One commenter suggests that the LTAD could be more narrowly tailored to apply only to orders that would take liquidity from

[36] *See* Citadel Letter, *supra* note 6, at 6.

[37] *See* Leuchtkafer Letter 1, *supra* note 6, at 1; Leuchtkafer Letter 2, *supra* note 6, at 3.

[38] *See* Angel Letter, *supra* note 6, at 2; CHX Response, *supra* note 6, at 2.

[39] *See* CHX Response, *supra* note 6, at 2, 8. *See also* Budish Letter, *supra* note 6, at 2.

[40] *See* CTC Trading Letter, *supra* note 6, at 5.

[41] *See id.* at 2.

[42] *See id.* at 3; CHX Response, *supra* note 6, at 2. *See also* IB Letter, *supra* note 6, at 2.

[43] *See* Citadel Letter, *supra* note 6, at 12–13. *See also* Beste Bidd Letter, *supra* note 6 (stating that ETPs could be severely affected during periods of elevated volatility if market makers are forced to hedge on unreliable markets).

[44] *See* CHX Response, *supra* note 6, at 9.

[45] *See* NYSE Letter, *supra* note 6, at 3 (stating that CHX would not be enforcing its members' obligations under the Quote Rule); Bats Letter, *supra* note 6, at 1 (stating that, absent new interpretative guidance, the proposal likely violates the Quote Rule).

[46] *See* FIA PTG Letter, *supra* note 6, at 4; Citadel Letter, *supra* note 6, at 5–6.

[47] *See* CTC Trading Letter, *supra* note 6, at 5–6; CHX Response, *supra* note 6, at 11–12.

[48] 17 CFR 242.611.

[49] *See* FIA PTG Letter, *supra* note 6, at 3.

[50] *See* Beste Bidd Letter, *supra* note 6. *See also* SIFMA Letter, *supra* note 6, at 3 (questioning the implications of market participants' obligation under Rule 611 of Regulation NMS to access protected CHX quotes when the CHX liquidity providers' quotes may not be accessible as a result of the LTAD).

[51] *See* Hudson River Trading Letter, *supra* note 6, at 4; Citadel Letter, *supra* note 6, at 12–13; NYSE Letter, *supra* note 6, at 4. *See also* SIFMA Letter, *supra* note 6, at 4 (questioning the effect of an access delay coupled with existing geographic or technological latencies on the fair and efficient access to an exchange's protected quotations).

[52] *See* CHX Response, *supra* note 6, at 14.

[53] *See* Hudson River Trading Letter, *supra* note 6, at 5; FIA PTG Letter, *supra* note 6, at 3; SIFMA Letter, *supra* note 6, at 4. Another commenter argues that in conjunction with CHX's market data revenue sharing program, the LTAD would harm overall market transparency, quality, and efficiency. *See* Citadel Letter, *supra* note 6, at 3–4.

[54] *See* CHX Response, *supra* note 6, at 10–11.

[55] *See* FIA PTG Letter, *supra* note 6, at 3–4.

[56] *See* Citadel Letter, *supra* note 6, at 4.

[57] *See* CHX Response, *supra* note 6, at 10.

[58] *See* Citadel Letter, *supra* note 6, at 8; Leuchtkafer Letter 2, *supra* note 6, at 4.

market makers that meet heightened quoting obligations.[59]

Finally, a commenter asserts that due to the implementation of the LTAD through software, rather than hardware, the indeterminacy of the delay may result in the LTAD producing delays inconsistent with the Commission's ''speed bump guidelines.'' [60] In response, the Exchange states that system messaging delays and variable message queuing are irrelevant, stating that they exist today in every market that utilizes a continuous limit order book to rank and match orders and are a function of finite network and processing resources.[61] The commenter responds in turn that implementing the LTAD through software could create opportunities for delays and queuing, and that the Exchange should outline how it plans to surveil for and remediate any implementation issues.[62]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–CHX–2016–16 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [63] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[64] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers [65] and Section 6(b)(8) of the Exchange Act, which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5), 6(b)(8), or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[66]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 17, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 31, 2017. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2016–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–CHX–2016–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2016–16 and should be submitted on or before January 17, 2017]. Rebuttal comments should be submitted by January 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31100 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[59] *See* CTC Letter, *supra* note 6, at 6.

[60] *See* Leuchtkafer Letter 1, *supra* note 6, at 1.

[61] *See* CHX Response, *supra* note 6, at 15.

[62] *See* Leuchtkafer Letter 2, *supra* note 6, at 2.

[63] 15 U.S.C. 78s(b)(2)(B).

[64] *Id.*

[65] 15 U.S.C. 78f(b)(5).

[66] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[67] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79609; File No. SR–BX–2016–072]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of the Limit Order Protection

December 20, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on December 16, 2016, NASDAQ BX, Inc. (''BX'' 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 delay the implementation of the Limit Order Protection or ''LOP'' for members accessing the BX Market Center.

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 purpose of the proposal is to delay the implementation of the Exchange's mechanism to protect against erroneous Limit Orders, which are entered into BX Market Center, at Rule 4757(d).[3] The Exchange received approval to implement this mechanism on August 24, 2016.[4] Within that rule change, the Exchanges proposed to implement LOP within ninety days of the approval of the proposal, which was November 22, 2016.[5] The Exchange subsequently filed a modification to the original proposal and delayed the implementation an additional sixty (60) days from the original timeframe in order to implement the LOP, which was January 21, 2017.[6]

At this time the Exchange proposes to delay the implementation from January 21, 2017 until a date no later than March 31, 2017 in order to allow additional time to complete testing. The Exchange will announce the specific date in advance through an Equities Trader Alert. For more information regarding LOP see the previous LOP rule changes.[7]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to 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, by permitting the Exchange additional time to implement the LOP in accordance with the Exchange's processes. The Exchange's proposal does not significantly affect the protection of investors or the public interest because this proposal does not modify the manner in which LOP operates, only the implementation date is impacted. The Exchange will provide advance notice to members with respect to the new date.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal does not impose any significant burden on competition because LOP will apply to all BX market participants in a uniform manner once implemented.

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[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–072 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–BX–2016–072. 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/*

[3] *See* Securities Exchange Act Release No. 78246 (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR–BX–2016–037). *See also* Securities Exchange Act Release No. 79329 (November 16, 2016), 81 FR 83902 (November 22, 2016) (SR–BX–2016–058).

[4] *See* Securities Exchange Act Release No. 78246 (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR–BX–2016–037) (Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1, To Adopt Limit Order Protections).

[5] *Id* at 45321.

[6] *See* Securities Exchange Act Release No. 79329 (November 16, 2016), 81 FR 83902 (November 22, 2016) (SR–BX–2016–058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Limit Order Protection).

[7] *See* note 3 above.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). 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.

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–BX–2016–072 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31101 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79616; File No. SR–NASDAQ–2016–171]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4770 (Compliance With Regulation NMS Plan To Implement a Tick Size Pilot)

December 20, 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 December 13, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4770 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot) relating to the handling to certain Order Types in Test Group Three Pilot Securities in connection with the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'').[3] Relatedly, Nasdaq also proposes to delete Commentary .14, which addresses the current handling of those Order Types. Finally, Nasdaq proposes to add language to Rule 4770(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH, QIX or FIX protocols.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 7, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change (''Proposal'') to adopt paragraph (d) and Commentary .12 to Exchange Rule 4770 to describe changes to system functionality necessary to implement the Plan. The Exchange also proposed amendments to Rule 4770(a) and (c) to clarify how the Trade-at exception may be satisfied. The SEC published the Proposal in the **Federal Register** for notice and comment on September 20, 2016.[4] Nasdaq subsequently filed three Partial Amendments to clarify aspects of the Proposal. The Commission approved the Proposal, as amended, on October 7, 2016.[5]

In SR–NASDAQ–2016–126, Nasdaq had initially proposed a re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot securities.[6] Nasdaq subsequently determined that it would not offer this re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot securities. As part of Partial Amendment No. 2 to SR–NASDAQ–2016–126, Nasdaq proposed to delete the relevant language from Rule 4770 related to this re-pricing functionality.

In that amendment, Nasdaq noted that this change would only impact the treatment of Price to Comply Orders, Non-Displayed Orders, and Post-Only orders that are submitted through the OUCH and FLITE protocols in Test Group Three Pilot Securities, as these types of Orders that are currently submitted to Nasdaq through the RASH, QIX or FIX protocols are already subject to this re-pricing functionality and will remain subject to this functionality under the Pilot.

In the Amendment, Nasdaq further noted that its systems are currently programmed so that Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities may be adjusted repeatedly to reflect changes to the NBBO and/or the best price on the

[3] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[4] *See* Securities Exchange Act Release No. 78837 (September 14, 2016), 81 FR 64544 (September 20, 2016) (Notice of filing of SR–NASDAQ–2016–126).

[5] *See* Securities Exchange Act Release No. 79075 (October 7, 2016) (Order approving SR–NASDAQ–2016–126).

[6] As originally proposed, Rule 4770(d)(2) stated that Price to Comply Orders in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price. Rule 4770(d)(3) stated that, if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. Rule 4770(d)(4) stated that, if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Nasdaq Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

Nasdaq book. Nasdaq stated that it is re-programming its systems to remove this functionality for Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities. In the Amendment, Nasdaq stated that it anticipated that this re-programming shall be completed no later than November 30, 2016. If it appeared that this functionality would remain operational by October 17, 2016, Nasdaq indicated that it would file a proposed rule change with the SEC and will provide notice to market participants sufficiently in advance of that date to provide effective notice. The rule change and the notice to market participants would describe the current operation of the Nasdaq systems in this regard, and the timing related to the re-programming.

On October 17, 2016, Nasdaq filed a proposal to extend the date by which it would complete the re-programing of its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols.[7] In that proposal, Nasdaq stated that it anticipated that this re-programming shall be complete on or before October 31, 2016.[8] As Nasdaq continued to re-program its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols, it extended the date by which the re-programming shall be complete to the current date of December 12, 2016.[9]

Nasdaq has now completed re-programming its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols. However, as a result of removing the re-pricing functionality, there are instances, due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable Nasdaq protocols, where the behavior of certain Order Types entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities will differ from the behavior of those Order Types as set forth in Rule 4770; specifically, the behavior of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols when the Order locks or crosses a Protected Quotation. Nasdaq is therefore amending Rule 4770 to clarify these differences. Although the changes made to Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE reflect the different functionality of the OUCH and FLITE protocols in comparison with the other Nasdaq protocols, the proposed changes treat Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through OUCH and FLITE protocols in Test Group Three Securities as consistently as possible with such orders entered through OUCH and FLITE in Control Group Securities, and Test Group One and Test Group Two Securities. These changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO.

Price To Comply Orders

Currently, Rule 4770(d)(2) states that a Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(1) except as provided under this paragraph. If a Price to Comply Order for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Nasdaq Book, and the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Nasdaq Book at the current midpoint of the NBBO.

Nasdaq proposes to augment this provision to clarify the behavior of Price to Comply Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Price to Comply Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Nasdaq Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Price to Comply Order will be adjusted to rank and display at its original entered limit price.[10]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Price to Comply Order, based on the participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the Nasdaq Book, the non-displayed price of a Price to Comply Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Price to Comply Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Price to Comply Order will be cancelled.[11]

Non-Displayed Orders

Currently, Rule 4770(d)(3) states that a Non-Displayed Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(3) except as provided under this paragraph. A resting Non-Displayed Order in a Test Group Three Pilot security cannot execute at the price of a Protected Quotation of another market center unless the

[7] *See* Securities Exchange Act Release No. 79155 (October 25, 2016), 81 FR 75471 (October 31, 2016) (SR–NASDAQ–2016–143).

Subsequent to the approval of SR–NASDAQ–2016–126, Nasdaq become aware that this re-pricing functionality also applies to Price to Display Orders that are entered through the OUCH and FLITE protocols in Test Group Three Securities, and amended Commentary .14 to indicate that Price to Display Orders will be treated in the same manner as Price to Comply Orders under the re-pricing functionality. *Id.*

[8] *Id.*

[9] *See* Securities Exchange Release Nos. 79263 (November 8, 2016), 81 FR 80154 (November 15, 2016) (SR–NASDAQ–2016–151) (extending current re-pricing functionality to November 14, 2016); 79408 (November 28, 2016), 81 FR 87106 (December 2, 2016) (SR–NASDAQ–2016–159) (extending the current re-pricing functionality to December 12, 2016).

[10] Nasdaq notes that a Price to Comply Order will always be adjusted in this scenario, regardless of its port setting.

[11] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Price to Comply Order to buy at $10.15 is entered, the Price to Comply Order will be displayed at $10.05 and ranked at $10.075. If the National Best Offer then changes to $10.15, the Price to Comply Order will be adjusted to rank at $10.10, and will remain displayed at $10.05. If the National Best Offer subsequently changes to $10.10, the Price to Comply Order will be cancelled.

Nasdaq notes that a Price to Comply Order, Non-Displayed Order, or Post-Only Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would only cancel if the resting order is crossed (not locked) by a Protected Quotation due to a change in the NBBO.

incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 4770(c)(3)(D). If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will be ranked on the Nasdaq Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). For a Non-Displayed Order in a Test Group Three Pilot Security entered through RASH, QIX, or FIX, if after being posted to the Nasdaq Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp.[12] For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Nasdaq Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant.

Nasdaq proposes to amend this provision to clarify the behavior of Non-Displayed Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Nasdaq Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price would no longer lock a Protected Quotation, the Non-Displayed Order will be adjusted to rank at its original entered limit price.[13]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed.[14]

If entered at a price that locked or crossed a Protected Quotation, and if the NBBO changes such that it cannot be ranked at the price of the Protected Quotation it locked or crossed but can be ranked closer to its original limit price, the Non-Displayed Order will be adjusted to the new midpoint of the NBBO.[15]

If, after being posted on the Nasdaq Book, the Non-Displayed Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Non-Displayed Order will be cancelled.[16]

Post-Only Orders

Currently, Rule 4770(d)(4) states that a Post-Only Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(4) except as provided under this paragraph. For orders that are not attributable, if the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Nasdaq Book at the current midpoint of the NBBO.

Nasdaq proposes to augment this provision to clarify the behavior of Post-Only Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Attributable Post-Only Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Nasdaq Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Post-Only Order will be adjusted to rank and display at its original entered limit price.[17]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Post-Only Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the Nasdaq Book, the non-displayed price of a resting Post-Only Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Post-Only Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Post-Only Order will be cancelled.

Commentary .14

In removing the current re-pricing functionality, Commentary .014 [sic], which addresses the behavior of current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities, is no longer necessary.[18] The

[12] As part of this proposal, Nasdaq also proposes to clarify the operation of this provision so that it is structurally consistent with provisions in the descriptions of Price to Comply and Post-Only Orders. Specifically, Nasdaq will amend this language to provide that, if a resting Non-Displayed Order in a Test Group Three Pilot Security entered through RASH, QIX, or FIX becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp.

[13] Nasdaq notes that a Non-Displayed Order will always be adjusted in this scenario, regardless of its port setting.

[14] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.15 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Offer then changes to $10.15, the Non-Displayed Order may either be adjusted to rank at $10.10, or may be cancelled back to the Participant.

[15] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.10 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Bid then changes to $10.05, the price of the Non-Displayed Order will be adjusted to $10.075.

Nasdaq notes that a Non-Displayed Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would be ranked at the locking price upon entry.

[16] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.10 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Offer then changes to $10.05, the Non-Displayed Order will be cancelled back to the Participant.

[17] Nasdaq notes that a Post-Only Order will always be adjusted in this scenario, regardless of its port setting.

[18] Under Commentary .14, the current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities is as follows:

Following entry, and if market conditions allow, a Price to Comply Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Price to Display Order in a Test Group Three Pilot

Continued

Exchange therefore proposes to delete this Commentary from the Rule.

Finally, Nasdaq proposes to add language to Rule 4770(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH, QIX or FIX protocols. Specifically, subject to the provisions set forth in the remainder of Rule 4770(d), if the entered limit price of an Order in a Test Group Three Pilot Security, entered through RASH, QIX, or FIX, locked or crossed a Protected Quotation and the NBBO changes so that the Order can be ranked closer to its original entered limit price, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO. Nasdaq is proposing to make this change to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH, QIX or FIX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] 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.

The Exchange believes that the proposed rule change is consistent with the Act because it clarifies the changes the Exchange is making to the handling of certain Order Types necessary to implement the requirements of the Plan on its System and, in the case of the changes of Rule 4770(d)(1), to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH, QIX or FIX.

As a result of removing the current re-pricing functionality that applies to certain Order Types in Test Group Three Securities entered through the OUCH and FLITE protocols, and due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable Nasdaq protocols, these Order Types will behave differently than is currently set forth in Rule 4770 when entered through the OUCH or FLITE protocols in certain instances. As noted above, these changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO. These changes also will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE in scenarios where the subsequent movement of the NBBO implicates the Trade-at prohibition with respect to the resting order.

By clarifying the behavior of certain Order Types in Test Group Three Pilot Securities entered through the OUCH or FLITE protocols, the proposal will help allow market participants to continue to trade NMS Stocks, within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

More generally, Nasdaq also notes that the Plan, which was approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act,[21] provides the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Finally, Nasdaq believes that the proposal is consistent with the Act because the proposed functionality will more closely align the handling of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols for Test Group Three Pilot Securities with the handling of such Orders entered through the OUCH or FLITE protocols for Control Group, Test Group One and Test Group Two Securities than the current functionality in place for these Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan, and must take the same steps that the Exchange has to conform its existing rules to the requirements of the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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[22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the

Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Display Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.

Following entry, and if market conditions allow, a Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Nasdaq Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1.

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] *Id.*

[25] 17 CFR 240.19b–4(f)(6)(iii).

protection of investors and the public interest. In this filing, the Exchange has asked that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

The Exchange notes the proposed rule is intended to clarify the differences in the handling of certain orders entered into the system by different protocols. The Exchange notes that orders will be treated as consistently as possible across the Test Groups and the Control Group while complying with each grouping's varied quoting and trading requirements. Additionally, the Exchange proposed to remove Commentary .14 because it is no longer necessary.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal clarifies the Exchange's rules and provides transparency to members with regards to the handling of certain orders entered via OUCH and FLITE as well as RASH, QIX, or FIX protocols for locked or crossed orders in Test Group Three Pilot Securities. The Commission notes that the Exchange proposed to remove the functionality described in Commentary .14 and make the necessary corresponding systems changes in Partial Amendment No. 2 to Nasdaq–2016–126, which the Commission approved.[26] The Exchange notes that it was able to implement the systems changes and that they became fully operational on the December 14, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on December 14, 2016.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–NASDAQ–2016–171 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–171. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–171 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31108 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[26] *See supra* note 5.

[27] 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).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79620; File No. SR–FINRA–2016–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Reporting Transactions in U.S. Treasury Securities to the Trade Reporting and Compliance Engine

December 20, 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 December 14, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6710 to clarify the definitions of ''Auction Transaction'' and ''When-Issued Transaction'' for the purposes of reporting transactions in U.S. Treasury Securities to the Trade Reporting and Compliance Engine (''TRACE'').

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

* * * * *

6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6710. Definitions

The terms used in this Rule 6700 Series shall have the same meaning as those defined in the FINRA By-Laws and rules unless otherwise specified. For the purposes of this Rule 6700 Series, the following terms have the following meaning:

(a) through (ee) No Change.

(ff) ''Collateralized Debt Obligation'' (''CDO'') means a type of Securitized Product backed by fixed-income assets

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(such as bonds, receivables on loans, or other debt) or derivatives of these fixed-income assets, structured in multiple classes or tranches with each class or tranche entitled to receive distributions of principal and/or interest in accordance with the requirements adopted for the specific class or tranche. A CDO includes, but is not limited to, a collateralized loan obligation (''CLO'') and a collateralized bond obligation (''CBO'').

([ff]*gg*) ''Auction'' means the bidding process by which the U.S. Department of the Treasury sells marketable securities to the public pursuant to Part 356 of Title 31 of the Code of Federal Regulations.

([gg]*hh*) ''Auction Transaction'' means [the purchase of] *a transaction in which a member is awarded* a U.S. Treasury Security in an Auction.

([hh]*ii*) ''When-Issued Transaction'' means a transaction in a U.S. Treasury Security that is executed before the [Auction for] *issuance of* the security.

• • • **Supplementary Material:** ———

.01 No Change.

* * * * *

6730. Transaction Reporting

(a) through (b) No Change.

(c) Transaction Information To Be Reported

Each TRACE trade report shall contain the following information:

(1) through (2) No Change.

(3) Price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) or, for When-Issued Transactions in U.S. Treasury Securities *executed before the Auction for the security,* the yield as required by paragraph (d)(1) *of this Rule*[below];

(4) through (14) No Change.

(d) Procedures for Reporting Price, Capacity, Volume

(1) Price

(A) Except as noted in *sub*paragraph (B) [for When-Issued Transactions in U.S. Treasury Securities], for principal transactions, report the price, which must include the mark-up or mark-down. (However, if a price field is not available, report the contract amount and, if applicable, the accrued interest.) For agency transactions, report the price, which must exclude the commission. (However, if a price field is not available, report the contract amount and, if applicable, the accrued interest.) Report the total dollar amount of the commission if one is assessed on the transaction. Notwithstanding the foregoing, a member is not required to include a commission, mark-up or mark-down where one is not assessed on a trade-by-trade basis at the time of the transaction or where the amount is not known at the time the trade report is due. A member must use the ''No Remuneration'' indicator described in paragraph (d)(4)(F) where a trade report does not reflect either a commission, mark-up or mark-down, except for an inter-dealer transaction, a ''List or Fixed Offering Price Transaction,'' as defined in Rule 6710(q), or a ''Takedown Transaction,'' as defined in Rule 6710(r).

(B) For When-Issued Transactions in U.S. Treasury Securities *executed before the Auction for the security and* conducted on a principal basis, report the yield, which must include the mark-up or mark-down, of the security in lieu of price. For When-Issued Transactions in U.S. Treasury Securities *executed before the Auction for the security and* conducted on an agency basis, report the yield, which must exclude the commission, of the security in lieu of price. Report the total dollar amount of the commission.

(2) through (4) No Change.

(e) through (f) No Change.

• • • **Supplementary Material:** ———

.01 through .05 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 18, 2016, the Commission approved a proposed rule change to require FINRA members to report certain transactions in U.S. Treasury Securities to TRACE.[3] The reporting requirements will be implemented beginning July 10, 2017.[4] As part of the proposed rule change, FINRA adopted three new defined terms to address members' reporting requirements involving transactions in U.S. Treasury Securities that occur on a ''when-issued'' basis or that occur as part of an auction of U.S. Treasury Securities: ''Auction,'' ''Auction Transaction,'' and ''When-Issued Transaction.'' FINRA is amending the definitions of ''Auction Transaction'' and ''When-Issued Transaction'' to clarify the application of those terms, and is amending Rule 6730 to clarify the reporting requirements in light of the changes to the definition of ''When-Issued Transaction.''[5]

First, FINRA is amending the terminology in the definition of ''Auction Transaction'' to conform to the regulations applicable to auctions of U.S. Treasury Securities. As adopted, the term ''Auction Transaction'' is defined as ''the purchase of a U.S. Treasury Security in an Auction.''[6] Pursuant to the amendments to Rule 6730(e), Auction Transactions are exempt from the TRACE reporting requirements.

When conducting auctions, the Department of the Treasury accepts bids and determines awards pursuant to the process set forth in the applicable regulations.[7] Securities awarded during the auction process must then be paid for by the issue date established in the announcement for the auction.[8] To incorporate the concept of ''awards'' and maintain consistency with the applicable Treasury regulations, FINRA is amending the definition of ''Auction Transaction'' to mean ''the [sic][9] transaction in which a member is awarded a U.S. Treasury Security in an Auction.'' Consequently, the acquisition of U.S. Treasury Securities on the issue

[3] *See* Securities Exchange Act Release No. 79116 (October 18, 2016), 81 FR 73167 (October 24, 2016) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of File No. SR–FINRA–2016–027).

[4] *See Regulatory Notice* 16–39 (October 2016).

[5] On September 23, 2016, the Commission approved SR–FINRA–2016–023, which added a definition of ''Collateralized Debt Obligation'' to Rule 6710 as paragraph (ff). *See* Securities Exchange Act Release No. 78925 (September 23, 2016), 81 FR 67023 (September 29, 2016) (Order Approving File No. SR–FINRA–2016–023). The proposed rule change also amends the paragraph designations for the definitions of ''Auction,'' ''Auction Transaction,'' and ''When-Issued Transaction'' as (gg), (hh), and (ii), respectively.

[6] The term ''Auction'' means ''the bidding process by which the U.S. Department of the Treasury sells marketable securities to the public pursuant to Part 356 of Title 31 of the Code of Federal Regulations.''

[7] *See* 31 CFR 356.20 (How does the Treasury determine auction awards?).

[8] *See* 31 CFR 356.25 (How does the settlement process work?).

[9] The proposed rule text states: '' 'Auction Transaction' means a transaction in which a member is awarded a U.S. Treasury Security in an Auction.''

date as a result of a successful bid in an Auction will not be reportable to TRACE by a FINRA member. Any secondary market transactions in the security following the initial acquisition on the issue date will be reportable.

Second, FINRA is amending the definition of ''When-Issued Transaction'' to conform to more common usage of the term. As adopted, the term ''When-Issued Transaction'' was defined as ''a transaction in a U.S. Treasury Security that is executed before the Auction for the security.'' Although ''when-issued'' trading typically refers to any trading conducted between the announcement of an auction for a U.S. Treasury Security and the issue date, which can often be several days after the auction for the security, FINRA defined the term to extend only until the auction for the security to reflect the change in how transactions are priced before and after the auction (*i.e.,* transactions are generally conducted on a yield basis before the auction and on a price basis after the auction).

To conform the definition in the TRACE rules to more common usage, FINRA is amending the definition of ''When-Issued Transaction'' to mean ''a transaction in a U.S. Treasury Security that is executed before the issuance of the security.'' Under the amendment, therefore, the timing of When-Issued Transactions will still commence with the announcement of the Auction, but any transaction in the security subject to the Auction will be considered a ''When-Issued Transaction'' until the date the security is issued rather than the date the security is auctioned. Members will still be required to report yield, rather than price, for When-Issued Transactions up until the Auction for the security and price following the Auction; however, all When-Issued Transactions, both before and after the Auction up until the issue date, must be reported with the appropriate indicator. Because of the change in definition, FINRA also is amending Rule 6730 to clarify that, although the definition of the term ''When-Issued Transaction'' is being amended, there are no changes as to how members report price or yield on these transactions.[10]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be July 10, 2017.

[10] Similarly, the guidance FINRA has provided on the use of the When-Issued Transaction indicator and reopening transactions does not change as a result of these amendments. *See Regulatory Notice* 16–39 (October 2016).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the amendments will conform the terms in FINRA rules to their more common usage and use of these terms in applicable Treasury regulations. FINRA believes the amended definitions may reduce confusion regarding usage of the terms in the FINRA TRACE rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because the amendments are limited to conforming the terms in FINRA rules to their more common usage and to the use of the terms in applicable Treasury regulations, FINRA believes that amending the definitions may reduce confusion regarding usage of the terms and will not result in any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2016–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR–FINRA–2016–046, and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31112 Filed 12–23–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79619; File No. SR–NASDAQ–2016–178]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to SQF Ports

December 20, 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 December 16, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, 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 Chapter XV, entitled ''Options Pricing,'' at Section 3, entitled ''NASDAQ Options Market—Ports and other Services.'' Chapter XV governs pricing for Exchange members using the NASDAQ Options Market LLC (''NOM''), the Exchange's facility for executing and routing standardized equity and index options. The Exchange proposes to amend Specialized Quote Feed (''SQF'') Port [3] Fees.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the SQF Port Fees in Chapter XV, Section 3 of the NOM Rules. The Exchange recently transitioned to state-of-the-art hardware and software architecture to achieve a more efficient and more robust infrastructure to support the growing needs of our Options Participants (''NOM Refresh''). In connection with this recent NOM Refresh, NOM Market Makers were required to make certain changes to connect to the new NOM System via their SQF Ports. As a result of these changes to NOM, the number of SQF Ports required by NOM Market Makers should be reduced, since a single connection may be utilized to quote across all symbols. The Exchange anticipates that NOM Market Makers will benefit from the efficiency of the service that is available to them as a result of the NOM Refresh.

The Exchange provided NOM Market Makers with new SQF ports for connectivity so that NOM Market Makers could support our migration from the old to the new SQF Ports during our symbol rollout period. During the months of October and November 2016 (''NOM Refresh Period'') the Exchange offered NOM Market Makers a Fixed SQF Port Fee, which is the amount that was paid by the NOM Market Maker for SQF Ports for the month of August 2016. Currently, NOM Market Makers are not assessed an SQF Port Fee for their use of the new version of the SQF Ports to connect to the new environment during this NOM Refresh Period.[4] As of December 1, 2016, only new SQF Ports were utilized and the old SQF Ports were eliminated.

At this time, the Exchange is proposing to eliminate the Fixed SQF Port Fee and adopt the following incremental cost model for SQF Port Fees, per port, per month:

Number of SQF ports	Monthly fee per port
First 5 ports	$1,500 per port.
Next 15 ports (6–20)	$1,000 per port.
All ports over 20 ports (21 and above).	$500 per port.

For example, if a NOM Market Maker desired 21 SQF Ports in December 2016, the NOM Market Maker would be billed $1,500 for the first 5 ports ($7,500), the next 15 ports will be billed $1,000 ($15,000) and the final port would be billed $500 for a total SQF Port Fee for December of $23,000.

While NOM Market Makers will be assessed higher fees for each port under 20 ports as compared to the original $750 SQF Port Fee prior to the implementation of the Fixed SQF Port Fee,[5] the Exchange believes that costs will decline overall as a result of the more efficient connectivity offered by the NOM Refresh and the need for fewer ports. The Exchange believes that it continues to offer SQF Ports to NOM Market Makers at competitive prices.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facility, and is not designed to permit unfair

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SQF ports are ports that receive inbound quotes at any time within that month. The SQF Port allows a NOM Market Maker to access information such as execution reports and other relevant data through a single feed. For example, this data would show which symbols are trading on NOM and the current state of an options symbol (*i.e.,* open for trading, trading, halted or closed). NOM Market Makers rely on data available through the SQF Port to provide them the necessary information to perform market making activities.

[4] For example if a NOM Market Maker obtained 1 new SQF Port to test during the NOM Refresh Period, the NOM Market Maker was not assessed a new SQF Port Fee for that port, but only pay the Fixed SQF Port Fee during the two months. The Exchange notes that it is removing language related to new NOM Market Makers that request SQF Ports after October 3, 2016 would be assessed $750 per port, per month between October 3, 2016 and November 30, 2016. This language is no longer necessary. The Exchange notes that no NOM Market Makers were subject to this fee during the NOM Refresh Period.

[5] Prior to the implementation of the Fixed SQF Port Fee, the Exchange assessed an SQF Port Fee of $750 per port, per month. *See* Securities Exchange Act Release No. 79105 (October 17, 2016), 81 FR 72844 (October 21, 2016) (SR–NASDAQ–2016–133).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [9] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[10] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [11]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [12] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes it is reasonable to assess NOM Market Makers an incremental SQF Port Fee, per port, per month of $1,500 for the first 5 SQF Ports, $1,000 for the next 15 SQF Ports and $500 for any ports over 20 SQF Ports because with the refresh fewer SQF Ports are required to connect to the Exchange. The technology refresh increased the efficiency with which Participants connect to the System. As a result of the refresh, Participants require fewer SQF Ports to connect to the System and therefore this should reduce the number of ports required and lower costs. With the refresh, each NOM Market Maker will be required to have at least 1 port to connect to the match engine as compared to 2 SQF Ports prior to the refresh. NOM Participants may have some technological reasons for desiring additional SQF Ports based on their own technical infrastructure requirements. The Exchange believes that the proposed rates and particularly the number of ports at each price point are reasonable because the Exchange utilized historical port usage and price points to determine comparable pricing.

Finally, the Exchange believes that it is reasonable to offer lower rates for a greater amount of ports because all NOM Participants only require one SQF Port. The Exchange believes that since 2 ports were required previously and now only 1 port is required, this pricing results in no cost increase. NOM Market Makers were originally assessed an SQF Port Fee of $750 per port prior to the implementation of the Fixed SQF Port Fee.[13] With this proposal, one port which equates to $1,500 per port, the equivalent of 2 ports at $750 per port. The Exchange assesses these fees to cover costs associated with supporting its architecture. The Exchange believes it is reasonable to assess less fees beyond a certain number of ports because the costs are mostly recouped in the first tier. Today, Bats BZX Exchange, Inc. (''BATS BZX'') assesses $1,500 to its market makers for Ports with Bulk Quoting Capabilities,[14] which is comparable to the highest priced tier that NOM is proposing for SQF Ports. The Exchange notes that the SQF Ports also have bulk quoting capability.

The Exchange believes it is equitable and not unfairly discriminatory to assess NOM Market Makers an incremental SQF Port Fee, per port, per month of $1,500 for the first 5 SQF Ports, $1,000 for the next 15 SQF Ports and $500 for any ports over 20 SQF Ports because all NOM Market Makers would be uniformly assessed the same SQF Port Fees, based on usage. Other NOM Participants that do not engage in market making activities do not utilize SQF Ports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed SQF Port Fees do not impose a burden on competition because if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

In terms of intra-market competition, assessing NOM Market Makers an incremental SQF Port Fee, per port, per month of $1,500 for the first five SQF Ports, $1,000 for six to 20 SQF Ports and $500 for more than 20 SQF Ports does not impose an undue burden on competition because all NOM Market Makers would be uniformly assessed the same SQF Port Fees, based on usage. Other NOM Participants that do not engage in market making activities do not utilize SQF Ports.

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.

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[9] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[10] *See NetCoalition,* at 534–535.

[11] *Id.* at 537.

[12] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[13] Prior to the implementation of the Fixed SQF Port Fee, the Exchange assessed an SQF Port Fee of $750 per port, per month. *See* Securities Exchange Act Release No. 79105 (October 17, 2016), 81 FR 72844 (October 21, 2016) (SR–NASDAQ–2016–133).

[14] *See* Bats BZX Options Exchange Fee Schedule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–178 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–178. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–178 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31111 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79618; File No. SR–BatsBZX–2016–88]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to BZX Rule 14.11(i), Managed Fund Shares, To List Shares of the Cambria Sovereign High Yield Bond ETF and the Cambria Value and Momentum ETFs

December 20, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 13, 2016, Bats BZX Exchange, Inc. (''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 list shares of the Cambria Sovereign High Yield Bond ETF and the Cambria Value and Momentum ETF under Rule 14.11(i) (''Managed Fund Shares''), which are currently listed on NYSE Arca, Inc. (''Arca''). The shares of the Fund are referred to herein as the ''Shares.''

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list shares of the Cambria Sovereign High Yield Bond ETF and the Cambria Value and Momentum ETF under Rule 14.11(i), (''Managed Fund Shares''), (each, a ''Fund'' and, collectively, the ''Funds''),[4] which governs the listing and trading of Managed Fund Shares on the Exchange.[5] The Exchange notes that both of the Funds are already trading on the Exchange pursuant to unlisted trading privileges, as provided in Rule 14.11(j).

The Shares will be offered by the Cambria ETF Trust (the ''Trust''), which is organized as a Delaware statutory trust and is registered with the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that the Commission previously approved a proposal to list and trade shares of the Funds on Arca. See Securities Exchange Act Release No. 75540 (July 28, 2015), 80 FR 46359 (August 4, 2015) (SR–NYSEArca–2015–50) (the ''Prior Proposal''). This proposal is substantively identical to the Prior Proposal and the issuer represents that all material representations contained within the Prior Proposal remain true. As further described below, the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares.

[5] The Commission approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

Commission as an open-end management investment company.[6]

Description of the Shares and the Fund

Cambria Investment Management, L.P. (''Cambria'' or the ''Adviser'') serves as the investment adviser of the Funds. SEI Investments Distribution Co. (the ''Distributor'' or ''SEI'') is the principal underwriter and distributor of the Funds' Shares. SEI Investments Global Funds Services (''SEI GFS'') will serve as the accountant and administrator of the Funds. Brown Brothers Harriman & Co. will serve as the ''Custodian'' and ''Transfer Agent'' of the Funds' assets.

Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event that (a) the Adviser or any sub-adviser becomes registered as, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Cambria Sovereign High Yield Bond ETF

Principal Investment Policies

According to the Registration Statement, the Fund seeks income and capital appreciation from investments in securities and instruments that provide exposure to sovereign and quasi-sovereign bonds.

Under normal market conditions,[8] at least 80% of the value of the Fund's net assets (plus borrowings for investment purposes) will be invested in sovereign and quasi-sovereign high yield bonds (commonly known as ''junk bonds'').[9] For the purposes of this policy, sovereign and quasi-sovereign high yield bonds include exchange-traded funds (''ETFs'')[10] and exchange-traded notes (''ETNs'')[11] that invest in or have exposure to such bonds. The Fund will invest in emerging and developed countries, including countries located in the G–20 and other countries. Potential countries include, but are not limited to, Argentina, Australia, Brazil, Canada, Chile, China, Colombia, members of the European Union, Hong Kong, India, Israel, Indonesia, Japan, Malaysia, Mexico, New Zealand, Norway, Peru, the Philippines, Russia, Saudi Arabia, Singapore, South Africa, South Korea, Sweden, Switzerland, Taiwan, Thailand, Turkey, the United Kingdom and the United States.

Sovereign bonds include debt securities issued by a national government, instrumentality or political sub-division. Quasi-sovereign bonds include debt securities issued by a supra-national government or a state-owned enterprise or agency. The sovereign and quasi-sovereign bonds that the Fund will invest in may be denominated in local and foreign currencies. The Fund may invest in securities of any duration or maturity.

The Fund may invest up to 20% of its net assets in money market instruments or other high quality debt securities, cash or cash equivalents, or ETFs and ETNs that invest in, or provide exposure to, such instruments or securities.

Cambria will utilize a quantitative model to select sovereign and quasi-sovereign bond exposures for the Fund. The model will review various characteristics of potential investments, with yield as the largest determinant. By considering together the various characteristics of potential investments, the model will identify potential allocations for the Fund, as well as opportune times to make such allocations. Screens will exclude foreign issuers whose securities are highly restricted or illegal for U.S. persons to own, including due to the imposition of sanctions by the U.S. Government.

Cambria Value and Momentum ETF

Principal Investments

According to the Registration Statement, the Fund seeks income and capital appreciation from investments in the U.S. equity market. The Fund will seek to achieve its investment objective

[6] *See* Registration Statement on Form N–1A for the Trust, dated September 30, 2015 (File Nos. 333–180879 and 811–22704) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C 80a–1) (''1940 Act'') (the ''Exemptive Order''). *See* Investment Company Act Release No. 30340 (January 4, 2013) (File No. 812–13959).

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] Sovereign and quasi-sovereign bonds include securities issued or guaranteed by foreign governments (including political subdivisions) or their authorities, agencies, or instrumentalities or by supra-national agencies. Supra-national agencies are agencies whose member nations make capital contributions to support the agencies' activities. Examples include the International Bank for Reconstruction and Development (the World Bank), the Asian Development Bank, the European Coal and Steel Community, and the Inter-American Development Bank.

[10] For purposes of this filing, the term ''ETFs'' includes Portfolio Depository Receipts (as described in Rule 14.11(b)); Index Fund Shares (as described in Rule 14.11(c)); and Managed Fund Shares (as described in Rule 14.11(i)). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

[11] For purposes of this filing, the term ''ETNs'' includes Index-Linked Securities (as described in Rule 14.11(d)). All ETNs will be listed and traded in the U.S. on a national securities exchange. The Funds will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETNs.

by investing, under normal market conditions, at least 80% of the value of the Fund's net assets in U.S. exchange-listed equity securities that are undervalued according to various valuation metrics, including cyclically adjusted valuation metrics. These valuation metrics are derived by dividing the current market value of a reference index or asset by an inflation-adjusted normalized factor (typically earnings, book value, dividends, cash flows or sales) over the past seven to ten years. The Adviser intends to employ systematic quantitative strategies in an effort to avoid overvalued and downtrending markets.

In attempting to avoid overvalued and downtrending markets, the Fund may use U.S. exchange-traded stock index futures or options thereon, or take short positions in ETFs to attempt to hedge the long equity portfolio during times when Cambria believes that the U.S. equity market is overvalued from a valuation standpoint, or Cambria's models identify unfavorable trends and momentum in the U.S. equity market. The Fund may hedge up to 100% of the value of the Fund's long portfolio using these strategies. During certain periods, including to collateralize the Fund's investments in futures contracts, the Fund may invest up to 20% of the value of its net assets in U.S. dollar and non-U.S. dollar denominated money market instruments or other high quality debt securities, or ETFs that invest in these instruments.

The Fund may invest in securities of companies in any industry, and will limit the maximum allocation to any particular sector. Although the Fund generally expects to invest in companies with larger market capitalizations, the Fund may also invest in small- and mid-capitalization companies. Filters will be implemented to screen for companies that pass sector concentration and liquidity requirements.

Screens also will exclude foreign issuers whose securities are highly restricted or illegal for U.S. persons to own, including due to the imposition of sanctions by the U.S. Government.

Cambria will utilize a quantitative model that combines value and momentum factors to identify which securities the Fund may purchase and sell and opportune times for purchases and sales. The Fund will look to allocate to the top performing value stocks based on value factors as well as absolute and relative momentum. Valuation will typically be measured on a longer time horizon (five to ten years) than momentum (typically less than one year).

The Fund may invest in U.S. exchange-listed preferred stocks. Preferred stocks include convertible and non-convertible preferred and preference stocks that are senior to common stock.

The Fund may invest in U.S. exchange-listed real estate investment trusts (''REITs'').

The Fund may engage in short sales of securities.

Other Investments

While each Fund, under normal market conditions, will invest at least 80% of the value of its net assets (plus borrowings for investment purposes) in the securities and other assets described above, each Fund may invest its remaining assets in the securities and financial instruments described below.

A Fund may invest a portion of its assets in cash or cash items pending other investments or to maintain liquid assets required in connection with some of a Fund's investments. These cash items and other high quality debt securities may include money market instruments, securities issued by the U.S. Government and its agencies, bankers' acceptances, commercial paper, bank certificates of deposit and shares of investment companies that invest primarily in such instruments.

A Fund may invest in corporate debt securities. A Fund may invest in commercial paper, master notes and other short-term corporate instruments that are denominated in U.S. dollars. Commercial paper consists of short-term promissory notes issued by corporations. Master notes are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of a Fund. Master notes are generally illiquid and therefore subject to a Fund's percentage limitations for investments in illiquid securities.

A Fund may invest in the following types of debt securities in addition to those described under ''Principal Investments'' above for each Fund: securities issued or guaranteed by the U.S. Government, its agencies, instrumentalities, and political subdivisions; securities issued or guaranteed by foreign governments, their authorities, agencies, instrumentalities and political subdivisions; securities issued or guaranteed by supra-national agencies; corporate debt securities; time deposits; notes; inflation-indexed securities; and repurchase agreements.

Such debt securities may be investment grade securities or high yield securities. Investment grade securities include securities issued or guaranteed by the U.S. Government, its agencies and instrumentalities, as well as securities rated in one of the four highest rating categories by at least two Nationally Recognized Statistical Rating Organizations (''NRSROs'') rating that security, such as Standard & Poor's Ratings Services (''Standard & Poor's''), Moody's Investors Service, Inc. (''Moody's'') or Fitch Ratings Ltd. (''Fitch''), or rated in one of the four highest rating categories by one NRSRO if it is the only NRSRO rating that security or, if unrated, deemed to be of comparable quality by Cambria and traded publicly on the world market. The Fund, at the discretion of Cambria, may retain a debt security that has been downgraded below the initial investment criteria.

A Fund may invest in securities rated lower than Baa by Moody's, or equivalently rated by S&P or Fitch.

The debt and other fixed income securities in which a Fund may invest include fixed and floating rate securities of any maturity. Fixed rate securities pay a specified rate of interest or dividends. Floating rate securities pay a rate that is adjusted periodically by reference to a specified index or market rate. A Fund may invest in indexed bonds, which are a type of fixed income security whose principal value and/or interest rate is adjusted periodically according to a specified instrument, index, or other statistic (*e.g.,* another security, inflation index, currency, or commodity).

A Fund may invest in zero coupon securities.

The Cambria Sovereign High Yield Bond ETF may gain exposure to foreign securities by purchasing U.S. exchange-listed and traded American Depositary Receipts (''ADRs'') and each of the Funds may gain exposure to foreign securities by purchasing exchange-traded European Depositary Receipts (''EDRs'') and Global Depositary Receipts (''GDRs'', together with ADRs and EDRs, ''Depositary Receipts'').[12]

[12] Depositary Receipts are receipts, typically issued by a bank or trust issuer, which evidence ownership of underlying securities issued by a non-U.S. issuer. Generally, ADRs, in registered form, are denominated in U.S. dollars and are designed for use in the U.S. securities markets. GDRs, in bearer form, are issued and designed for use outside the United States and EDRs, in bearer form, may be denominated in other currencies and are designed for use in European securities markets. ADRs are receipts typically issued by a U.S. bank or trust company evidencing ownership of the underlying securities. EDRs are European receipts evidencing a similar arrangement. GDRs are receipts typically issued by non- United States banks and trust companies that evidence ownership of either foreign or domestic securities. Not more than 10%

The Cambria Sovereign High Yield Bond ETF may enter into forward foreign currency contracts.

Investment Restrictions

To respond to adverse market, economic, political or other conditions, each of the Funds may invest up to 100% of its total assets, without limitation, in high-quality debt securities and money market instruments. The Funds may be invested in these instruments for extended periods, depending on Cambria's assessment of market conditions. Cambria deems high-quality debt securities and money market instruments to include commercial paper, certificates of deposit, bankers' acceptances, U.S. Government and agency securities, repurchase agreements and bonds that are BBB or higher, and registered investment companies that invest in such instruments.

The Funds may invest in the securities of other investment companies to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof.

According to the Registration Statement, each Fund will seek to qualify for treatment as a Regulated Investment Company (''RIC'') under the Internal Revenue Code.[13]

A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[14]

Initial and Continued Listing

The Shares will be subject to BZX Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[15] A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Each Fund's investments will be consistent with its respective investment objective in accordance with the 1940 Act and will not be used to enhance leverage.

Creation and Redemption of Shares

According to the Registration Statement, the Funds will sell and redeem Shares in aggregations of 50,000 Shares (each, a ''Creation Unit'') on a continuous basis through the Distributor, without a sales load, at the net asset value (''NAV'') next determined after receipt of an order in proper form on any business day. The size of a Creation Unit is subject to change.

The purchase or redemption of Creation Units from a Fund must be effected by or through an ''Authorized Participant'' (*i.e.,* either a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'') or a participant in the Depository Trust Company (''DTC'') with access to the DTC system, and who has executed an agreement (''Participant Agreement'') with the Distributor that governs transactions in a Fund's Creation Units.

The consideration for a Creation Unit of a Fund will be the ''Fund Deposit''. The Fund Deposit will consist of the ''In-Kind Creation Basket'' and ''Cash Component'', or an all cash payment (''Cash Value''), as determined by Cambria to be in the best interest of a Fund. The Cash Component will typically include a ''Balancing Amount'' reflecting the difference, if any, between the NAV of a Creation Unit and the market value of the securities in the ''In-Kind Creation Basket''. The Fund Deposit for the Cambria Value and Momentum ETF generally will consist of the In-Kind Creation Basket and Cash Component and the Fund Deposit for the Cambria Sovereign High Yield Bond ETF generally will consist of the Cash Value. If the NAV per Creation Unit exceeds the market value of the securities in the In-Kind Creation Basket, the purchaser will pay the Balancing Amount to a Fund. By contrast, if the NAV per Creation Unit is less than the market value of the securities in the In-Kind Creation Basket, a Fund will pay the Balancing Amount to the purchaser.

The Transfer Agent, in a portfolio composition file sent via the NSCC, generally will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), a list of the names and the required number of shares of each security in the In-Kind Creation Basket to be included in the current Fund Deposit for each Fund (based on information about a Fund's portfolio at the end of the previous business day) (subject to amendment or correction). If applicable, the Transfer Agent, through the NSCC, also will make available on each business day, the estimated Cash Component or Cash Value, effective through and including the previous business day, per Creation Unit.

The announced Fund Deposit will be applicable, subject to any adjustments as described below, for purchases of Creation Units of a Fund until such time as the next-announced Fund Deposit is made available. From day to day, the composition of the In-Kind Creation Basket may change as, among other things, corporate actions and investment decisions by Cambria are implemented for a Fund's portfolio. Each Fund reserves the right to accept a nonconforming (*i.e.,* custom) Fund Deposit.

The Fund may, in its sole discretion, permit or require the substitution of an amount of cash (''cash in lieu'') to be added to the Cash Component to replace any security in the In-Kind Creation Basket. The Fund may permit or require cash in lieu when, for example, the securities in the In-Kind Creation Basket

of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or party to a comprehensive surveillance sharing agreement (''CSSA'') with the Exchange.

[13] 26 U.S.C. 851.

[14] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[15] *See* 17 CFR 240.10A–3.

may not be available in sufficient quantity for delivery or may not be eligible for transfer through the systems of DTC. Similarly, a Fund may permit or require cash in lieu when, for example, the Authorized Participant or its underlying investor is restricted under U.S. or local securities law or policies from transacting in one or more securities in the In-Kind Creation Basket.[16]

To compensate the Trust for costs incurred in connection with creation and redemption transactions, investors will be required to pay to the Trust a ''Transaction Fee'' as described in the Registration Statement.

According to the Registration Statement, Fund Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by a Fund through the Transfer Agent and only on a business day. The redemption proceeds for a Creation Unit will consist of the ''In-Kind Redemption Basket'' and a ''Cash Redemption Amount'', or the Cash Value, in all instances equal to the value of a Creation Unit. The redemption proceeds for the Cambria Value and Momentum ETF generally will consist of the In-Kind Redemption Basket and the Cash Redemption Amount and the redemption proceeds for the Cambria Sovereign High Yield Bond ETF generally will consist of the Cash Value.

The Cash Redemption Amount will typically include a Balancing Amount, reflecting the difference, if any, between the NAV of a Creation Unit and the market value of the securities in the In-Kind Redemption Basket. If the NAV per Creation Unit exceeds the market value of the securities in the In-Kind Redemption Basket, a Fund will pay the Balancing Amount to the redeeming investor. By contrast, if the NAV per Creation Unit is less than the market value of the securities in the In-Kind Redemption Basket, the redeeming investor will pay the Balancing Amount to a Fund.

The composition of the In-Kind Creation Basket will normally be the same as the composition of the In-Kind Redemption Basket. Otherwise, the In-Kind Redemption Basket will be made available by the Adviser or Transfer Agent. The Fund reserves the right to accept a nonconforming (*i.e.,* custom) ''Fund Redemption''.

In lieu of an In-Kind Redemption Basket and Cash Redemption Amount, Creation Units may be redeemed consisting solely of cash in an amount equal to the NAV of a Creation Unit, which amount is referred to as the Cash Value. If applicable, information about the Cash Value will be made available by the Adviser or Transfer Agent.

The right of redemption may be suspended or the date of payment postponed: (i) For any period during which the Exchange is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the Exchange is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares or determination of a Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as permitted by the Commission.

A Fund may, in its sole discretion, permit or require the substitution of an amount of cash (''cash in lieu'') to be added to the Cash Redemption Amount to replace any security in the In-Kind Redemption Basket. A Fund may permit or require cash in lieu when, for example, the securities in the In-Kind Redemption Basket may not be available in sufficient quantity for delivery or may not be eligible for transfer through the systems of DTC. Similarly, a Fund may permit or require cash in lieu when, for example, the Authorized Participant or its underlying investor is restricted under U.S. or local securities law or policies from transacting in one or more securities in the In-Kind Redemption Basket.

If it is not possible to effect deliveries of the securities in the In-Kind Redemption Basket, the Trust may in its discretion exercise its option to redeem Shares in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash that a Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the relevant Fund next determined after the redemption request is received in proper form (minus a Transaction Fee, including a variable charge, if applicable, as described in the Registration Statement).[17]

The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities that differs from the exact composition of the In-Kind Redemption Basket, or cash in lieu of some securities added to the Cash Component, but in no event will the total value of the securities delivered and the cash transmitted differ from the NAV. Redemptions of Fund Shares for the In-Kind Redemption Basket will be subject to compliance with applicable federal and state securities laws and a Fund (whether or not it otherwise permits cash redemptions) reserves the right to redeem Creation Units for cash to the extent that the Trust could not lawfully deliver specific securities in the In-Kind Redemption Basket upon redemptions or could not do so without first registering the securities in the In-Kind Redemption Basket under such laws.

When cash redemptions of Creation Units are available or specified for a Fund, they will be effected in essentially the same manner as in-kind redemptions. In the case of a cash redemption, the investor will receive the cash equivalent of the In-Kind Redemption Basket minus any Transaction Fees.

Additional information regarding creation and redemption procedures is included in the Registration Statement.

Net Asset Value

The NAV of Shares will be calculated each business day by SEI GFS as of the close of regular trading on the Exchange, generally 4:00 p.m., Eastern Time on each day that the Exchange is open. The Fund will calculate its NAV per Share by taking the value of its total assets, subtracting any liabilities, and dividing that amount by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV.

When calculating the NAV of a Fund's Shares, expenses will be accrued and applied daily and U.S. exchange-traded equity securities will be valued at their market value when reliable market quotations are readily available. Exchange- traded equity securities will be valued at the closing price on the relevant exchange, or, if the closing price is not readily available, the mean of the closing bid and asked prices. Certain equity securities, debt securities and other assets will be valued differently. For instance, fixed-income investments maturing in 60 days or less may be valued using the amortized cost method or, like those maturing in excess of 60 days, at the readily available market price, if available. Investments in securities of investment companies (other than ETFs) will be valued at NAV.

[16] The Adviser represents that, to the extent the Trust effects the creation of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

[17] The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

Forward foreign currency contracts generally will be valued based on the marked-to-market value of the contract provided by pricing services. Pricing services, approved and monitored pursuant to a policy approved by the Funds' Board of Trustees (''Board''), provide market quotations based on both market prices and indicative bids.

Sovereign and quasi-sovereign bonds, U.S. government securities, corporate debt securities, commercial paper, commercial interests, bankers' acceptances, bank certificates of deposit, repurchase agreements, fixed and floating rate securities, indexed bonds, master notes, zero coupon securities will be valued based on price quotations obtained from a third-party pricing service or from a broker-dealer who makes markets in such securities.

U.S. exchange-traded stock index futures contracts and U.S. exchange-traded options thereon will be valued at the settlement or closing price determined by the applicable U.S. futures exchange.

If a market quotation is not readily available or is deemed not to reflect market value, a Fund will determine the price of the security held by a Fund based on a determination of the security's fair value pursuant to policies and procedures approved by the Board. In addition, a Fund may use fair valuation to price securities that trade on a foreign exchange, if any, when a significant event has occurred after the foreign exchange closes but before the time at which a Fund's NAV is calculated. Such significant events may include, but are not limited to: Governmental action that affects securities in one sector or country; natural disasters or armed conflicts affecting a country or region; or significant domestic or foreign market fluctuations.

Availability of Information

The Funds' Web site (*www.cambriafunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for the Funds (1) the prior business day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[18] and a calculation of the premium and discount of the closing price or Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares during Regular Trading Hours,[19] each Fund will disclose on its Web site the Disclosed Portfolio as defined in BZX Rule 14.11(i)(3)(B), that will form the basis for a Fund's calculation of NAV at the end of the business day.[20]

On a daily basis, the Funds will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of BZX via NSCC. The basket represents one Creation Unit of a Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), a Fund's Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N- CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

Quotation and last sale information for the Shares will be available via the Exchange proprietary quote and trade services and via the Consolidated Tape Association (''CTA'') high-speed line.

Quotation and last sale information for the equity portfolio holdings of a Fund that are U.S. exchange listed, including common stocks, preferred stocks, ETFs, ETNs, Depositary Receipts, and REITs will be available via the CTA high speed line. Quotation and last sale information for such U.S. exchange-listed securities, as well as futures and options on futures will be available from the exchange on which they are listed. Information relating to non-exchange listed securities of investment companies will be available from major market data vendors.

Quotation information for sovereign and quasi-sovereign bonds, U.S. government securities, corporate debt securities, commercial paper, commercial interests, bankers' acceptances, bank certificates of deposit, repurchase agreements, fixed and floating rate securities, indexed bonds, master notes, zero coupon securities, and forward foreign currency contracts may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

In addition, the Intraday Indicative Value, as defined in BZX Rule 14.11(i)(3)(C), will be widely disseminated at least every 15 seconds during Regular Trading Hours by one or more major market data vendors.[21] The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund and provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to a Fund that are referred to, but not defined, in this proposed rule change are defined in the Registration Statement.

[18] The Bid/Ask Price of the Funds will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[19] As defined in Rule 1.5(w), the term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[20] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[21] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values taken from CTA or other data feeds.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.[22] Trading in Shares of the Funds will be halted if the circuit breaker parameters in BZX Rule 11.18 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to BZX Rule 11.18, which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 14.11(i)(2)(C), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares.

The Exchange will communicate as needed regarding trading in the Shares and underlying common stocks, preferred stocks, Depositary Receipts, REITs, ETFs, ETNs, futures and options on futures with other markets and other entities that are members of the ISG, and the Exchange may obtain trading information regarding trading in the Shares and underlying common stocks, preferred stocks, Depositary Receipts, REITs, ETFs, ETNs, futures and options on futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying common stocks, preferred stocks, Depositary Receipts, REITs, ETFs, ETNs, futures and options on futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[23] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or party to a CSSA with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of listing on the Exchange, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening[24] and After Hours Trading Sessions[25] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of each of the Funds and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on each Fund's Web site. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in each Fund's Registration Statement.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[26] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the applicable initial and continued listing criteria in BZX Rule 14.11(i). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment company shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. The Exchange will communicate as needed regarding trading in the Shares and underlying common stocks, preferred stocks,

[22] *See* BZX Rule 11.18.

[23] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for each Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[24] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. E.T.

[25] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. E.T.

[26] 15 U.S.C. 78f(b)(5).

Depositary Receipts, REITs, ETFs, ETNs, futures and options on futures with other markets and other entities that are members of the ISG, and the Exchange may obtain trading information regarding trading in the Shares and underlying common stocks, preferred stocks, Depositary Receipts, REITs, ETFs, ETNs, futures and options on futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying common stocks, preferred stocks, Depositary Receipts, REITs, ETFs, ETNs, futures and options on futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[27] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE. Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or party to a CSSA with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event that (a) the Adviser or any sub-adviser becomes registered as, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), consistent with Commission guidance. Each Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Trading Hours. On each business day, before commencement of trading in Shares in the Regular Trading on the Exchange, the Adviser will disclose on its Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.

Quotation and last sale information for the equity portfolio holdings of a Fund that are U.S. exchange listed, including common stocks, preferred stocks, ETFs, ETNs, Depositary Receipts, and REITs will be available via the CTA high speed line. Quotation and last sale information for such U.S. exchange-listed securities, as well as futures and options on futures will be available from the exchange on which they are listed. Information relating to non-exchange listed securities of investment companies will be available from major market data vendors.

Quotation information for sovereign and quasi-sovereign bonds, U.S. government securities, corporate debt securities, commercial paper, commercial interests, bankers' acceptances, bank certificates of deposit, repurchase agreements, fixed and floating rate securities, indexed bonds, master notes, zero coupon securities, and forward foreign currency contracts may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.

Moreover, prior to the commencement of listing on the Exchange, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted under the conditions specified in BZX Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BZX Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. As noted above, investors will also have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information of the Shares. The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange- traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the transfer from Arca and listing of additional actively-managed exchange-traded products on Bats, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

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: (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, the proposed rule change has become

[27] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for each Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

effective pursuant to Section 19(b)(3)(A) of the Act [28] and Rule 19b–4(f)(6) thereunder.[29]

Normally, a proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [30] does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [31] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would allow the Shares to be listed on the Exchange in December of 2016 and would allow the Funds to avoid paying listing fees that the current listing exchange will assess for next year, which will be applied at the beginning of January. The Commission notes that the Funds are currently listed and traded on NYSE Arca and that the Exchange has represented that the proposal to list and trade the Funds on the Exchange is substantively identical to the proposal, which the Commission approved, to list and trade the Funds on NYSE Arca. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the operative delay and designates the proposal operative upon filing.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 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, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBZX–2016–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–88. 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–BatsBZX–2016–88 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31110 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79622; File No. SR–ISE–2016–30]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 803 at Supplementary Material .02 in Connection With Business Continuity and Disaster Recovery Plans

December 20, 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 December 12, 2016, the International Securities Exchange, LLC (''ISE'' 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 ISE Rule 803 at Supplementary Material .02 in connection with business continuity and disaster recovery plans (''BC/DR Plans'') testing requirements for certain Members in connection with Regulation Systems Compliance and Integrity (''Regulation SCI'').[3]

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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

[33] 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. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (''SCI Adopting Release'').

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 ISE Rule 803 at Supplementary Material .02 to conform the current rule text regarding BC/DR Plans testing requirements with that of NASDAQ PHLX LLC (''Phlx'') Rule 926,[4] The NASDAQ Stock Market LLC (''Nasdaq'') Rule 1170[5] and NASDAQ BX, Inc. (''BX'') Rule 1170.[6]

Background

As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (''ATSs''), plan processors, and exempt clearing agencies (collectively, ''SCI entities''), and requires these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain ''[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.''[7] The Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR Plans consistent with the Rule.

With respect to an SCI entity's BC/DR Plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: ''[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.''[8] Paragraph (b) of Rule 1004 of Regulation SCI further requires each SCI entity to ''[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.''[9]

Proposal

As set forth below, in connection with Regulation SCI, the Exchange is proposing to amend ISE Rule 803 at Supplementary Material .02 to conform with Phlx Rule 926, Nasdaq Rule 1170 and BX Rule 1170. Phlx Rule 926, Nasdaq Rule 1170 and BX Rule 1170 are similar to ISE Rule 803 at Supplementary Material .02, which incorporates the requirements of Rule 1004 of Regulation SCI as part of the Exchange's rules, and sets forth the notice, selection criteria and obligations of Members with respect to BC/DR Plans testing.

The Exchange proposes to adopt rule text from Phlx Rule 926(a), Nasdaq Rule 1170(a) and BX Rule 1170(a), which will set forth the Exchange's obligations with respect to the selection of Members for testing. Specifically, the proposed rule will require the Exchange to ''[e]stablish standards for the designation of those Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.'' The proposed rule further provides that ''[s]uch standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by the Exchange.'' Lastly, the proposed rule will require the Exchange to provide public notice of the standards that it adopts.

The Exchange is proposing to revise Rule 803 at Supplementary Material .02, which will set forth the obligations of the Exchange and its Members with respect to testing, similar to Phlx Rule 926(b), Nasdaq Rule 1170(b) and BX Rule 1170(b). Specifically, the proposed rule will require the Exchange to ''designate Members pursuant to the standards established in paragraph (a) of this rule and require participation by such designated Members in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months.'' Moreover, the proposed rule will require the Exchange to provide at least 6 months prior notice to Members that are designated for mandatory testing. Lastly, the proposed rule will provide notice that participation in testing is a condition of membership for Members that are designated for testing.

Today, ISE's Rule similarly sets forth the Exchange's obligations with respect to the selection of Members for testing. Like the proposed rule change, these standards for the designation of those Members must be reasonably determined by the Exchange, when taken as a whole, to have the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. ISE's Rule requires the Exchange to provide public notice of the standards that it adopts. Further, ISE's Rule requires Primary Market Makers (''PMMs'') to participate in scheduled functional and performance testing of the operation of such plans with a frequency of not less than once every 12 months. These standards remain substantially the same under the proposed rule change.

Today, ISE's Rule requires that at least 3 months prior to a scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans, the Exchange publishes the criteria to be used by the Exchange to determine which PMMs will be required to participate in such testing, and notifies those PMMs that are required to participate based on such criteria. The Phlx, Nasdaq and BX rules require at least 6 months prior notice to Members that are designated for mandatory testing. This change would expand the notice period. Also, ISE has specific provisions for PMMs with respect to selection for testing. Today, ISE provides that PMMs that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis, will be required to participate in scheduled functional and performance testing. The Exchange may also consider other factors in determining the PMMs that will be required to participate in scheduled functional and performance

[4] Phlx Rule 926 is titled ''The Exchange's Business Continuity and Disaster Recovery Plan Testing Requirements for Member Organizations and PSX Participants Pursuant to Regulation SCI.''

[5] Nasdaq Rule 1170 is titled ''Nasdaq's Business Continuity and Disaster Recovery Plan Testing Requirements for Members and Options Participants Pursuant to Regulation SCI.''

[6] BX Rule 1170 is titled ''The Exchange's Business Continuity and Disaster Recovery Plan Testing Requirements for Members and Options Participants Pursuant to Regulation SCI.''

[7] 17 CFR 242.1001(a)(2)(v).

[8] 17 CFR 242.1004(a).

[9] 17 CFR 242.1004(b).

testing, including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or PMMs who collectively account for a certain percentage of market share on the Exchange. The proposed rule text does not require a different treatment for PMMs as compared to other market participants. Today, Phlx, Nasdaq and BX select market participants based on volume and/or market share, regardless of market making activity. The proposed rule text would not specifically mandate PMMs however, given the importance of market makers on the Exchange and the volume they traditionally trade, they are likely to be required to participate in business continuity and disaster recovery plans under the proposed rule change as they are today.

The Exchange would continue to encourage all Members to connect to the Exchange's backup systems and to participate in testing of such systems; [10] however, certain Members will be obligated to participate in BC/DR Plans testing. In adopting the rule text of Phlx Rule 926, Nasdaq Rule 1170 and BX Rule 1170, the Exchange will require mandatory participation in BC/DR Plans testing by those Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans on the Exchange. The Exchange believes that using overall participation on its markets (by volume and/or market share) as a measure to select Members for mandatory participation in BC/DR Plans testing is a reasonable means by which it can determine which Members are necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. For each BC/DR Plans test cycle, the Exchange will select the top ten Members on the Exchange based on the Exchange's measure of overall participation. The Exchange notes that when considering volume, it will exclude contracts traded on PrecISE®.[11] The Exchange has provided notice of the initial selection criteria and measurement period to its Members.[12] All notices concerning BC/DR Plans testing will be posted on the Exchange's Web site.

The Exchange is proposing to initially select Members with the highest levels of trading volume on the Exchange over four calendar months (''Measurement Period'') as mandatory testing for Members [sic].[13] Specifically, the Measurement Period will be the four calendar months of trading immediately prior to the Exchange's announcement of the next BC/DR Plans test date. The Measurement Period will always begin at a point after the Exchange announces the criteria to be used in the next BC/DR Plans test. By way of example, if on October 6, 2017 the Exchange announced the BC/DR Plans test selection criteria and on March 2, 2018 the Exchange announced a BC/DR Plans test date of September 8, 2018, the Measurement Period used to select Member subject to mandatory testing would be November 2017 through February 2018. Members not obligated to participate that wish to participate in this test must inform the Exchange no later than September 1, 2018, based on the aforementioned timeline.[14]

The proposed rule change is intended to provide consistency across the six options exchanges operated by Nasdaq, Inc. in regard to the standards established for the designation of Members that are required to participate in the Exchange's business continuity and disaster recovery testing. In turn, participants that are Members on multiple exchanges operated by Nasdaq, Inc. will be provided greater uniformity and ease of testing with the establishment of consistent standards across the multiple Nasdaq exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal will ensure that the Members necessary to ensure the maintenance of fair and orderly markets are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, the proposal will adopt clear and objective criteria with respect to the designation of Members that are required to participate in the testing of the Exchange's BC/DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, ''SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [17] The Exchange believes that this proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange's compliance with Regulation SCI.

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

[10] In this regard, the Exchange will allow any Member to participate in the testing of the Exchange's BC/DR Plans, which is consistent with the BC/DR Plans. *See* SCI Adopting Release, *supra* note 3 at 72350. The Exchange will provide instructions on how a Member must inform the Exchange of its interest in participating in an upcoming BC/DR Plans test via the announcement of the test date. A Member must provide the Exchange notice of its interest to participate at least a week prior to the test date and must have the appropriate connection for testing in place.

[11] PrecISE is [sic] front-end order and execution management system for trading options and stock-option combinations.

[12] *See* ISE Circular 2016–08.

[13] The Exchange may change the total number of Members selected from time to time.

[14] *See supra* note 10.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] *See* SCI Adopting Release, *supra* note 3 at 72350.

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[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2016–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2016–30. 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–ISE–2016–30 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31114 Filed 12–23–16; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 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.

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Centers Advisory Board

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the 2nd and 3rd quarter meetings of the Federal Advisory Committee for the Small Business Development Centers Program. The meetings will be open to the public; however, advance notice of attendance is required.

DATES:

Tuesday, January 10, 2017, at 1:00 pm EST
Sunday, February 5, 2017, at 2:00 p.m. EST—In person
Tuesday, March 21, 2017, at 1:00 p.m. EST
Tuesday, April 11, 2017, at 1:00 p.m. EST
Tuesday, May 16, 2017, at 1:00 p.m. EST
Tuesday, June 20, 2017, at 1:00 p.m. EST

ADDRESSES: All meetings will be held via conference call with the exception of Sunday, February 5, 2017. February meeting will be held at the Crystal City Marriot at Reagan National, 1999 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Monika Nixon, Office of Small Business Development Center, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416; *monika.nixon@.sba.gov.*

If anyone wishes to be a listening participant or would like to request accommodations, please contact Monika Nixon at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of the meetings is to discuss the following issues pertaining to the SBDC Program:

SBA Update
Annual Meetings
Board Assignments
Member Roundtable

Dated: December 19, 2016.

Miguel L' Heureux White,

House Liaison.

[FR Doc. 2016–31135 Filed 12–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Delegation of Authority No.: 410]

Delegation to the Assistant Secretary for Political-Military Affairs of Authority To Concur With Secretary of Defense Institution Capacity Building Programs

By virtue of the authority vested in the Secretary of State, including Section 1081 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–95) (the NDAA) and delegated pursuant to Delegation of Authority 245–1, dated February 13,2009, I hereby delegate to the Assistant Secretary for Political-Military Affairs, to the extent authorized by law, the authority to concur with the Secretary of Defense establishing Defense Institution Capacity Building Programs pursuant to subsection 1081(a) and 1081(b) of the NDAA.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, or the Under Secretary for Arms Control and International Security. Any reference in this

delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation of authority shall be published in the **Federal Register**.

Dated: November 30, 2016.

Antony J. Blinken,

Deputy Secretary of State.

[FR Doc. 2016–31199 Filed 12–23–16; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 9826]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: "Gold and Steel: The Deering Family Galleries of Medieval and Renaissance Art, Arms, and Armor" Exhibition

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Gold and Steel: The Deering Family Galleries of Medieval and Renaissance Art, Arms, and Armor,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, Illinois, from on or about March 20, 2017, until on or about August 30, 2021, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–31119 Filed 12–23–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9827]

Notice of Public Meeting

The Department of State will conduct an open meeting at 9:30 a.m. on Tuesday January 24, 2017, in room 4R14–18 of the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593. The primary purpose of the meeting is to prepare for the fourth session of the International Maritime Organization's (IMO) Sub-Committee on Human Element, Training and Watchkeeping (HTW) to be held at the IMO Headquarters, United Kingdom, January 30–February 3, 2017.

The agenda items to be considered include:

- Decisions of other IMO bodies
- Validated model training courses
- Reports on unlawful practices associated with certificates of competency
- Guidance for the implementation of the 2010 Manila Amendments
- Comprehensive review of the 1995 STCW–F Convention
- Role of the human element
- Revision of the Guidelines on Fatigue
- Draft Modernization Plan of the GMDSS
- Amendments to the IGF Code and development of guidelines for low-flashpoint fuels
- Revision of requirements for escape route signs and equipment location markings in SOLAS and related instruments
- Revised SOLAS regulation II–1/3–8 and associated guidelines (MSC.1/Circ.1175) and new guidelines for safe mooring operations for all ships

Members of the public may attend this meeting up to the seating capacity of the room. Upon request to the meeting coordinator, members of the public may also participate via teleconference, up to the capacity of the teleconference phone line. To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 887 809 72. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. E.J. Terminella, by email at *Emanuel.J.TerminellaJr@uscg.mil,* by phone at (202) 372–1239, or in writing at 2703 Martin Luther King Jr. Ave. SE., Stop 7509, Washington DC 20593–7509 not later than January 17, 2017. Requests made after January 17, 2017 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Coast Guard Headquarters Building. The Coast Guard Headquarters Building is accessible by taxi, public transportation, and privately owned conveyance (upon request). In the case of inclement weather where the Federal Government is closed or delayed, a public meeting may be conducted virtually by calling (202) 475–4000, Participant code: 887 809 72. The meeting coordinator will confirm whether the virtual public meeting will be utilized by posting an announcement at: *www.uscg.mil/imo.* Members of the public can find out whether the Federal Government is delayed or closed by visiting *www.opm.gov/status/.*

Additional information regarding this and other IMO public meetings may be found at: *www.uscg.mil/imo.*

Jonathan W. Burby,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2016–31056 Filed 12–23–16; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 9829]

Executive Order (E.O.) 13224 Designation of Saleck Ould Cheikh Mohamedou aka Saleck Ould Cheikh as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(b) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, and E.O. 13284 of January 23, 2003, I hereby determine that the individual known as Saleck Ould Cheikh Mohamedou, also known as Saleck Ould Cheikh committed or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a

constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: November 23, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–31196 Filed 12–23–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Alternative Pilot Physical Examination and Education Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval of a new information collection. The information collected is used to verify that pilots in command meet the requirements of section 2307 of Public Law 114–190. The new information collection is in response to implementation of section 2307, medical certification of certain small aircraft pilots, of Public Law 114–190, the Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016 (FESSA). Section 2307 of FESSA established a new voluntary program of physical examination and education requirements for certain pilots in command in lieu of those pilots holding a medical certificate.

DATES: Written comments should be submitted by February 27, 2017.

ADDRESSES: Send comments to the FAA at the following address: Ronda Thompson, Room 441, Federal Aviation Administration, ASP–110, 950 L'Enfant Plaza SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: Not assigned.

Title: Alternative Pilot Physical Examination and Education Requirements.

Form Numbers: FAA form 8700–2 and 8700–3.

Type of Review: New information collection.

Background: The Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016 (Pub. L. 114–190) (FESSA) was enacted on July 15, 2016. Section 2307 of FESSSA, medical certification of certain small aircraft pilots, directed the FAA to ''issue or revise regulations to ensure that an individual may operate as pilot in command of a covered aircraft'' if the pilot and aircraft meet certain prescribed conditions as outlined in FESSA. The FAA notes that the use of section 2307 by any eligible pilot is voluntary. Persons may elect to use these alternative pilot physical examination and education requirements or may continue to operate using any FAA medical certificate.

The FAA is publishing a final rule, Alternative Pilot Physical Examination and Education Requirements, to implement the provisions of section 2307 (RIN 2120–AK96).

Respondents: Approximately 453,993 individuals.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 21 minutes.

Estimated Total Annual Burden: 159,000 hours.

Issued in Washington, DC, on December 19, 2016.

Ronda L. Thompson,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2016–31234 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Medical Standards and Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew and revise a previously approved information collection. The information collected is used to determine if applicants are medically qualified to perform the duties associated with the class of airman medical certificate sought. The FAA is announcing its intent to reduce the burden associated with this information collection in response to its implementation of section 2307 of Public Law 114–190. Section 2307 of Public Law 114–190 established a new voluntary program of physical examination and education requirements for certain pilots in command in lieu of those pilots holding a medical certificate.

DATES: Written comments should be submitted by February 27, 2017.

ADDRESSES: Send comments to the FAA at the following address: Ronda Thompson, Room 441, Federal Aviation Administration, ASP–110, 950 L'Enfant Plaza SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0034.

Title: Medical Standards and Certification.

Form Numbers: FAA Forms 8500–7, 8500–8, 8500–14, 8500–20.

Type of Review: Revision of an information collection.

Background: The Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016 (Pub. L. 114–190) (FESSA) was enacted on July 15, 2016. Section 2307 of FESSSA, medical certification of certain small aircraft pilots, directed the FAA to ''issue or revise regulations to ensure that an individual may operate as pilot in command of a covered aircraft'' if the pilot and aircraft meet certain prescribed conditions as outlined in FESSA. The FAA notes that the use of section 2307 by any eligible pilot is voluntary. Persons may elect to use these alternative pilot physical examination and education requirements or may continue to operate using any FAA medical certificate.

The FAA is publishing a final rule, Alternative Pilot Physical Examination and Education Requirements, to implement the provisions of section 2307 (RIN 2120–AK96).

Respondents: Approximately 198,847 (8500–8) form applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3 minutes.

Estimated Total Annual Burden: 9,900 hours.

Issued in Washington, DC, on December 19, 2016.

Ronda L. Thompson,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2016–31233 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2016–0015]

Emergency Route Working Group—Notice of Public Meetings

AGENCY: Federal Highway Administration (FHWA); DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces three meetings of the Emergency Route Working Group (ERWG). The Federal Advisory Committee Act requires that notice of these meetings be published in the **Federal Register**.

DATES: Three public meetings will be held on:

- Monday, January 9, 2017, from 8:30 a.m. to 4:00 p.m., e.t.
- Thursday, February 16, 2017, from 8:30 a.m. to 4:00 p.m., e.t.
- Thursday, March 16, 2017, from 8:30 a.m. to 4:00 p.m., e.t.

ADDRESSES: All three public meetings will be held at the U.S. Department of Transportation, 1200 New Jersey Ave., Conference Center, Washington, DC 20590.

Due to the limited amount of parking around DOT Headquarters, use of public transit is strongly advised. DOT is served by the Navy Yard Metrorail Station (Green line). The closest exit to DOT Headquarters is the Navy Yard exit. Train and bus schedules are available at Metrorail's Web site at: *http://www.wmata.com/rider_tools/tripplanner/tripplanner_form_solo.cfm.*

FOR FURTHER INFORMATION CONTACT: Crystal Jones, FHWA Office of Freight Management and Operations, (202) 366–2976, or via email at *Crystal.Jones@dot.gov* or *erwg@dot.gov.* For legal questions, contact Seetha Srinivasan, FHWA Office of the Chief Counsel, (202) 366–4099 or via email at *Seetha.Srinivasan@dot.gov.* Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the from the **Federal Register**'s home page at: *http://www.archives.gov;* the Government Publishing Office's database at: *https://www.gpo.gov/fdsys/;* or the specific docket page at: *www.regulations.gov.*

Background

Purpose of the Committee: The ERWG was established pursuant to section 5502 of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94). Section 5502 of the (FAST) Act requires the DOT to establish an emergency route working group to determine best practices for expeditious State approval of special permits for vehicles involved in emergency response and recovery. Pursuant to the Federal Advisory Committee Act (FACA), the FHWA's Office of Freight Management and Operations is announcing three public meetings of the Emergency Route Working Group (ERWG) on the following dates:

- Monday, January 9, 2017, from 8:30 a.m. to 4:00 p.m., e.t.
- Thursday, February 16, 2017, from 8:30 a.m. to 4:00 p.m., e.t.
- Thursday, March 16, 2017, from 8:30 a.m. to 4:00 p.m., e.t.

These meetings are being conducted to develop recommendations for the DOT Secretary on issues and associated best practices to encourage expeditious State approval of special permits for vehicles involved in emergency response and recovery.

Tentative Agenda: The agenda will include a welcome and introduction by the Designated Federal Officer and Committee Chair, a review of literature related to special permits and emergency response and recovery, and a topical discussion on considerations for best practices; including whether:

(1) Impediments currently exist that prevent expeditious State approval of special permits for vehicles involved in emergency response and recovery;

(2) it is possible to pre-identify and establish emergency routes between States through which infrastructure repair materials could be delivered following a natural disaster or emergency;

(3) a State could pre-designate an emergency route identified under paragraph (2) as a certified emergency route if a motor vehicle that exceeds the otherwise applicable Federal and State truck size and weight limits may safely operate along such route during periods of declared emergency and recovery from such periods; and

(4) an online map could be created to identify each pre-designated emergency route under paragraph (3), including information on specific vehicle limitations, obligations, and notification requirements along that route.

Public Participation: All three meetings are open to the public. The Designated Federal Officer and the Chair of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting by submitting an electronic copy of that statement to *erwg@dot.gov* or the specific docket page at: *www.regulations.gov.* If you would like to make oral statements regarding any of the items on the agenda, you should contact Crystal Jones at the phone number listed above or email your request to *erwg@dot.gov.* You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provisions will be made to include any such presentation on the agenda. Public comment will be limited to 3 minutes per speaker, per topic.

Minutes: An electronic copy of the minutes from these meetings will be available for download within 60 days of each meeting at: *http://ops.fhwa.dot.gov/fastact/erwg/index.htm.*

Authority: Section 5502 of Public Law 114–94; 5 U.S.C. Appendix 2; 41 CFR 102–3.65; 49 CFR 1.85.

Dated: December 21, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–31243 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0055]

Third Amendment to the Coordinated Remedy Order With Annex A; Coordinated Remedy Program Proceeding

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Third Amendment to the Coordinated Remedy Order.

DATES: *Effective date:* This Third Amendment to the Coordinated Remedy Order went into effect on November 9, 2016.

Order: This Amendment to the Coordinated Remedy Order (''Amendment'') is issued by the Administrator of the National Highway Traffic Safety Administration (''NHTSA''), an operating administration of the U.S. Department of Transportation. Pursuant to NHTSA's authority under the National Traffic and Motor Vehicle Safety Act of 1966, as amended and recodified (the ''Safety Act''), 49 U.S.C. 30101, *et seq.,* and specifically, 49 U.S.C. 30118–30120, 30120(a)(1), 30120(c)(2)–(3), 30166(b), 30166(c), 30166(e), 30166(g)(1), and 49 CFR 573.6, 573.14, this Amendment modifies the Coordinated Remedy Order issued on November 3, 2015 (''CRO'') to add newly affected vehicle manufacturers [1] (the ''Expansion Vehicle Manufacturers'') to the Coordinated Remedy Program and to set forth additional requirements and obligations of the affected vehicle manufacturers (the ''Affected Vehicle Manufacturers'') [2] and TK Holdings, Inc., (''Takata'') in connection with the recall and remedy of certain types of Takata air bag inflators. The CRO, including all facts, findings, terms, and prior amendments,[3] is hereby incorporated by reference as if fully set forth herein.

I. Nature of the Matter and Findings

1. On November 3, 2015, upon the conclusion of the Coordinated Remedy Program Proceeding and closing of public Docket Number NHTSA–2015–0055 (addressing the recalls of certain Takata air bag inflators), NHTSA issued a Consent Order to Takata on November 3, 2015 (''November 2015 Consent Order'') and the CRO. *See Coordinated Remedy Order with Annex A,* 80 FR 70866 (Nov. 16, 2015).

2. Since that time, NHTSA has continued its investigation into the Takata air bag inflator ruptures (EA15–001) and has been implementing and overseeing the Coordinated Remedy Program. As part of the ongoing investigation NHTSA has, among other things, received briefings from three independent research organizations,[4] each of which had undertaken scientific evaluations of Takata's frontal air bag inflators containing non-desiccated phase-stabilized ammonium nitrate (''PSAN''). *See* Amendment to November 3, 2015 Consent Order, EA15–001 Air Bag Inflator Rupture (May 4, 2016) (''Amended Consent Order''). NHTSA staff evaluated the research and also consulted with the Agency's independent expert on the various researchers' findings. *See id.* (including Expert Report of Harold R. Blomquist, Ph.D. as Exhibit A). Based upon the scientific analyses and data obtained from the researchers and additional data from Takata, on May 4, 2016, NHTSA issued, with Takata's agreement, the Amended Consent Order, which, among other things, established a phased schedule for the future recall of all Takata frontal inflators containing non-desiccated PSAN by December 31, 2019.

3. The number of Takata air bag inflators currently recalled, or scheduled for recall, has increased since November 3, 2015, from approximately 23 million to approximately 61 million [5] and the number of affected vehicle manufacturers has grown from 12 to 19. The size of these recalls, ages of vehicles affected, nature of the defect, and associated communications and outreach challenges, as well as remedy part and alternative part supply challenges, lends unprecedented complexity to the recall and remedy process. Given the potential severity of the harm to vehicle occupants when an inflator rupture occurs and the wide-spread exposure across a large vehicle population, the ongoing risk of harm presented by the defective Takata air bag inflators is extraordinary. Accordingly, for the reasons that follow, and upon consideration of the entire record in this proceeding (including NHTSA's ongoing investigation in EA15–001, oversight of the Takata non-desiccated PSAN inflator recalls issued in May and June 2015 by the Original Affected Manufacturers (the ''Inflator Recalls'') to date, and the Amended Consent Order) NHTSA now issues this Third Amendment to the Coordinated Remedy Order.

Additional Factual Background

4. Following the issuance of the November 2015 Consent Order and the CRO, NHTSA continued its investigation into the rupturing Takata air bag inflators and began to implement the Coordinated Remedy Program.

5. In late 2015, Takata shared new inflator ballistic testing data with the Agency. That data included ruptures during testing of four (4) non-desiccated PSPI inflators and two (2) non-desiccated PSPI–L inflators (both of which are passenger side air bag inflators). Based on the new ballistic testing data, in December 2015, Takata amended DIRs 15E–042 (for the PSPI–L) and 15E–043 (for the PSPI) to include inflators through model year 2008, and the impacted vehicle manufacturers [6] expanded their existing recalls to all vehicles with those inflator types through model year 2008.

6. Meanwhile, in the fall of 2015, Takata began ballistic testing and analysis of certain non-desiccated PSDI–5 driver air bag inflators returned from the field. In January 2016, Takata notified the Agency that of 961 returned non-desiccated PSDI–5 inflators subjected to testing, three (3) had ruptured during testing and an additional five (5) had shown elevated internal pressure levels during testing

[1] Including Ferrari North America, Inc. (''Ferrari''), Jaguar Land Rover North America, LLC (''Jaguar-Land Rover''), McLaren Automotive, Ltd. (''McLaren''), Mercedes-Benz U.S., LCC (''Mercedes-Benz''), Tesla Motors, Inc. (''Tesla''), Volkswagen Group of America, Inc. (''Volkswagen''), and, per Memorandum of Understanding dated September 16, 2016, Karma Automotive on behalf of certain Fisker vehicles (''Karma'').

[2] Including, in addition to the Expansion Vehicle Manufacturers, the previously included companies, or ''Original Affected Manufacturers'': BMW of North America, LLC (''BMW''), FCA US, LLC (''FCA'') (formerly Chrysler), Daimler Trucks North America, LLC (''Daimler Trucks''), Daimler Vans USA, LLC (''Daimler Vans''), Ford Motor Company (''Ford''), General Motors, LLC (''GM''), American Honda Motor Company (''Honda''), Mazda North American Operations (''Mazda''), Mitsubishi Motors North America, Inc. (''Mitsubishi''), Nissan North America, Inc. (''Nissan''), Subaru of America, Inc. (''Subaru''), and Toyota Motor Engineering and Manufacturing (''Toyota'').

[3] Amendments were issued granting extensions of time to BMW on March 15, 2016, and to GM, Daimler Vans, and Ford on September 29, 2016. These amendments are publicly available at: *http://www.safercar.gov/rs/takata/takata-docs.html.*

[4] Exponent, Inc., Fraunhofer ICT, and Orbital ATK.

[5] This number of inflators does not include like-for-like remedies.

[6] Honda, Mazda, and Subaru.

deployment, but did not rupture during testing.

7. In January 2016, the Agency learned that on December 22, 2015, the driver of a 2006 Ford Ranger was killed in a crash in Lancaster County, South Carolina, when the non-desiccated SDI inflator in his air bag ruptured during deployment. While this vehicle was under recall for the passenger side air bag inflator, the driver side air bag inflator had not been recalled because no ruptures had occurred during previous ballistic testing. That ballistic testing was conducted as part of a proactive surveillance testing program that included 1,900 tests conducted on parts taken out of vehicles located in the high absolute humidity (''HAH'') region.

8. In light of the new ballistic test data showing ruptures in non-desiccated PSDI–5 inflators (see Paragraph 6),[7] the December 22, 2015, fatality involving a non-desiccated SDI inflator (see Paragraph 7), and paragraph 29 of the November 2015 Consent Order, on January 25, 2016, Takata filed two DIRs, initiating the recall of non-desiccated PSDI–5 inflators (16E–005) from start of production through model year 2014, and initiating the recall of non-desiccated SDI inflators (16E–006) from the start of production through model year 2014. Thereafter, vehicle manufacturers impacted by these expansions subsequently filed corresponding DIRs, including Volkswagen and Mercedes-Benz, neither of which had previously been part of the Coordinated Remedy Program.

9. In February and March 2016, the Agency received briefings from Exponent, Inc., Fraunhofer ITC, and Orbital ATK, regarding their research into the root cause(s) of the inflator ruptures, including the conclusions each had drawn as of that time. The findings of all three research organizations were consistent with previous theories that most of the inflator ruptures are associated with a long-term phenomenon of PSAN propellant degradation caused by years of exposure to temperature fluctuations and intrusion of moisture from the ambient atmosphere into the inflator. *See* Amended Consent Order at ¶ 2. The temperature fluctuations and moisture intrusions are more severe in warmer climates with high absolute humidity. *Id.* Based upon the Agency's review of the work done by the research organizations, it concluded that the likely root cause of the rupturing of most[8] non-desiccated frontal Takata air bag inflators is a function of time, temperature cycling, and environmental moisture. *Id.* at ¶ 5. Other factors may influence the relative risk[9] of inflator rupture, but the overarching root cause of the ruptures consists of the three identified factors.

10. Based on the Agency's root cause determination regarding the non-desiccated PSAN frontal inflators, on May 4, 2016, NHTSA issued, and Takata agreed to, the Amended Consent Order. The Amended Consent Order sets forth a phased schedule of five DIR filings by Takata between May 15, 2016 and December 31, 2019, that ultimately will recall all Takata frontal non-desiccated PSAN air bag inflators, including all ''like-for-like'' inflators used as remedy parts during the recalls.[10] Vehicle manufacturers not previously affected by the Takata air bag inflator recalls are included under this DIR schedule, including: Ferrari, Jaguar-Land Rover, McLaren, Tesla, and, by agreement with the Agency, Karma (as to certain Fisker vehicles).

11. Since issuing the CRO, the Agency has continued to monitor the availability of remedy parts supply through communications with Takata, other major inflator suppliers (the ''Suppliers''),[11] and Affected Vehicle Manufacturers. At least one vehicle manufacturer has taken significant steps to ensure an adequate supply chain of replacement inflators going forward, including working with alternative suppliers to establish additional supply lines. However, some vehicle manufacturers struggled to find alternative suppliers with sufficient production capacity in a timely fashion, or to identify acceptable final remedy inflators (whether produced by Takata or another supplier). Further, some vehicle manufacturers that became involved in the Takata air bag inflator recalls relatively recently must find remedy parts production capacity in an already crowded marketplace. Additionally, developing and validating new remedy parts can add several months, or more, to the process. However, not all Suppliers are at maximum capacity for future production orders. Suppliers have some limited additional production capacity. Further, the Suppliers and Affected Vehicle Manufacturers have the ability, with time and capital investments, to develop additional supply capacity to address the significant parts demand not only for U.S. supply, but for the larger global supply that may well be required.

12. Significant efforts by the Affected Vehicle Manufacturers and Suppliers to ensure an adequate remedy parts supply will be required for the foreseeable future as these recalls continue to expand with the future scheduled DIRs for Takata frontal air bag inflators containing non-desiccated PSAN (hereafter, the combined current and future recalls of Takata non-desiccated PSAN air bag inflators are referred to as the ''Expanded Inflator Recalls''), and the potential expansion by December 31, 2019, to Takata frontal inflators containing desiccated PSAN.[12]

13. In addition to the ongoing investigation and recall expansions, the Agency is implementing the Coordinated Remedy Program. This included the selection in December 2015 of an Independent Monitor (hereafter, the Independent Monitor and/or his team are referred to as the ''Monitor'') responsible for, among other things, data collection from the Affected Vehicle Manufacturers, Takata, and Suppliers, which allows for enhanced analysis on remedy parts supply, recall completion rates, and efforts being made by each affected manufacturer to successfully carry out its recall and remedy program. In addition to frequent direct communications with Takata and each of the Affected Vehicle Manufacturers, the Agency has extensive communications with the Monitor regarding new information, insights, and proposals for addressing challenges identified through the data analysis.

[7] By the time Takata filed the DIR with the Agency on January 25, 2016, Takata reported four (4) ruptures and six (6) abnormally high internal pressurizations during ballistic testing on 1995 inflators returned from the field.

[8] The findings are qualified as applicable to ''most'' non-desiccated PSAN frontal inflators made by Takata because some of the earliest rupture-related recalls additionally involved certain manufacturing defects that caused the inflators to rupture before the combined effects of time, temperature cycling, and humidity could have caused the degradation that leads to rupture.

[9] Factors that may affect relative risk of inflator rupture and risk to vehicle occupants include, but are not limited to, vehicle size, position of the inflator in the vehicle (passenger, driver, or both), and manufacturing location.

[10] Like-for-like replacements are remedy parts that are the same as the part being removed, except that they are new production. These parts are an adequate interim remedy because the risk of inflator rupture develops over time. Thus, like-for-like remedy parts are safe at the time of installation and much safer than the older parts they replace, because the inflators present a lower risk of rupture since insufficient time has passed for the propellant degradation process to have occurred. Like-for-like parts are sometimes also referred to as an ''interim remedy''.

[11] Hereinafter, ''Suppliers'' shall collectively refer to Autoliv Americas, Daicel Safety Systems America, LLC, and ZF–TRW.

[12] Paragraph 30 of the November 2015 Consent Order provides that the NHTSA Administrator may issue final orders for the recall of Takata's desiccated PSAN inflators if no root cause has been determined by Takata or any other credible source, or if Takata has not otherwise shown the safety and/or service life of the parts by December 31, 2019.

14. In consultation with NHTSA, the Monitor has engaged in extensive discussions with the Affected Vehicle Manufacturers and Takata, and also with the Suppliers. Among other things, the Monitor has conducted data analysis to identify high-risk communities needing improved repair rates; spearheaded targeted outreach into high-risk communities with data analysis of the effectiveness of those efforts; overseen marketing research, developed deep knowledge of affected vehicle manufacturers supply chains and dealer network business practices; and provided recommendations to the vehicle manufacturers subject to the CRO to improve processes, procedures, communications, and outreach to improve recall completion rates at each.

15. Numerous challenges have been identified by the Agency, or brought to the Agency's attention by the Monitor, regarding the recalls underway and varying levels of compliance with the CRO. One significant issue that has arisen is clear communication with the public on what is happening. Consumers are confused. Consumers should be readily able to determine what vehicles are affected (and when), what to do if a remedy part is not available, and whether they will need to get their vehicle repaired more than once. The challenge of providing the public with clear and accurate information (for NHTSA and the Affected Vehicle Manufacturers) is compounded when each vehicle manufacturer crafts a different message, often resulting in consumer confusion.

16. Another overarching challenge has been the term ''sufficient supply'' to launch a remedy campaign as set forth in paragraph 39 of the CRO. Some vehicle manufacturers have expressed uncertainty to NHTSA about what volume of supply is ''sufficient'' to launch a remedy campaign. Some vehicle manufacturers have also struggled to comply with the ''sufficient supply'' schedule set forth in paragraph 39 of the CRO, and some have provided inadequate and late communication to NTHSA regarding their inability to fully meet the ''sufficient supply'' schedule. Finally, some vehicle manufacturers have communicated to the Agency and the Monitor that they had adequate supply to launch, yet did not reflect that status in the data sent to the Vehicle Identification Number (''VIN'') Lookup Tool available through NHTSA's Web site, *safercar.gov.* If a manufacturer has sufficient parts to repair vehicles, it is inappropriate for the manufacturer to keep that information hidden from the anxiously awaiting public in need of those remedy parts.

17. *In addition, several vehicle manufacturers submitted inadequate recall engagement processes or plans, required under paragraph 41 of the CRO, and have failed to take actions sufficient to effectuate full and timely remedy completion (i.e., limiting efforts to:* Sending recall notices by mail, using phone calls and text messaging, providing customer data to dealers, evaluating technician training requirements, having some information available on their Web site, and updating the VIN lookup information available through *safercar.gov*, and completing biweekly recall completion updates to the Agency but with inconsistent accuracy of data). Such inadequate efforts were often accompanied by an unwillingness or inability to implement recommendations of the Monitor as to how to improve outreach efforts and remedy completion rates.

18. *Other issues that have arisen in the Coordinated Remedy Program include:* Reluctance by some vehicle manufacturers to provide timely customer notification of a recall, or of remedy part availability; inadequate effort by some vehicle manufacturers to motivate customers to get repairs done, *i.e.,* to actually carry out and complete the remedy campaign; reluctance by some vehicle manufacturers to stop using Takata PSAN-based inflators without conducting adequate research to prove their safety, despite the potential for additional recalls of these very parts; some vehicle manufacturers' consumer communications indicating that the remedy is not important, or the recall is not serious; resistance by some vehicle manufacturers engaging in surveillance programs for Takata inflators that contain desiccated PSAN; and reluctance by certain vehicle manufacturers to cooperate with the Monitor, including reluctance to provide information requested by the Monitor in carrying out Monitor duties.

19. In addition to the above challenges to NHTSA's oversight of vehicle manufacturers under the existing Coordinated Remedy Program and the CRO, a change to the structure of the recall zones will present challenges going forward. In the original CRO issued in November 2015, vehicles were categorized into the HAH and non-HAH categories based upon the best available information at that time, which indicated that vehicles in the HAH region posed the greatest risk of rupture and thus the greatest risk of injury or death. Further testing and analysis done by Exponent, Inc. has now provided the Agency with a better understanding of the PSAN degradation process. The current, best available information shows that the HAH region should also include the states of South Carolina and California,[13] and that the non-HAH region can be broken into two separate risk zones with the northern zone presenting the lowest risk of rupture in the near-term. The most recent recall expansions (filed in May and June 2016) categorized vehicles into these three zones—the HAH and two non-HAH zones [14]—rather than the two HAH and non-HAH zones previously used. However, the previous recalls remain divided into the two-zone system.

20. As of December 1, 2016, there have been 220 confirmed Takata inflator rupture incidents in the United States. Many of these incidents resulted in serious injury to vehicle occupants. In 11 of the incidents, the vehicle's driver died as a result of injuries sustained from the rupture of the air bag inflator. In other incidents, vehicle occupants suffered injuries including cuts or lacerations to the face or neck, broken or fractured facial bones, loss of eyesight, and broken teeth. The risk of these tragic consequences is greatest for individuals sitting in the driver seat.

Findings

Based upon the Agency's analysis and judgment, and upon consideration of the entire record, NHTSA finds that:

21. There continues to be a risk of serious injury or death if the remedy programs of the Affected Vehicle Manufacturers are not accelerated.

22. Acceleration of each Affected Vehicle Manufacturers' remedy program can be reasonably achieved by expanding the sources of replacement parts.

23. Each Affected Vehicle Manufacturers' remedy program will not likely be completed within a reasonable time without acceleration.

24. Each air bag inflator with the capacity to rupture (*e.g.,* the recalled Takata non-desiccated PSAN inflators) presents an unreasonable risk of serious injury or death. As of December 1, 2016, 11 individuals have already been killed in the United States alone, with reports of at least 184 injured. Since the propensity for rupture is a function of time, humidity, and temperature cycling, the risk for injurious or lethal

[13] The previously defined HAH region includes the following states and territories: Alabama, Florida, Georgia, Hawaii, Louisiana, Mississippi, Texas, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands (Saipan), and the U.S. Virgin Islands. *See* Coordinated Remedy Order at ¶ 38 n.8 (Nov. 3, 2015).

[14] The three zones—A, B, and C—are defined in paragraph 7 of the Amended Consent Order.

rupture in affected vehicles increases each day. While each of the Affected Vehicle Manufacturers has made effort towards the remedy of these defective air bag inflators, acceleration and coordination of the inflator remedy programs is necessary to reduce the risk to public safety. Acceleration and coordination (including the Expansion Vehicle Manufacturers) will enhance the ability of all of the Affected Vehicle Manufacturers to carry out remedy programs using established priorities based on relative risk; coordinate on safety-focused efforts to successfully complete their respective remedy programs; and allow for the organization and prioritization of remedy parts, if needed, with NHTSA's oversight.

25. Continued acceleration of the inflator remedy programs can be reasonably achieved by, among other things, expanding the sources of replacement parts. This acceleration can be accomplished in part by a vehicle manufacturer contracting with any appropriate alternative part supplier for remedy parts. Takata cannot manufacture sufficient remedy parts in a reasonable time for the estimated 61 million inflators that presently require remedy in the U.S. market alone under the recalls of Takata's frontal non-desiccated PSAN inflators.

26. In light of all the circumstances, including the safety risks discussed above, the Affected Vehicle Manufacturers' recall remedy programs are not likely capable of completion within a reasonable amount of time without acceleration of each remedy program. It is critical to the timely completion of each remedy program that the Affected Vehicle Manufacturers obtain remedy inflators from sources other than Takata. There is no single supplier capable of producing the volume of replacement inflators required, in a reasonable timeframe, to supply all of the remedy parts.

27. Based on the challenges identified thus far in implementing and carrying out the Coordinated Remedy Program, the Agency finds that clarification of terms of the CRO and additional CRO requirements are necessary to effectively monitor the Affected Vehicle Manufacturers' recall and remedy programs.

28. Further, based upon the recall completion information available to the Agency and the severity of the harm from inflator ruptures, notifications to vehicle owners sent by the Affected Vehicle Manufacturers do not result in an adequate number of vehicles being returned for the inflator remedy within an acceptable timeframe.

29. The issuance of this Third Amendment to the Coordinated Remedy Order is a necessary and appropriate exercise of NHTSA's authority under the Safety Act, 49 U.S.C. 30101, *et seq.,* as delegated by the Secretary of Transportation, 49 CFR 1.95, 501.2(a)(1), to inspect and investigate, 49 U.S.C. 30166(b)(1); to ensure that defective vehicles and equipment are recalled and remedied and that owners are notified of a defect and how to have the defect remedied, 49 U.S.C. 30118–30120; to ensure the adequacy of the remedy, including through acceleration of the remedy program, 49 U.S.C. 30120(c); to require vehicle manufacturers and equipment manufacturers to keep records and make reports, 49 U.S.C. 30166(e); to require any person to file reports or answers to specific questions, 49 U.S.C. 30166(g); and to seek civil penalties, 49 U.S.C. 30165.

30. This Third Amendment to the Coordinated Remedy Order, developed based on all evidence, data, analysis, and other information received in the Coordinated Remedy Program Proceeding, NHTSA investigation EA15–001, the Amended Consent Order, and information learned in implementing and overseeing the Coordinated Remedy Program, will reduce the risk of serious injury or death to the motoring public and enable the affected vehicle manufacturers and Takata to implement, and complete, the necessary remedy programs on an accelerated basis.

Accordingly, it is hereby *ordered* by NHTSA as follows:

II. Additional Terms to the Coordinated Remedy Order

31. In addition to the Original Affected Manufacturers covered under the Coordinated Remedy Order issued November 3, 2015, the following vehicle manufacturers are hereby added to the Coordinated Remedy Program and, henceforth, are subject to the terms of the Coordinated Remedy Order and this Amendment: Ferrari North America, Inc., Jaguar Land Rover North America, LLC, McLaren Automotive, Ltd., Mercedes-Benz US, LCC, Tesla Motors, Inc., Volkswagen Group of America, Inc., and, based on a Memorandum of Understanding with the Agency, Karma Automotive.[15]

32. Pursuant to 49 U.S.C. 30118, within 5 business days of Takata filing a DIR as set forth in the Amended Consent Order, each Affected Vehicle Manufacturer shall file with the Agency a corresponding DIR for the affected vehicles in that vehicle manufacturers' fleet. Takata DIRs are scheduled to be filed with the Agency on December 31 of the years 2016, 2017, 2018, and 2019. Where a DIR is scheduled to be filed on a weekend or federal holiday, that DIR shall instead be filed on the next business day that the federal government is open.

Amended Priority Groups and Recall Completion Deadlines for the Coordinated Remedy Program

33. The Agency has communicated with the Affected Vehicle Manufacturers regarding vehicle prioritization plans based on a risk-assessment that takes into account the primary factors related to Takata inflator rupture, as currently known and understood, and other relative risk factors specific to that vehicle manufacturer's products. The primary factors utilized in prioritizations remain the same as in the CRO and are: (1) Age of the inflator (with older presenting a greater risk of rupture); (2) geographic location of the inflator (with prolonged exposure to HAH presenting a greater risk of rupture); and (3) location of the Takata inflator in the vehicle (driver, passenger, or both). Prioritizations also take into account continuity of previous recall plans and priority groups. In order to timely and adequately complete its remedy program, each Affected Vehicle Manufacturer shall, pursuant to 49 U.S.C. 30120(a)(1) and (c), carry out its remedy program in accordance with the following prioritization plans unless otherwise authorized by the Agency. A complete listing of the vehicles in each priority group (''Priority Group'') developed using the above risk factors is attached hereto as Amended Annex A,[16] and is hereby incorporated by reference as if fully set forth herein. The Priority Groups are as follows:

a. *Priority Group 1*—Highest risk vehicles that were recalled May through December 2015.

b. *Priority Group 2*—Second highest risk vehicles that were recalled May through December 2015.

c. *Priority Group 3*—Third highest risk vehicles that were recalled May through December 2015.

d. *Priority Group 4*—Highest risk vehicles that were recalled January through June 2016 [17]

[15] As to certain Fisker vehicles per the Memorandum of Understanding dated September 16, 2016.

[16] Because information about the risk factors may change throughout this Coordinated Remedy Program, these prioritizations are subject to change by a vehicle manufacturer, subject to NHTSA's oversight and approval.

[17] Vehicles in Priority Groups 4 through 10 were not recalled in May of 2015 and thus were not part of the original prioritizations. Priority Group (''PG'')

e. *Priority Group 5*—Second highest risk vehicles that were recalled January through June 2016.

f. *Priority Group 6*—Third highest risk vehicles that were recalled January through June 2016.

g. *Priority Group 7*—Vehicles scheduled for recall by the Affected Vehicle Manufacturers [18] in January 2017 that have ever been registered in Zone A.[19]

h. *Priority Group 8*—Vehicles scheduled for recall by the Affected Vehicle Manufacturers in January 2017 that *have not* ever been registered in the Zone A region during the service life of the vehicle.

i. *Priority Group 9*—Vehicles scheduled for recall by the Affected Vehicle Manufacturers in January 2018.

j. *Priority Group 10*—Vehicles scheduled for recall by the Affected Vehicle Manufacturers in January 2019.

k. *Priority Group 11*—Vehicles ever registered in the HAH or Zone A that were previously remedied with a ''like for like'' part [20] under a recall initiated by an Affected Vehicle Manufacturer during calendar year 2015 or before.

l. *Priority Group 12*—Vehicles previously remedied with a ''like for like'' part and are not covered in Priority Group 11.

34. Pursuant to their obligations to remedy a defect within a reasonable time, as set forth in 49 U.S.C. 30120(a)(1) and § 30120(c)(2), each Affected Vehicle Manufacturer shall acquire a sufficient supply of remedy parts to enable it to provide remedy parts, in a manner consistent with customary business practices, to dealers within their respective dealer networks and, *further, to launch the remedy program,* by the timelines set forth in this Paragraph. Each Vehicle Manufacturer shall ensure that it has a sufficient supply of remedy parts on the following schedule:

Priority Group	Sufficient Supply & Remedy Launch Deadlines
Priority Group 1	March 31, 2016.
Priority Group 2	September 30, 2016.
Priority Group 3	December 31, 2016.
Priority Group 4	March 31, 2017.
Priority Group 5	June 30, 2017.
Priority Group 6	September 30, 2017.
Priority Group 7	December 31, 2017.
Priority Group 8	March 31, 2018.
Priority Group 9	June 30, 2018.
Priority Group 10	March 31, 2019.
Priority Group 11	March 31, 2020.
Priority Group 12	September 30, 2020.

Further, to the maximum extent possible, each Affected Vehicle Manufacturer shall take those measures necessary to sustain its supply of remedy parts available to dealers so that dealers are able to continue remedying vehicles after remedy program launch without delay or disruption due to issues of sufficient supply. An Affected Vehicle Manufacturer may, after consultation with and approval from NHTSA, further accelerate the launch of a Priority Group to begin the recall remedy campaign at an earlier date, provided that the vehicle manufacturer has a sufficient supply available to do so without negatively affecting supply for earlier Priority Groups.

35. To more clearly specify the remedy completion progress required in accelerating the Expanded Inflator Recalls, pursuant to the Affected Vehicle Manufacturers obligations to remedy a defect within a reasonable time (as set forth in 49 U.S.C. 30120(a)(1) and § 30120(c)(2)–(3)) each Affected Vehicle Manufacturer shall implement and execute its recall remedy program in a manner and according to a schedule designed to achieve the following remedy completion percentages [21] at the following intervals:

End of Quarter (after remedy launches)	Percentage of campaign vehicles remedied
1st	15
2nd	40
3rd	50
4th	60
5th	70
6th	80
7th	85
8th	90
9th	95
10th	100

An Affected Vehicle Manufacturer shall not delay the launch of a remedy campaign, or decline to timely obtain sufficient supply to launch or sustain a remedy campaign, to defer the completion targets set forth in the preceding chart. An Affected Vehicle Manufacturer further accelerating a Priority Group under Paragraph 34 herein shall not be penalized for launching early, and shall be held to the standard of meeting the remedy completion timeline as though the recall remedy campaign launched on the date established in the Paragraph 34 Sufficient Supply & Remedy Launch Deadline (''Supply & Launch Deadline'') chart.

Remedy Completion Maximization Efforts

36. Pursuant to 49 U.S.C. 30166(e), within 90 days of the issuance of this Amendment, a vehicle manufacturer recalling inflators subject to this Amendment shall provide to NHTSA and to the Monitor a written recall engagement plan for maximizing remedy completion rates for all vehicles covered by the Expanded Inflator Recalls. Such plan shall, at a minimum, include, but not be limited to, plans to implement the methodology and techniques presented at NHTSA's Retooling Recalls Workshop held at the U.S. Department of Transportation Headquarters on April 28, 2015, as well as the recommendations the Monitor has supplied to vehicle manufacturers. Further, each such plan shall also include:

a. A narrative statement, which may be supplemented with a table, specifically detailing all inquiries made, contracts entered, and other efforts made to obtain sufficient remedy supply parts for the Inflator Recalls, including, but not limited to, the name of the supplier contacted; date of contact, request or inquiry made; and current status of that inquiry including any date by which action by one party must be taken. To ensure that sufficient United States supply will not be negatively impacted by global supply demands, this statement shall clearly explain: (i) The volume of supply intended for use in the United States; and (ii) the volume of supply the vehicle manufacturer is obtaining for recalls outside the United States; and

b. a narrative statement discussing specific communications and marketing efforts the vehicle manufacturer has taken, is taking, or is considering or planning to take to improve and maximize recall completion rates including, but not limited to, data

4 and 5, in particular, should be considered comparable to PG 1 and 2 of the CRO in terms of urgency of the remedy.

[18] Vehicles in Priority Groups 7 through 10 are defined as being recalled by Affected Vehicle Manufacturers in January of a given year to minimize confusion about which vehicles and DIRs are affected, because Takata will file DIRs by December 31 of the prior year, or on the first business day of the PG defined year when December 31 falls on a weekend or holiday.

[19] Zone A includes the original HAH area plus the addition of the expansion states of California and South Carolina.

[20] These parts are sometimes referred to as ''interim parts''.

[21] The remedy completion timeline set forth in paragraph 35 does not apply to Priority Groups 1, 2, and 3, for which completion deadlines were previously established in the Coordinated Remedy Order.

segmentation and specific motivational tools; and

c. a narrative statement discussing in detail efforts the vehicle manufacturer has taken, is taking, and is considering or planning to take, to prevent the sale of inflators and/or air bag modules covered by the Expanded Inflator Recalls, and vehicles equipped with the same, over the internet (*i.e.,* through online marketplaces including, but not limited to, eBay, Amazon Marketplace, Facebook Marketplace, Alibaba, Craigslist, *Hollander.com,* and *carparts.com*). This discussion shall include the company name, contact name, email and telephone contact information for any online marketplace contacted, and any third-party company enlisted to assist in this work; and

d. a detailed narrative discussion of what efforts the vehicle manufacturer has taken, is taking, or is considering or planning to take, to monitor and remove inflators covered by the Expanded Inflator Recalls as the affected vehicles move through the used vehicle market and end-of-life market (*i.e.* vehicle auctions, franchised dealer lots, independent dealer lots, off-lease programs, scrapyards, etc.). This discussion shall include the company name, contact name, email and telephone contact information for contacts at any third-party company enlisted to assist in this work; and

e. discussion of any other efforts the vehicle manufacturer is considering or has implemented evidencing the good-faith efforts being made by that vehicle manufacturer to maximize the Expanded Inflator Recalls completion rates and timely remedying of affected vehicles and the removal of defective inflators and/or inflator modules.

Such a plan shall be submitted with clear headings and subheadings that state the subject area addressed. A vehicle manufacturer that previously submitted a report pursuant to paragraph 41 of the CRO shall file an updated plan including all of the components identified herein.

37. Pursuant to 49 U.S.C. 30166(e), each Affected Vehicle Manufacturer shall submit to NHTSA and to the Monitor at the end of each calendar quarter supplemental assessments (''Quarterly Supplements'') of the remedy completion and maximization plans submitted pursuant to paragraph 36 of this Amendment. These Quarterly Supplements shall include, at a minimum:

a. A detailed explanation of the effectiveness of efforts since the last reporting period and an update on the implementation status of the maximization plan presented; and

b. a discussion of additional efforts being considered and/or undertaken to increase completion rates and meet the deadlines set forth in the CRO and this Amendment; and

c. a detailed discussion of efforts to implement Monitor recommendations, including recommendations issued prior to this Amendment; and

d. a detailed update on efforts made, and metrics of success, relating to each of the issues and actions identified in paragraph 36 above; and

e. a statement and/or accounting of the impact of the vehicle manufacturer's additional efforts on its recall completion relative to each of its recalls governed by this Amendment.

Quarterly Supplements shall discuss efforts made since the last report as well as future efforts planned or contemplated going forward. Quarterly Supplements shall be submitted with clear headings and subheadings identifying the required subject area addressed. Each Vehicle Manufacturer filing a plan pursuant to paragraph 36 herein shall file its first Quarterly Supplement not later than June 30, 2017.

38. Pursuant to 49 U.S.C. 30166(e), each Vehicle Manufacturer shall submit to the Agency a Sufficient Supply & Remedy Launch Certification Report (''Supply Certification'') not later than the Supply & Remedy Launch Deadline set forth for the applicable Priority Group in paragraph 34 herein, stating:

a. The criteria used to determine the appropriate sufficient supply to launch the remedy program for this particular phase of the recall;

b. the total number of Expanded Inflator Recalls remedy parts (or kits) the vehicle manufacturer has on hand in the United States available to customers through its dealer netwok within 48 hours;

c. the total number of Expanded Inflator Recalls remedy parts the vehicle manufacturer has on hand in the United States currently located at dealer locations ready and available for use as vehicle repair parts;

d. the percentage of Expanded Inflator Recalls remedy parts available to the dealer network within 48 hours (*i.e.,* the volume covered under 38.b. above based on the total number of vehicles remaining to be repaired); and

e. the specific remedy part(s) identified in the Supply Certification, including the inflator supplier and the inflator model or type as identified by the inflator supplier to the vehicle manufacturer.

For paragraphs (b), (c), and (d), if more than one remedy inflator supplier or more than one remedy part is being utilized, the volumes of each part shall also be specified by inflator supplier and inflator model or type. The Supply Certification shall be signed under oath, *i.e.,* accompanied by an affidavit, by a responsible officer of that vehicle manufacturer.

39. Any Affected Vehicle Manufacturer seeking an extension of time to launch based on an insufficient supply by the Supply & Launch Deadline as set forth in the CRO or this Amendment shall submit to the Agency not less than 45 days prior to the applicable deadline a Notice of Anticipated Shortage and Request for Extension (''Extension Request''). An Extension Request shall be signed under oath, (*i.e.,* accompanied by an affidavit, by a responsible officer of that vehicle manufacturer) and shall include a thorough explanation of (i) why the vehicle manufacturer believes it will not be able to meet the sufficient supply deadline; (ii) the remedy part selection, validation, and development process it is using (including the timeline for this process); (iii) the steps the vehicle manufacturer is taking to obtain sufficient supply; (iv) how many replacement parts (number and percentage ready for launch) the vehicle manufacturer reasonably believes will be available by the Supply & Launch Deadline, and (v) a specific extension request date. If an Affected Vehicle Manufacturer determines within 45 days of the Supply & Launch Deadline that it is unlikely to have a sufficient supply of remedy parts by that date, that vehicle manufacturer shall file an Extension Request with the Agency within 2 business days of making such determination. Any vehicle manufacturer filing an Extension Request shall provide an Extension Request Update not less than 14 days prior to the Sufficient Supply & Remedy Launch Deadline informing the Agency of any changes in the sufficient supply status and making any additional necessary requests.

40. Pursuant to 49 U.S.C. 30116–30120 and Public Law 112–141, 126 Stat. 405, within 24 hours of filing a Supply Certification, each Affected Vehicle Manufacturer shall update the remedy status returned in a search of NHTSA's Vehicle Identification Number (''VIN'') Lookup Tool, as well as its own recall search tool, if it is required under federal regulation to support those tools or is voluntarily supporting those tools at the time of this Amendment, to reflect that parts are available for vehicles covered by the Supply Certification.

41. Pursuant to 49 U.S.C. 30120(a), 30120(c)(3), and 30166(e), each Affected Vehicle Manufacturer using, or planning

to use, a desiccated PSAN Takata inflator as a final remedy shall work in coordination with Takata to develop and implement an appropriate surveillance and testing plan to ensure the safety of the desiccated PSAN inflator part as an adequate final remedy. Not more than 60 days following the issuance of this Amendment, each vehicle manufacturer affected by this paragraph shall submit, jointly with Takata, to NHTSA and the Monitor a written plan setting forth the testing plan. Such plan shall include parts recovery and testing for Takata desiccated PSAN inflators from the field when that vehicle manufacturer's fleet includes vehicles equipped with Takata desiccated PSAN inflators. Pursuant to paragraph 30 of the November 2015 Consent Order to Takata, these desiccated PSAN inflators remain subject to potential recall if Takata or another credible source has not proven the safety of the parts by December 31, 2019, and, as such, require further investigation by Takata and the relevant vehicle manufacturers, particularly when used as a final remedy part.

42. Pursuant to 49 U.S.C. 30118(c)–(d), 30119(a)–(f), and 30120(c)(3), each Affected Vehicle Manufacturer shall conduct supplemental owner notification efforts, in coordination with the Agency and the Monitor, to increase remedy completion rates and accelerate its remedy completion timeline. Such notifications shall be made by an Affected Vehicle Manufacturer either upon specific recommendation of the Monitor to that Affected Vehicle Manufacturer, or at NHTSA's direction, or may also occur upon a vehicle manufacturer initiating such action in consultation with NHTSA and/or the Monitor. Supplemental communications shall adhere to *Coordinated Communications* Recommendations issued by the Monitor, forthcoming, unless otherwise agreed to by the Agency. *Coordinated Communications* Recommendations shall be made public on NHTSA's Web site. One or more Affected Vehicle Manufacturer(s) may, at any time, propose alternative messaging, imaging, formats, technologies, or communications strategies, with any supporting data, analysis, and rationales favoring the variation in communication, to the Agency and the Monitor. Not less than five (5) business days prior to sending, or otherwise issuing, a supplemental communication under this paragraph, an Affected Vehicle Manufacturer shall provide electronic versions of all supplemental consumer communications to both the Agency and the Monitor following the submission instructions to be set forth in the *Coordinated Communications* Recommendations.

Potential Future Recalls

43. Paragraph 30 of the November 2015 Consent Order provides that the NHTSA Administrator may issue final orders for the recall of Takata's desiccated PSAN inflators if, by December 31, 2019, Takata or another credible source has not proven to NHTSA's satisfaction that the inflators are safe or the safe service life of the inflators. Pursuant to 49 U.S.C. 30166(e), each Affected Vehicle Manufacturer with any vehicle in its fleet equipped with a desiccated PSAN Takata inflator, and not filing a report under paragraph 41 herein, shall provide a written plan, not more than 90 days following the issuance of this amendment, fully detailing the vehicle manufacturer's plans to confirm the safety and/or service life of the desiccated PSAN inflator(s) used in its fleet. This plan shall include discussion of any plans to coordinate with Takata for recovery of parts from fleet vehicles and testing, and any anticipated or future plans to develop or expand a recovery and testing protocol of the desiccated PSAN inflators.

Record Keeping & Reports

44. Pursuant to 49 U.S.C. 30166(e), Affected Vehicle Manufacturers shall submit complete and accurate biweekly recall completion update reports to NHTSA and the Monitor in the format(s) and manner requested.

45. Currently, vehicle manufacturers conducting recalls report to NHTSA vehicles determined to be unreachable for recall remedy due to export, theft, scrapping, failure to receive notification (return mail), or other reasons (manufacturer specifies), as part of regulatory requirements. *See* 49 CFR 573.7(b)(5). Recording and reporting the volume of the unreachable population is important in calculating a recall's completion and assessing a recall campaign's success. It is also important for purposes of reallocating outreach resources from vehicles likely no longer in service to vehicles that are, and thus continue to present an unreasonable risk to the public. In the interest of obtaining a higher degree of accuracy in recalls completion reporting, and to support the Affected Vehicle Manufacturers in focusing their resources on remedy campaign vehicles at risk, Affected Vehicle Manufacturers are hereby permitted to count vehicles in the ''other reasons'' portion of their unreachable population counts where:

a. ALL vehicles in the particular recall campaign are at least five years of age measured from their production dates; and

b. a vehicle has not been registered in any state or territory, or has held an expired registration, for at least three continuous years; and

c. at least one alternative, nationally recognized data source corroborates the vehicle is no longer in service. Examples of such data sources include: Records from the National Motor Vehicle Title Information Service (NMVTIS); a license plate recognition data source; and a vehicle history report reflecting a lack of activity for at least three years (*e.g.,* no repair or maintenance history, no transfer of title or purchase records, etc.). In utilizing this provision, a vehicle manufacturer shall not ignore information in its possession that indicates that the vehicle remains in service.

46. For the purposes of reporting under this Amendment, Affected Vehicle Manufacturers may remove from recall outreach efforts the vehicles counted in the ''other'' category pursuant to the procedure set forth in the preceding paragraph. This includes re-notifications. However, in all instances, Affected Vehicle Manufacturers shall conduct required first class mailings, pursuant to 49 CFR 577.5. These mailings may be discontinued for vehicles the vehicle manufacturer has identified, and reported to NHTSA, as scrapped, exported, stolen, or for whom mail was returned.

47. Before utilizing the ''other'' category as set forth herein, the vehicle manufacturer shall explicitly notify NHTSA through a Part 573 document (initial or updated) that it intends to use the ''other'' reporting category to report counts of vehicles that meet its defined criteria. The manufacturer shall notify NHTSA of its decision before filing the quarterly report, or biweekly completion report, in which the vehicle manufacturer intends to utilize this ''other'' category as set forth herein.

48. Vehicle manufacturers opting to use the ''other'' reporting category shall:

a. Keep records to substantiate the determination to count any vehicle in the ''other'' category; and

b. in the initial notice, and with updates upon NHTSA's request, provide written documentation identifying to NHTSA an estimate of the financial resources saved utilizing this approach and explaining how those resources are reallocated to improve recall completion rates for the recalled vehicle population that remains in service; and

c. perform retroactive monitoring to identify any VIN reported as ''other'' but that was later serviced, for any reason, by a dealer. This recurring obligation shall be completed every quarter for which the vehicle manufacturer reports on the recall. Should the number of these VINs exceed five (5) percent of the total number of ''other'' reported VINs, the vehicle manufacturer must notify NHTSA and justify why the ''other'' category should remain available for use for that recall; and

d. maintain ALL VINs as active, or ''live'', in the VIN data systems such that any search for the VIN will reflect an open recall status on the NHTSA web tool, the manufacturer's web tool, and any and all dealer and other data networks with, and through which, the vehicle manufacturer communicates safety recall status information.

49. The Agency may, in its discretion, reject, modify, or terminate, a manufacturer's use of the ''other'' category reporting mechanism.

50. Vehicle manufacturers are required to provide six (6) consecutive quarters of reporting on recall completions pursuant to 49 CFR 573.7. Some Affected Vehicle Manufacturers are utilizing phased launches to prioritize parts availability in certain recall remedy campaigns. While quarterly reports must be filed once a vehicle manufacturer has initiated a recall remedy program, the consecutive quarters of reporting shall be counted towards the six required reports once the campaign is fully launched.

Miscellaneous

51. NHTSA may, after consultation with an affected vehicle manufacturer, and/or Takata, or upon a recommendation of the Monitor, modify or amend provisions of this Amendment to, among other things: Account for and timely respond to newly obtained facts, data, changed circumstances, and/or other information that may become available throughout the term of the Coordinated Remedy Program. Such modifications may include, but are not limited to, changes to the Priority Groups contained in Amended Annex A; allowing for reasonable extensions of time for the timelines contained in Paragraphs 34 and 35; facilitating further recalls as contemplated by Paragraphs 29 and 30 of the Amended Consent Order; or for any other purpose related to the Coordinated Remedy Program, the Coordinated Remedy Order, and/or this Amendment to the Coordinated Remedy Order. Any such modification or amendment shall be made in writing signed by the NHTSA Administrator or his designee.

52. This Amendment shall be binding upon, and inure to the benefit of, Takata and the Affected Vehicle Manufacturers, including their current and former directors, officers, employees, agents, subsidiaries, affiliates, successors, and assigns, as well as any person or entity succeeding to its interests or obligations herein, including as a result of any changes to the corporate structure or relationships among or between Takata, or any Affected Vehicle Manufacturers, and any of that company's parents, subsidiaries, or affiliates.

53. This Amendment shall become effective upon issuance by the NHTSA Administrator. In the event of a breach of, or failure to perform, any term of this Amendment by Takata or any Affected Vehicle Manufacturer, NHTSA may pursue any and all appropriate remedies, including, but not limited to, seeking civil penalties pursuant to 49 U.S.C. 30165, actions compelling specific performance of the terms of this Order, and/or commencing litigation to enforce this Order in any United States District Court.

54. This Amendment to the Coordinated Remedy Order should be construed to include all terms and provisions of the Coordinated Remedy Order, and prior Amendments, unless expressly superseded herein.

55. This Amendment to the Coordinated Remedy Order shall not be construed to create rights in, or grant any cause of action to, any third party not subject to this Amendment.

56. In carrying out the directives of the Coordinated Remedy Order and this Amendment to the Coordinated Remedy Order, vehicle manufacturers and vehicle equipment manufacturers (*i.e.,* suppliers) shall not engage in any conduct prohibited under the antitrust laws, or other applicable law.

It is so ordered: National Highway Traffic Safety Administration, U.S. Department of Transportation.

Dated: December 9, 2016.

Mark R. Rosekind,

Administrator.

AMENDED ANNEX A [22]

Coordinated Remedy Program Priority Groups

In the following Priority Groups, the area of high absolute humidity (''HAH'') is defined by each vehicle manufacturer individually, but in all instances includes vehicles originally sold or ever registered in Alabama, Florida, Georgia, Hawaii, Louisiana, Mississippi, Texas, Puerto Rico, American Samoa, Guam, Saipan, and the U.S. Virgin Islands. ''Non-HAH'' means any vehicle that has not been identified by the vehicle manufacturer as having been originally sold or ever registered in the HAH region, as defined by the vehicle manufacturer. The terms HAH and Non-HAH apply to vehicles in Priority Groups 1, 2, and 3. Zones A, B, and C are defined in paragraph 7 of the Amendment to November 3, 2015 Consent Order issued to Takata by the National Highway Traffic Safety Administration on May 4, 2016. Zone A includes the previously defined HAH plus the expansion states of California and South Carolina. Zones A, B, and C apply to Priority Groups 4 through 12.

PG	Model years	Make	Model, inflator position & (zone) [23]
1	2003–2003	Acura	3.2CL DAB (HAH).
1	2003–2003	Acura	3.2CL DAB (Non-HAH).
1	2002–2003	Acura	3.2TL DAB (HAH).
1	2002–2003	Acura	3.2TL DAB (Non-HAH).
1	2002–2006	BMW	3 Series, M3 DAB (HAH).
1	2002–2006	BMW	3 Series, M3 PAB (HAH).
1	2005–2008	Chrysler	300, 300C, SRT8 DAB (HAH).
1	2005–2005	Chrysler	300, 300C, SRT8 DAB (Non-HAH).
1	2005–2005	Chrysler	300, 300C, SRT8 PAB (HAH).
1	2008–2008	Dodge	Challenger DAB (HAH).
1	2006–2008	Dodge	Charger DAB (HAH).
1	2005–2005	Dodge	Dakota Pickup DAB (HAH).

[22] Corrected as of December 16, 2016.

[23] Where a vehicle make, model, model year appears in one Priority Group (''PG'') and the ''Zone'' is listed as ''(Non-A)'', and the same vehicle make, model, and model year appears in a later PG as applicable to ''Zone C'', the ''Non-A'' zone refers to Zone B vehicles.

PG	Model years	Make	Model, inflator position & (zone) [23]
1	2005–2005	Dodge	Dakota Pickup PAB (HAH).
1	2004–2005	Dodge	Durango DAB (HAH).
1	2004–2005	Dodge	Durango PAB (HAH).
1	2005–2008	Dodge	Magnum DAB (HAH).
1	2005–2005	Dodge	Magnum DAB (Non-HAH).
1	2005–2005	Dodge	Magnum PAB (HAH).
1	2004–2005	Dodge	RAM 1500 Pickup PAB (HAH).
1	2004–2005	Dodge	RAM 1500, 2500, 3500 Pickup DAB (HAH).
1	2005–2005	Dodge	RAM 2500 Pickup PAB (HAH).
1	2007–2008	Dodge	Sprinter PAB (HAH).
1	2005–2006	Ford	GT DAB (HAH).
1	2005–2006	Ford	GT PAB (HAH).
1	2005–2008	Ford	Mustang DAB (HAH).
1	2004–2005	Ford	Ranger DAB (HAH).
1	2004–2005	Ford	Ranger PAB (HAH).
1	2007–2008	Freightliner	Sprinter PAB (HAH).
1	2005–2005	GM-Saab	9–2X PAB (HAH).
1	2001–2003	Honda	ACCORD DAB (HAH).
1	2001–2003	Honda	ACCORD DAB (Non-HAH).
1	2003–2003	Honda	ACCORD PAB (HAH).
1	2003–2003	Honda	ACCORD PAB (Non-HAH).
1	2001–2005	Honda	CIVIC DAB (HAH).
1	2001–2003	Honda	CIVIC DAB (Non-HAH).
1	2003–2005	Honda	CIVIC HYBRID DAB (HAH).
1	2003–2003	Honda	CIVIC HYBRID DAB (Non-HAH).
1	2003–2005	Honda	CIVIC HYBRID PAB (HAH).
1	2003–2003	Honda	CIVIC HYBRID PAB (Non-HAH).
1	2001–2005	Honda	CIVIC NGV DAB (HAH).
1	2001–2003	Honda	CIVIC NGV DAB (Non-HAH).
1	2001–2005	Honda	CIVIC NGV PAB (HAH).
1	2001–2003	Honda	CIVIC NGV PAB (Non-HAH).
1	2001–2005	Honda	CIVIC PAB (HAH).
1	2001–2003	Honda	CIVIC PAB (Non-HAH).
1	2002–2006	Honda	CR–V DAB (HAH).
1	2002–2002	Honda	CR–V DAB (Non-HAH).
1	2002–2005	Honda	CR–V PAB (HAH).
1	2002–2002	Honda	CR–V PAB (Non-HAH).
1	2003–2006	Honda	ELEMENT DAB (HAH).
1	2003–2004	Honda	ELEMENT PAB (HAH).
1	2002–2002	Honda	ODYSSEY DAB (HAH).
1	2002–2002	Honda	ODYSSEY PAB (HAH).
1	2003–2008	Honda	PILOT DAB (HAH).
1	2003–2008	Honda	PILOT DAB (Non-HAH).
1	2003–2005	Honda	PILOT PAB (HAH).
1	2003–2005	Honda	PILOT PAB (Non-HAH).
1	2006–2006	Honda	RIDGELINE DAB (HAH).
1	2006–2006	Honda	RIDGELINE PAB (HAH).
1	2002–2003	Infiniti	QX4 PAB (HAH).
1	2007–2007	Lexus	SC430 PAB (HAH).
1	2003–2008	Mazda	Mazda6 DAB (HAH).
1	2003–2008	Mazda	Mazda6 PAB (HAH).
1	2004–2008	Mazda	RX8 DAB (HAH).
1	2004–2004	Mazda	RX8 PAB (HAH).
1	2006–2007	Mazda	Speed6 DAB (HAH).
1	2006–2007	Mazda	Speed6 PAB (HAH).
1	2004–2006	Mitsubishi	Lancer Evolution PAB (HAH).
1	2004–2006	Mitsubishi	Lancer PAB (HAH).
1	2004–2004	Mitsubishi	Lancer Sportback PAB (HAH).
1	2002–2003	Nissan	Pathfinder PAB (HAH).
1	2002–2003	Nissan	Sentra PAB (HAH).
1	2003–2007	Pontiac	Vibe PAB (HAH).
1	2004–2005	Subaru	Impreza/WRX/STI PAB (HAH).
1	2005–2008	Subaru	Legacy/Outback PAB (HAH).
1	2003–2007	Toyota	Corolla PAB (HAH).
1	2003–2007	Toyota	Matrix PAB (HAH).
1	2005–2007	Toyota	Sequoia PAB (HAH).
1	2005–2006	Toyota	Tundra PAB (HAH).
2	2003–2006	Acura	MDX DAB (HAH).
2	2003–2006	Acura	MDX DAB (Non-HAH).
2	2003–2005	Acura	MDX PAB (HAH).
2	2003–2005	Acura	MDX PAB (Non-HAH).
2	2002–2006	BMW	3 Series, M3 DAB (Non-HAH).
2	2000–2001	BMW	3 Series, M3 PAB (HAH).

PG	Model years	Make	Model, inflator position & (zone) [23]
2	2002–2006	BMW	3 Series, M3 PAB (Non-HAH).
2	2002–2003	BMW	5 Series, M5 DAB (HAH).
2	2002–2003	BMW	5 Series, M5 DAB (Non-HAH).
2	2003–2004	BMW	X5 SAV DAB (HAH).
2	2003–2004	BMW	X5 SAV DAB (Non-HAH).
2	2007–2008	Chevrolet/GMC	Silverado/Sierra HD PAB (HAH).
2	2009–2010	Chrysler	300, 300C, SRT8 DAB (HAH).
2	2006–2010	Chrysler	300, 300C, SRT8 DAB (Non-HAH).
2	2007–2008	Chrysler	Aspen DAB (HAH).
2	2007–2008	Chrysler	Aspen DAB (Non-HAH).
2	2009–2010	Dodge	Challenger DAB (HAH).
2	2008–2010	Dodge	Challenger DAB (Non-HAH).
2	2009–2010	Dodge	Charger DAB (HAH).
2	2006–2010	Dodge	Charger DAB (Non-HAH).
2	2006–2011	Dodge	Dakota Pickup DAB (HAH).
2	2005–2011	Dodge	Dakota Pickup DAB (Non-HAH).
2	2006–2008	Dodge	Durango DAB (HAH).
2	2004–2008	Dodge	Durango DAB (Non-HAH).
2	2006–2008	Dodge	Magnum DAB (Non-HAH).
2	2006–2009	Dodge	RAM 1500, 2500, 3500 Pickup DAB (HAH).
2	2004–2009	Dodge	RAM 1500, 2500, 3500 Pickup DAB (Non-HAH).
2	2003–2003	Dodge	RAM 1500, 2500, 3500 Pickup PAB (HAH).
2	2003–2003	Dodge	RAM 1500, 2500, 3500 Pickup PAB (Non-HAH).
2	2007–2009	Dodge	RAM 3500 Cab Chassis DAB (HAH).
2	2007–2009	Dodge	RAM 3500 Cab Chassis DAB (Non-HAH).
2	2006–2009	Dodge	RAM 3500 Pickup DAB (HAH).
2	2006–2009	Dodge	RAM 3500 Pickup DAB (Non-HAH).
2	2008–2010	Dodge	RAM 4500, 5500 Cab Chassis DAB (HAH).
2	2008–2010	Dodge	RAM 4500, 5500 Cab Chassis DAB (Non-HAH).
2	2007–2008	Dodge	Sprinter PAB (Non-HAH).
2	2005–2006	Ford	GT DAB (HAH).
2	2005–2006	Ford	GT DAB (Non-HAH).
2	2009–2014	Ford	Mustang DAB (HAH).
2	2005–2008	Ford	Mustang DAB (Non-HAH).
2	2006–2006	Ford	Ranger PAB (HAH).
2	2007–2008	Freightliner	Sprinter PAB (Non-HAH).
2	2004–2007	Honda	ACCORD DAB (HAH).
2	2004–2007	Honda	ACCORD DAB (Non-HAH).
2	2004–2007	Honda	ACCORD PAB (HAH).
2	2004–2007	Honda	ACCORD PAB (Non-HAH).
2	2004–2005	Honda	CIVIC DAB (Non-HAH).
2	2004–2005	Honda	CIVIC HYBRID DAB (Non-HAH).
2	2004–2005	Honda	CIVIC HYBRID PAB (Non-HAH).
2	2004–2005	Honda	CIVIC NGV DAB (Non-HAH).
2	2004–2005	Honda	CIVIC NGV PAB (Non-HAH).
2	2004–2005	Honda	CIVIC PAB (Non-HAH).
2	2003–2006	Honda	CR–V DAB (Non-HAH).
2	2003–2005	Honda	CR–V PAB (Non-HAH).
2	2007–2011	Honda	ELEMENT DAB (HAH).
2	2003–2007	Honda	ELEMENT DAB (Non-HAH).
2	2003–2004	Honda	ELEMENT PAB (Non-HAH).
2	2003–2004	Honda	ODYSSEY DAB (HAH).
2	2002–2004	Honda	ODYSSEY DAB (Non-HAH).
2	2003–2004	Honda	ODYSSEY PAB (HAH).
2	2002–2004	Honda	ODYSSEY PAB (Non-HAH).
2	2004–2004	Honda	PILOT PAB (HAH).
2	2006–2006	Honda	RIDGELINE DAB (Non-HAH).
2	2006–2006	Honda	RIDGELINE PAB (Non-HAH).
2	2003–2003	Infiniti	FX35 PAB (HAH).
2	2003–2003	Infiniti	FX45 PAB (HAH).
2	2001–2001	Infiniti	I30 PAB (HAH).
2	2002–2003	Infiniti	I35 PAB (HAH).
2	2002–2003	Infiniti	QX4 PAB (Non-HAH).
2	2007–2007	Lexus	SC430 PAB (Non-HAH).
2	2004–2006	Mazda	B-Series PAB (HAH).
2	2003–2008	Mazda	Mazda6 DAB (Non-HAH).
2	2003–2008	Mazda	Mazda6 PAB (Non-HAH).
2	2004–2005	Mazda	MPV PAB (HAH).
2	2004–2004	Mazda	RX8 DAB (Non-HAH).
2	2005–2005	Mazda	RX8 PAB (HAH).
2	2004–2004	Mazda	RX8 PAB (Non-HAH).
2	2006–2007	Mazda	Speed6 DAB (Non-HAH).
2	2006–2007	Mazda	Speed6 PAB (Non-HAH).

PG	Model years	Make	Model, inflator position & (zone) [23]
2	2004–2006	Mitsubishi	Lancer Evolution PAB (Non-HAH).
2	2004–2006	Mitsubishi	Lancer PAB (Non-HAH).
2	2004–2004	Mitsubishi	Lancer Sportback PAB (Non-HAH).
2	2006–2009	Mitsubishi	Raider DAB (HAH).
2	2006–2009	Mitsubishi	Raider DAB (Non-HAH).
2	2001–2003	Nissan	Maxima PAB (HAH).
2	2004–2004	Nissan	Pathfinder PAB (HAH).
2	2002–2004	Nissan	Pathfinder PAB (Non-HAH).
2	2004–2006	Nissan	Sentra PAB (HAH).
2	2002–2006	Nissan	Sentra PAB (Non-HAH).
2	2003–2007	Pontiac	Vibe PAB (Non-HAH).
2	2008–2009	Sterling	Bullet DAB (HAH).
2	2008–2009	Sterling	Bullet DAB (Non-HAH).
2	2005–2005	Subaru	Baja PAB (HAH).
2	2003–2004	Subaru	Legacy/Outback/Baja PAB (HAH).
2	2003–2007	Toyota	Corolla PAB (Non-HAH).
2	2003–2007	Toyota	Matrix PAB (Non-HAH).
2	2004–2005	Toyota	RAV4 DAB (HAH).
2	2004–2005	Toyota	RAV4 DAB (Non-HAH).
2	2002–2004	Toyota	Sequoia PAB (HAH).
2	2005–2007	Toyota	Sequoia PAB (Non-HAH).
2	2003–2004	Toyota	Tundra PAB (HAH).
2	2005–2006	Toyota	Tundra PAB (Non-HAH).
3	2005–2005	Acura	RL PAB (HAH).
3	2005–2005	Acura	RL PAB (Non-HAH).
3	2000–2001	BMW	3 Series, M3 PAB (Non-HAH).
3	2007–2008	Chevrolet/GMC	Silverado/Sierra HD PAB (Non-HAH).
3	2005–2006	Ford	GT DAB (Non-HAH).
3	2005–2008	Ford	Mustang DAB (HAH).
3	2005–2014	Ford	Mustang DAB (Non-HAH).
3	2004–2006	Ford	Ranger PAB (Non-HAH).
3	2005–2005	GM–Saab	9–2X PAB (Non-HAH).
3	2008–2011	Honda	ELEMENT DAB (Non-HAH).
3	2004–2005	Infiniti	FX35 PAB (HAH).
3	2003–2003	Infiniti	FX35 PAB (Non-HAH).
3	2004–2005	Infiniti	FX45 PAB (HAH).
3	2003–2003	Infiniti	FX45 PAB (Non-HAH).
3	2001–2001	Infiniti	I30 PAB (Non-HAH).
3	2004–2004	Infiniti	I35 PAB (HAH).
3	2002–2003	Infiniti	I35 PAB (Non-HAH).
3	2006–2006	Infiniti	M45 PAB (HAH).
3	2002–2006	Lexus	SC430 PAB (HAH).
3	2002–2006	Lexus	SC430 PAB (Non-HAH).
3	2004–2006	Mazda	B-Series PAB (Non-HAH).
3	2004–2008	Mazda	RX8 DAB (Non-HAH).
3	2004–2004	Mazda	RX8 PAB (Non-HAH).
3	2001–2003	Nissan	Maxima PAB (Non-HAH).
3	2004–2005	Subaru	Impreza/WRX/STI PAB (Non-HAH).
3	2005–2008	Subaru	Legacy/Outback PAB (Non-HAH).
3	2003–2004	Subaru	Legacy/Outback/Baja PAB (Non-HAH).
3	2002–2004	Toyota	Sequoia PAB (Non-HAH).
3	2003–2004	Toyota	Tundra PAB (Non-HAH).
4	2003–2006	Acura	MDX PAB (A).
4	2003–2006	Acura	MDX PAB (Non-A).
4	2007–2009	Acura	RDX DAB (A).
4	2005–2011	Acura	RL DAB (A).
4	2005–2009	Acura	RL DAB (Non-A).
4	2005–2011	Acura	RL PAB (A).
4	2005–2009	Acura	RL PAB (Non-A).
4	2009–2009	Acura	TL DAB (A).
4	2009–2009	Acura	TSX PAB (A).
4	2010–2011	Acura	ZDX DAB (A).
4	2010–2011	Acura	ZDX PAB (A).
4	2006–2009	Audi	A3 DAB (A).
4	2007–2009	Audi	A4 Cabriolet DAB (A).
4	2009–2009	Audi	Audi Q5 DAB (A).
4	2008–2008	Audi	RS 4 Cabriolet DAB (A).
4	2007–2009	Audi	S4 Cabriolet DAB (A).
4	2008–2009	BMW	1 Series DAB (A).
4	2006–2009	BMW	3 Series DAB (A).
4	2007–2009	BMW	X3 DAB (A).
4	2007–2009	BMW	X5 DAB (A).
4	2007–2009	BMW	X5 PAB (A).

PG	Model years	Make	Model, inflator position & (zone) [23]
4	2008–2009	BMW	X6 DAB (A).
4	2008–2009	BMW	X6 PAB (A).
4	2005–2012	Chrysler	300 PAB (A).
4	2007–2009	Chrysler	Aspen PAB (A).
4	2007–2008	Chrysler	Crossfire DAB (A).
4	2008–2012	Dodge	Challenger PAB (A).
4	2008–2009	Dodge	Challenger PAB (Non-A).
4	2006–2012	Dodge	Charger PAB (A).
4	2005–2011	Dodge	Dakota PAB (A).
4	2004–2009	Dodge	Durango PAB (A).
4	2005–2008	Dodge	Magnum PAB (A).
4	2005–2008	Dodge	Magnum PAB (Non-A).
4	2004–2008	Dodge	Ram 1500/2500/3500 Pickup PAB (A).
4	2005–2009	Dodge	Ram 2500 Pickup PAB (A).
4	2007–2010	Dodge	Ram 3500 Cab Chassis PAB (A).
4	2006–2009	Dodge	Ram 3500 Pickup PAB (A).
4	2008–2010	Dodge	Ram 4500/5500 Cab Chassis PAB (A).
4	2009–2009	Dodge	Sprinter PAB (A).
4	2009–2009	Dodge	Sprinter PAB (Non-A).
4	2009–2009	Ferrari	California PAB (A).
4	2005–2006	Ford	GT PAB (A).
4	2005–2006	Ford	GT PAB (Non-A).
4	2005–2011	Ford	Mustang PAB (A).
4	2005–2008	Ford	Mustang PAB (Non-A).
4	2004–2006	Ford	Ranger DAB (A).
4	2004–2006	Ford	Ranger DAB (Non-A).
4	2007–2009	Freightliner	Sprinter DAB (A).
4	2007–2009	Freightliner	Sprinter DAB (Non-A).
4	2009–2009	Freightliner	Sprinter PAB (A).
4	2009–2009	Freightliner	Sprinter PAB (Non-A).
4	2008–2009	Honda	ACCORD PAB (A).
4	2006–2009	Honda	CIVIC HYBRID PAB (A).
4	2006–2009	Honda	CIVIC NGV PAB (A).
4	2006–2009	Honda	CIVIC PAB (A).
4	2007–2011	Honda	CR–V DAB (A).
4	2007–2009	Honda	CR–V DAB (Non-A).
4	2005–2011	Honda	CR–V PAB (A).
4	2005–2009	Honda	CR–V PAB (Non-A).
4	2003–2011	Honda	ELEMENT PAB (A).
4	2003–2009	Honda	ELEMENT PAB (Non-A).
4	2010–2011	Honda	FCX CLARITY DAB (A).
4	2010–2011	Honda	FCX CLARITY PAB (A).
4	2009–2011	Honda	FIT DAB (A).
4	2009–2009	Honda	FIT DAB (Non-A).
4	2007–2011	Honda	FIT PAB (A).
4	2009–2009	Honda	FIT PAB (Non-A).
4	2010–2011	Honda	INSIGHT DAB (A).
4	2010–2011	Honda	INSIGHT PAB (A).
4	2002–2004	Honda	ODYSSEY PAB (A).
4	2002–2004	Honda	ODYSSEY PAB (Non-A).
4	2003–2009	Honda	PILOT PAB (A).
4	2003–2008	Honda	PILOT PAB (Non-A).
4	2007–2011	Honda	RIDGELINE DAB (A).
4	2007–2009	Honda	RIDGELINE DAB (Non-A).
4	2006–2011	Honda	RIDGELINE PAB (A).
4	2006–2009	Honda	RIDGELINE PAB (Non-A).
4	2009–2009	Jaguar	XF PAB (A).
4	2007–2012	Jeep	Wrangler PAB (A).
4	2007–2009	Land Rover	Range Rover PAB (A).
4	2007–2009	Lexus	ES350 PAB (A).
4	2008–2009	Lexus	IS F PAB (A).
4	2006–2009	Lexus	IS250 PAB (A).
4	2006–2009	Lexus	IS350 PAB (A).
4	2004–2006	Mazda	B-Series DAB (A).
4	2004–2006	Mazda	B-Series DAB (Non-A).
4	2003–2008	Mazda	Mazda6 PAB (A).
4	2006–2007	Mazda	Mazdaspeed6 PAB (A).
4	2004–2008	Mazda	RX8 PAB (A).
4	2005–2009	Mercedes-Benz	C-Class DAB (A).
4	2008–2009	Mercedes-Benz	C-Class PAB (A).
4	2009–2009	Mercedes-Benz	GL-Class DAB (A).
4	2009–2009	Mercedes-Benz	ML-Class DAB (A).
4	2009–2009	Mercedes-Benz	R-Class DAB (A).

PG	Model years	Make	Model, inflator position & (zone) [23]
4	2007–2008	Mercedes-Benz	SLK-Class DAB (A).
4	2006–2007	Mitsubishi	Lancer PAB (A).
4	2006–2009	Mitsubishi	Raider PAB (A).
4	2007–2009	Nissan	Versa Hatchback PAB (A).
4	2007–2009	Nissan	Versa Sedan PAB (A).
4	2009–2009	Pontiac	Vibe PAB (A).
4	2006–2009	Saab	9–3 DAB (A).
4	2006–2009	Saab	9–5 DAB (A).
4	2008–2009	Saturn	Astra DAB (A).
4	2008–2009	Scion	xB PAB (A).
4	2008–2009	Sterling	Bullet DAB (A).
4	2008–2009	Sterling	Bullet DAB (Non-A).
4	2003–2005	Subaru	Baja PAB (A).
4	2003–2004	Subaru	Legacy PAB (A).
4	2003–2004	Subaru	Outback PAB (A).
4	2009–2009	Toyota	Corolla Matrix PAB (A).
4	2009–2009	Toyota	Corolla PAB (A).
4	2006–2009	Toyota	Yaris HB PAB (A).
4	2007–2009	Toyota	Yaris PAB (A).
4	2009–2009	Volkswagen	CC DAB (A).
4	2009–2009	Volkswagen	GTI DAB (A).
4	2006–2008	Volkswagen	Passat Sedan DAB (A).
4	2007–2008	Volkswagen	Passat Wagon DAB (A).
5	2013–2016	Acura	ILX DAB (A).
5	2013–2014	Acura	ILX HYBRID DAB (A).
5	2010–2016	Acura	RDX DAB (A).
5	2007–2009	Acura	RDX DAB (Non-A).
5	2012–2012	Acura	RL DAB (A).
5	2010–2011	Acura	RL DAB (Non-A).
5	2010–2011	Acura	RL PAB (Non-A).
5	2010–2014	Acura	TL DAB (A).
5	2009–2009	Acura	TL DAB (Non-A).
5	2010–2011	Acura	TSX PAB (A).
5	2009–2009	Acura	TSX PAB (Non-A).
5	2012–2013	Acura	ZDX DAB (A).
5	2010–2011	Acura	ZDX DAB (Non-A).
5	2010–2011	Acura	ZDX PAB (Non-A).
5	2010–2013	Audi	A3 DAB (A).
5	2006–2009	Audi	A3 DAB (Non-A).
5	2005–2008	Audi	A4 Avant PAB (A).
5	2007–2009	Audi	A4 Cabriolet DAB (Non-A).
5	2007–2009	Audi	A4 Cabriolet PAB (A).
5	2005–2008	Audi	A4 Sedan PAB (A).
5	2010–2012	Audi	A5 Cabriolet DAB (A).
5	2006–2009	Audi	A6 Avant PAB (A).
5	2005–2009	Audi	A6 Sedan PAB (A).
5	2010–2012	Audi	Audi Q5 DAB (A).
5	2009–2009	Audi	Audi Q5 DAB (Non-A).
5	2008–2008	Audi	RS 4 Cabriolet DAB (Non-A).
5	2008–2008	Audi	RS 4 Cabriolet PAB (A).
5	2007–2008	Audi	RS 4 Sedan PAB (A).
5	2005–2008	Audi	S4 Avant PAB (A).
5	2007–2009	Audi	S4 Cabriolet DAB (Non-A).
5	2007–2009	Audi	S4 Cabriolet PAB (A).
5	2005–2008	Audi	S4 Sedan PAB (A).
5	2010–2012	Audi	S5 Cabriolet DAB (A).
5	2007–2009	Audi	S6 Sedan PAB (A).
5	2010–2013	BMW	1 Series DAB (A).
5	2008–2009	BMW	1 Series DAB (Non-A).
5	2010–2013	BMW	3 Series DAB (A).
5	2006–2009	BMW	3 Series DAB (Non-A).
5	2013–2015	BMW	X1 DAB (A).
5	2010–2010	BMW	X3 DAB (A).
5	2007–2009	BMW	X3 DAB (Non-A).
5	2010–2011	BMW	X5 DAB (A).
5	2007–2009	BMW	X5 DAB (Non-A).
5	2010–2011	BMW	X5 PAB (A).
5	2007–2008	BMW	X5 PAB (Non-A).
5	2010–2011	BMW	X6 DAB (A).
5	2008–2009	BMW	X6 DAB (Non-A).
5	2010–2011	BMW	X6 Hybrid DAB (A).
5	2010–2011	BMW	X6 Hybrid PAB (A).
5	2010–2011	BMW	X6 PAB (A).

PG	Model years	Make	Model, inflator position & (zone) [23]
5	2008–2008	BMW	X6 PAB (Non-A).
5	2005–2012	Chrysler	300 PAB (Non-A).
5	2007–2009	Chrysler	Aspen PAB (Non-A).
5	2007–2008	Chrysler	Crossfire DAB (Non-A).
5	2010–2012	Dodge	Challenger PAB (Non-A).
5	2006–2012	Dodge	Charger PAB (Non-A).
5	2005–2011	Dodge	Dakota PAB (Non-A).
5	2004–2009	Dodge	Durango PAB (Non-A).
5	2004–2008	Dodge	Ram 1500/2500/3500 Pickup PAB (Non-A).
5	2005–2009	Dodge	Ram 2500 Pickup PAB (Non-A).
5	2007–2010	Dodge	Ram 3500 Cab Chassis PAB (Non-A).
5	2006–2009	Dodge	Ram 3500 Pickup PAB (Non-A).
5	2008–2010	Dodge	Ram 4500/5500 Cab Chassis PAB (Non-A).
5	2010–2011	Ferrari	458 Italia PAB (A).
5	2010–2011	Ferrari	California PAB (A).
5	2007–2009	Ford	Edge PAB (A).
5	2006–2009	Ford	Fusion PAB (A).
5	2007–2009	Ford	Ranger PAB (A).
5	2010–2012	Freightliner	Sprinter DAB (A).
5	2010–2012	Freightliner	Sprinter DAB (Non-A).
5	2010–2011	Freightliner	Sprinter PAB (A).
5	2010–2011	Freightliner	Sprinter PAB (Non-A).
5	2010–2011	Honda	ACCORD PAB (A).
5	2008–2009	Honda	ACCORD PAB (Non-A).
5	2010–2011	Honda	CIVIC HYBRID PAB (A).
5	2006–2009	Honda	CIVIC HYBRID PAB (Non-A).
5	2010–2011	Honda	CIVIC NGV PAB (A).
5	2006–2009	Honda	CIVIC NGV PAB (Non-A).
5	2010–2011	Honda	CIVIC PAB (A).
5	2006–2009	Honda	CIVIC PAB (Non-A).
5	2010–2011	Honda	CROSSTOUR PAB (A).
5	2010–2011	Honda	CR–V DAB (Non-A).
5	2010–2011	Honda	CR–V PAB (Non-A).
5	2011–2015	Honda	CR–Z DAB (A).
5	2010–2011	Honda	ELEMENT PAB (Non-A).
5	2012–2014	Honda	FCX CLARITY DAB (A).
5	2012–2013	Honda	FIT DAB (A).
5	2010–2011	Honda	FIT DAB (Non-A).
5	2013–2014	Honda	FIT EV DAB (A).
5	2007–2011	Honda	FIT PAB (Non-A).
5	2012–2014	Honda	INSIGHT DAB (A).
5	2010–2011	Honda	INSIGHT DAB (Non-A).
5	2010–2011	Honda	INSIGHT PAB (Non-A).
5	2010–2011	Honda	PILOT PAB (A).
5	2009–2009	Honda	PILOT PAB (Non-A).
5	2012–2014	Honda	RIDGELINE DAB (A).
5	2010–2011	Honda	RIDGELINE DAB (Non-A).
5	2010–2011	Honda	RIDGELINE PAB (Non-A).
5	2003–2005	Infiniti	FX PAB (A).
5	2003–2004	Infiniti	I35 PAB (A).
5	2010–2010	Jaguar	XF PAB (A).
5	2007–2012	Jeep	Wrangler PAB (Non-A).
5	2010–2010	Land Rover	Range Rover PAB (A).
5	2007–2008	Land Rover	Range Rover PAB (Non-A).
5	2010–2010	Lexus	ES350 PAB (A).
5	2007–2008	Lexus	ES350 PAB (Non-A).
5	2010–2010	Lexus	GX460 PAB (A).
5	2010–2010	Lexus	IS F PAB (A).
5	2008–2008	Lexus	IS F PAB (Non-A).
5	2010–2010	Lexus	IS250 PAB (A).
5	2006–2008	Lexus	IS250 PAB (Non-A).
5	2010–2010	Lexus	IS250C PAB (A).
5	2010–2010	Lexus	IS350 PAB (A).
5	2006–2008	Lexus	IS350 PAB (Non-A).
5	2010–2010	Lexus	IS350C PAB (A).
5	2007–2009	Lincoln	MKX PAB (A).
5	2006–2009	Lincoln	Zephyr/MKZ PAB (A).
5	2007–2009	Mazda	B-Series PAB (A).
5	2007–2009	Mazda	CX7 PAB (A).
5	2007–2009	Mazda	CX9 PAB (A).
5	2009–2009	Mazda	Mazda6 PAB (A).
5	2003–2008	Mazda	Mazda6 PAB (Non-A).
5	2006–2007	Mazda	Mazdaspeed6 PAB (Non-A).

PG	Model years	Make	Model, inflator position & (zone) [23]
5	2004–2006	Mazda	MPV PAB (A).
5	2009–2009	Mazda	RX8 PAB (A).
5	2004–2008	Mazda	RX8 PAB (Non-A).
5	2010–2011	Mercedes-Benz	C-Class DAB (A).
5	2005–2009	Mercedes-Benz	C-Class DAB (Non-A).
5	2010–2011	Mercedes-Benz	C-Class PAB (A).
5	2008–2008	Mercedes-Benz	C-Class PAB (Non-A).
5	2011–2011	Mercedes-Benz	E-Class Cabrio DAB (A).
5	2011–2011	Mercedes-Benz	E-Class Cabrio PAB (A).
5	2010–2011	Mercedes-Benz	E-Class Coupe DAB (A).
5	2010–2011	Mercedes-Benz	E-Class Coupe PAB (A).
5	2010–2011	Mercedes-Benz	E-Class DAB (A).
5	2010–2012	Mercedes-Benz	GL-Class DAB (A).
5	2009–2009	Mercedes-Benz	GL-Class DAB (Non-A).
5	2010–2012	Mercedes-Benz	GLK Class DAB (A).
5	2010–2011	Mercedes-Benz	GLK Class PAB (A).
5	2010–2011	Mercedes-Benz	ML-Class DAB (A).
5	2009–2009	Mercedes-Benz	ML-Class DAB (Non-A).
5	2010–2012	Mercedes-Benz	R-Class DAB (A).
5	2009–2009	Mercedes-Benz	R-Class DAB (Non-A).
5	2007–2008	Mercedes-Benz	SLK-Class DAB (Non-A).
5	2011–2014	Mercedes-Benz	SLS-Class DAB (A).
5	2011–2011	Mercedes-Benz	SLS-Class DAB (Non-A).
5	2011–2011	Mercedes-Benz	SLS-Class PAB (A).
5	2010–2012	Mercedes-Benz	Sprinter DAB (A).
5	2010–2012	Mercedes-Benz	Sprinter DAB (Non-A).
5	2010–2011	Mercedes-Benz	Sprinter PAB (A).
5	2010–2011	Mercedes-Benz	Sprinter PAB (Non-A).
5	2006–2009	Mercury	Milan PAB (A).
5	2006–2007	Mitsubishi	Lancer PAB (Non-A).
5	2006–2009	Mitsubishi	Raider PAB (Non-A).
5	2010–2011	Nissan	Versa Hatchback PAB (A).
5	2007–2008	Nissan	Versa Hatchback PAB (Non-A).
5	2010–2011	Nissan	Versa Sedan PAB (A).
5	2007–2008	Nissan	Versa Sedan PAB (Non-A).
5	2010–2010	Pontiac	Vibe PAB (A).
5	2006–2006	Saab	9–2X PAB (A).
5	2006–2009	Saab	9–3 DAB (Non-A).
5	2006–2009	Saab	9–5 DAB (Non-A).
5	2008–2009	Saturn	Astra DAB (Non-A).
5	2010–2010	Scion	xB PAB (A).
5	2008–2008	Scion	xB PAB (Non-A).
5	2006–2006	Subaru	Baja PAB (A).
5	2003–2005	Subaru	Baja PAB (Non-A).
5	2009–2009	Subaru	Forester PAB (A).
5	2006–2009	Subaru	Impreza PAB (A).
5	2009–2009	Subaru	Legacy PAB (A).
5	2003–2004	Subaru	Legacy PAB (Non-A).
5	2009–2009	Subaru	Outback PAB (A).
5	2003–2004	Subaru	Outback PAB (Non-A).
5	2006–2009	Subaru	Tribeca PAB (A).
5	2010–2010	Toyota	4Runner PAB (A).
5	2010–2010	Toyota	Corolla Matrix PAB (A).
5	2010–2010	Toyota	Corolla PAB (A).
5	2010–2010	Toyota	Yaris HB PAB (A).
5	2007–2008	Toyota	Yaris HB PAB (Non-A).
5	2010–2010	Toyota	Yaris PAB (A).
5	2007–2008	Toyota	Yaris PAB (Non-A).
5	2010–2014	Volkswagen	CC DAB (A).
5	2009–2009	Volkswagen	CC DAB (Non-A).
5	2010–2014	Volkswagen	Eos DAB (A).
5	2010–2014	Volkswagen	Golf DAB (A).
5	2013–2013	Volkswagen	Golf R DAB (A).
5	2010–2013	Volkswagen	GTI DAB (A).
5	2012–2014	Volkswagen	Passat DAB (A).
5	2010–2010	Volkswagen	Passat Sedan DAB (A).
5	2006–2009	Volkswagen	Passat Sedan DAB (Non-A).
5	2010–2010	Volkswagen	Passat Wagon DAB (A).
6	2013–2016	Acura	ILX DAB (Non-A).
6	2013–2014	Acura	ILX HYBRID DAB (Non-A).
6	2010–2016	Acura	RDX DAB (Non-A).
6	2012–2012	Acura	RL DAB (Non-A).
6	2010–2014	Acura	TL DAB (Non-A).

PG	Model years	Make	Model, inflator position & (zone) [23]
6	2010–2011	Acura	TSX PAB (Non-A).
6	2012–2013	Acura	ZDX DAB (Non-A).
6	2010–2013	Audi	A3 DAB (Non-A).
6	2005–2008	Audi	A4 Avant PAB (Non-A).
6	2007–2008	Audi	A4 Cabriolet PAB (Non-A).
6	2005–2008	Audi	A4 Sedan PAB (Non-A).
6	2010–2012	Audi	A5 Cabriolet DAB (Non-A).
6	2010–2011	Audi	A6 Avant PAB (A).
6	2006–2008	Audi	A6 Avant PAB (Non-A).
6	2010–2011	Audi	A6 Sedan PAB (A).
6	2005–2008	Audi	A6 Sedan PAB (Non-A).
6	2010–2012	Audi	Audi Q5 DAB (Non-A).
6	2008–2008	Audi	RS 4 Cabriolet PAB (Non-A).
6	2007–2008	Audi	RS 4 Sedan PAB (Non-A).
6	2005–2008	Audi	S4 Avant PAB (Non-A).
6	2007–2008	Audi	S4 Cabriolet PAB (Non-A).
6	2005–2008	Audi	S4 Sedan PAB (Non-A).
6	2010–2012	Audi	S5 Cabriolet DAB (Non-A).
6	2010–2011	Audi	S6 Sedan PAB (A).
6	2007–2008	Audi	S6 Sedan PAB (Non-A).
6	2010–2013	BMW	1 Series DAB (Non-A).
6	2010–2013	BMW	3 Series DAB (Non-A).
6	2013–2015	BMW	X1 DAB (Non-A).
6	2010–2010	BMW	X3 DAB (Non-A).
6	2012–2013	BMW	X5 DAB (A).
6	2010–2013	BMW	X5 DAB (Non-A).
6	2012–2014	BMW	X6 DAB (A).
6	2010–2014	BMW	X6 DAB (Non-A).
6	2010–2011	BMW	X6 Hybrid DAB (Non-A).
6	2007–2011	Cadillac	Escalade ESV PAB (A).
6	2007–2008	Cadillac	Escalade ESV PAB (Non-A).
6	2007–2011	Cadillac	Escalade EXT PAB (A).
6	2007–2008	Cadillac	Escalade EXT PAB (Non-A).
6	2007–2011	Cadillac	Escalade PAB (A).
6	2007–2008	Cadillac	Escalade PAB (Non-A).
6	2007–2011	Chevrolet	Avalanche PAB (A).
6	2007–2008	Chevrolet	Avalanche PAB (Non-A).
6	2009–2011	Chevrolet	Silverado HD PAB (A).
6	2007–2011	Chevrolet	Silverado LD PAB (A).
6	2007–2008	Chevrolet	Silverado LD PAB (Non-A).
6	2007–2011	Chevrolet	Suburban PAB (A).
6	2007–2008	Chevrolet	Suburban PAB (Non-A).
6	2007–2011	Chevrolet	Tahoe PAB (A).
6	2007–2008	Chevrolet	Tahoe PAB (Non-A).
6	2010–2011	Ferrari	458 Italia PAB (Non-A).
6	2009–2011	Ferrari	California PAB (Non-A).
6	2010–2010	Ford	Edge PAB (A).
6	2007–2008	Ford	Edge PAB (Non-A).
6	2010–2011	Ford	Fusion PAB (A).
6	2006–2008	Ford	Fusion PAB (Non-A).
6	2010–2011	Ford	Ranger PAB (A).
6	2007–2008	Ford	Ranger PAB (Non-A).
6	2013–2014	Freightliner	Sprinter DAB (A).
6	2013–2014	Freightliner	Sprinter DAB (Non-A).
6	2009–2011	GMC	Sierra HD PAB (A).
6	2007–2011	GMC	Sierra LD PAB (A).
6	2007–2008	GMC	Sierra LD PAB (Non-A).
6	2007–2011	GMC	Yukon PAB (A).
6	2007–2008	GMC	Yukon PAB (Non-A).
6	2007–2011	GMC	Yukon XL PAB (A).
6	2007–2008	GMC	Yukon XL PAB (Non-A).
6	2010–2011	Honda	ACCORD PAB (Non-A).
6	2010–2011	Honda	CIVIC HYBRID PAB (Non-A).
6	2010–2011	Honda	CIVIC NGV PAB (Non-A).
6	2010–2011	Honda	CIVIC PAB (Non-A).
6	2010–2011	Honda	CROSSTOUR PAB (Non-A).
6	2011–2015	Honda	CR–Z DAB (Non-A).
6	2012–2013	Honda	FIT DAB (Non-A).
6	2013–2014	Honda	FIT EV DAB (Non-A).
6	2012–2014	Honda	INSIGHT DAB (Non-A).
6	2010–2011	Honda	PILOT PAB (Non-A).
6	2012–2014	Honda	RIDGELINE DAB (Non-A).
6	2006–2008	Infiniti	FX PAB (A).

PG	Model years	Make	Model, inflator position & (zone) [23]
6	2003–2008	Infiniti	FX PAB (Non-A).
6	2003–2004	Infiniti	I35 PAB (Non-A).
6	2006–2010	Infiniti	M PAB (A).
6	2006–2008	Infiniti	M PAB (Non-A).
6	2011–2011	Jaguar	XF PAB (A).
6	2011–2011	Land Rover	Range Rover PAB (A).
6	2011–2011	Lexus	ES350 PAB (A).
6	2011–2011	Lexus	GX460 PAB (A).
6	2011–2011	Lexus	IS F PAB (A).
6	2011–2011	Lexus	IS250 PAB (A).
6	2011–2011	Lexus	IS250C PAB (A).
6	2011–2011	Lexus	IS350 PAB (A).
6	2011–2011	Lexus	IS350C PAB (A).
6	2010–2010	Lincoln	MKX PAB (A).
6	2007–2008	Lincoln	MKX PAB (Non-A).
6	2010–2011	Lincoln	Zephyr/MKZ PAB (A).
6	2006–2008	Lincoln	Zephyr/MKZ PAB (Non-A).
6	2007–2008	Mazda	B-Series PAB (Non-A).
6	2010–2011	Mazda	CX7 PAB (A).
6	2007–2008	Mazda	CX7 PAB (Non-A).
6	2010–2011	Mazda	CX9 PAB (A).
6	2007–2008	Mazda	CX9 PAB (Non-A).
6	2010–2011	Mazda	Mazda6 PAB (A).
6	2004–2006	Mazda	MPV PAB (Non-A).
6	2010–2011	Mazda	RX8 PAB (A).
6	2010–2011	Mercedes-Benz	C-Class DAB (Non-A).
6	2011–2011	Mercedes-Benz	E-Class Cabrio DAB (A).
6	2010–2011	Mercedes-Benz	E-Class Coupe DAB (Non-A).
6	2010–2011	Mercedes-Benz	E-Class DAB (Non-A).
6	2010–2012	Mercedes-Benz	GL-Class DAB (Non-A).
6	2010–2012	Mercedes-Benz	GLK Class DAB (Non-A).
6	2010–2011	Mercedes-Benz	ML-Class DAB (Non-A).
6	2010–2012	Mercedes-Benz	R-Class DAB (Non-A).
6	2012–2014	Mercedes-Benz	SLS-Class DAB (Non-A).
6	2013–2014	Mercedes-Benz	Sprinter DAB (A).
6	2013–2014	Mercedes-Benz	Sprinter DAB (Non-A).
6	2010–2011	Mercury	Milan PAB (A).
6	2006–2008	Mercury	Milan PAB (Non-A).
6	2006–2006	Saab	9–2X PAB (Non-A).
6	2010–2011	Saab	9–3 DAB (A).
6	2010–2011	Saab	9–3 DAB (Non-A).
6	2011–2011	Scion	xB PAB (A).
6	2003–2004, 2006	Subaru	Baja PAB (Non-A).
6	2010–2011	Subaru	Forester PAB (A).
6	2010–2011	Subaru	Impreza PAB (A).
6	2006–2008	Subaru	Impreza PAB (Non-A).
6	2010–2011	Subaru	Legacy PAB (A).
6	2003–2004	Subaru	Legacy PAB (Non-A).
6	2010–2011	Subaru	Outback PAB (A).
6	2003–2004	Subaru	Outback PAB (Non-A).
6	2010–2011	Subaru	Tribeca PAB (A).
6	2006–2008	Subaru	Tribeca PAB (Non-A).
6	2011–2011	Toyota	4Runner PAB (A).
6	2011–2011	Toyota	Corolla Matrix PAB (A).
6	2011–2011	Toyota	Corolla PAB (A).
6	2011–2011	Toyota	Sienna PAB (A).
6	2011–2011	Toyota	Yaris HB PAB (A).
6	2011–2011	Toyota	Yaris PAB (A).
6	2010–2014	Volkswagen	CC DAB (Non-A).
6	2010–2014	Volkswagen	Eos DAB (Non-A).
6	2010–2014	Volkswagen	Golf DAB (Non-A).
6	2011–2013	Volkswagen	GTI DAB (Non-A).
6	2012–2014	Volkswagen	Passat DAB (Non-A).
6	2010–2010	Volkswagen	Passat Sedan DAB (Non-A).
6	2006–2008	Volkswagen	Passat Wagon DAB (Non-A).
6	2010–2010	Volkswagen	Passat Wagon DAB (Non-A).
7	2012–2012	Acura	RL PAB (A).
7	2012–2012	Acura	TSX PAB (A).
7	2012–2012	Acura	ZDX PAB (A).
7	2012–2012	BMW	X5 PAB (A).
7	2012–2012	BMW	X6 PAB (A).
7	2012–2012	Cadillac	Escalade ESV PAB (A).
7	2012–2012	Cadillac	Escalade EXT PAB (A).

PG	Model years	Make	Model, inflator position & (zone) [23]
7	2012–2012	Cadillac	Escalade PAB (A).
7	2012–2012	Chevrolet	Avalanche PAB (A).
7	2012–2012	Chevrolet	Silverado HD PAB (A).
7	2012–2012	Chevrolet	Silverado LD PAB (A).
7	2012–2012	Chevrolet	Suburban PAB (A).
7	2012–2012	Chevrolet	Tahoe PAB (A).
7	2012–2012	Ferrari	458 Italia PAB (A).
7	2012–2012	Ferrari	458 Spider PAB (A).
7	2012–2012	Ferrari	California PAB (A).
7	2012–2012	Ferrari	FF PAB (A).
7	2012–2012	Fisker	Karma PAB (A).
7	2012–2012	Ford	Fusion PAB (A).
7	2012–2012	Ford	Mustang PAB (A).
7	2012–2012	GMC	Sierra HD PAB (A).
7	2012–2012	GMC	Sierra LD PAB (A).
7	2012–2012	GMC	Yukon PAB (A).
7	2012–2012	GMC	Yukon XL PAB (A).
7	2012–2012	Honda	ACCORD PAB (A).
7	2012–2012	Honda	CROSSTOUR PAB (A).
7	2012–2012	Honda	FCX CLARITY PAB (A).
7	2012–2012	Honda	FIT PAB (A).
7	2012–2012	Honda	INSIGHT PAB (A).
7	2012–2012	Honda	PILOT PAB (A).
7	2012–2012	Honda	RIDGELINE PAB (A).
7	2012–2012	Jaguar	XF PAB (A).
7	2012–2012	Land Rover	Range Rover PAB (A).
7	2012–2012	Lexus	ES350 PAB (A).
7	2012–2012	Lexus	GX460 PAB (A).
7	2012–2012	Lexus	IS250/350 PAB (A).
7	2012–2012	Lexus	IS250C/350C PAB (A).
7	2012–2012	Lexus	IS–F PAB (A).
7	2012–2012	Lexus	LFA PAB (A).
7	2012–2012	Lincoln	Zephyr/MKZ PAB (A).
7	2012–2012	Mazda	CX7 PAB (A).
7	2012–2012	Mazda	CX9 PAB (A).
7	2012–2012	McLaren	MP4–12C PAB (A).
7	2011–2011	McLaren	P1TM PAB (A).
7	2012–2012	Mercedes-Benz	C-Class PAB (A).
7	2012–2012	Mercedes-Benz	E-Class Cabrio PAB (A).
7	2012–2012	Mercedes-Benz	E-Class Coupe PAB (A).
7	2012–2012	Mercedes-Benz	GLK Class PAB (A).
7	2012–2012	Mercedes-Benz	SLS-Class PAB (A).
7	2012, 2014	Mitsubishi	i-MiEV PAB (A).
7	2012–2012	Nissan	Versa PAB (A).
7	2012–2012	Scion	xB PAB (A).
7	2012–2012	Subaru	Forester PAB (A).
7	2012–2012	Subaru	Legacy PAB (A).
7	2012–2012	Subaru	Outback PAB (A).
7	2012–2012	Subaru	Tribeca PAB (A).
7	2012–2012	Subaru	WRX/STI PAB (A).
7	2012–2012	Tesla	Model S PAB (A).
7	2012–2012	Toyota	4Runner PAB (A).
7	2012–2012	Toyota	Corolla PAB (A).
7	2012–2012	Toyota	Matrix PAB (A).
7	2012–2012	Toyota	Sienna PAB (A).
7	2012–2012	Toyota	Yaris (Sedan) PAB (A).
8	2006–2006	Acura	MDX PAB (C).
8	2009–2009	Acura	RL PAB (B).
8	2010–2010	Acura	RL PAB (B).
8	2006–2008	Acura	RL PAB (C).
8	2009–2009	Acura	RL PAB (C).
8	2009–2009	Acura	TSX PAB (B).
8	2005–2008	Audi	A4 Avant PAB (C).
8	2009–2009	Audi	A4 Cabriolet PAB (B).
8	2007–2008	Audi	A4 Cabriolet PAB (C).
8	2005–2008	Audi	A4 Sedan PAB (C).
8	2009–2009	Audi	A6 Avant PAB (B).
8	2006–2008	Audi	A6 Avant PAB (C).
8	2009–2009	Audi	A6 Sedan PAB (B).
8	2005–2008	Audi	A6 Sedan PAB (C).
8	2008–2008	Audi	RS 4 Cabriolet PAB (C).
8	2007–2008	Audi	RS 4 Sedan PAB (C).
8	2005–2008	Audi	S4 Avant PAB (C).

PG	Model years	Make	Model, inflator position & (zone) [23]
8	2009–2009	Audi	S4 Cabriolet PAB (B).
8	2007–2009	Audi	S4 Cabriolet PAB (C).
8	2005–2008	Audi	S4 Sedan PAB (C).
8	2009–2009	Audi	S6 Sedan PAB (B).
8	2007–2008	Audi	S6 Sedan PAB (C).
8	2009–2009	BMW	X5 PAB (B).
8	2007–2008	BMW	X5 PAB (C).
8	2009–2009	BMW	X6 PAB (B).
8	2008–2008	BMW	X6 PAB (C).
8	2009–2009	Cadillac	Escalade ESV PAB (B).
8	2007–2008	Cadillac	Escalade ESV PAB (C).
8	2009–2009	Cadillac	Escalade EXT PAB (B).
8	2007–2008	Cadillac	Escalade EXT PAB (C).
8	2009–2009	Cadillac	Escalade PAB (B).
8	2007–2008	Cadillac	Escalade PAB (C).
8	2009–2009	Chevrolet	Avalanche PAB (B).
8	2007–2008	Chevrolet	Avalanche PAB (C).
8	2009–2009	Chevrolet	Silverado HD PAB (B).
8	2009–2009	Chevrolet	Silverado LD PAB (B).
8	2007–2008	Chevrolet	Silverado LD PAB (C).
8	2009–2009	Chevrolet	Suburban PAB (B).
8	2007–2008	Chevrolet	Suburban PAB (C).
8	2009–2009	Chevrolet	Tahoe PAB (B).
8	2007–2008	Chevrolet	Tahoe PAB (C).
8	2012–2012	Ferrari	458 Italia PAB (B).
8	2012–2012	Ferrari	458 Italia PAB (C).
8	2012–2012	Ferrari	458 Spider PAB (B).
8	2012–2012	Ferrari	458 Spider PAB (C).
8	2012–2012	Ferrari	California PAB (B).
8	2012–2012	Ferrari	California PAB (C).
8	2012–2012	Ferrari	FF PAB (B).
8	2012–2012	Ferrari	FF PAB (C).
8	2009–2009	Ford	Edge PAB (B).
8	2007–2008	Ford	Edge PAB (C).
8	2009–2009	Ford	Fusion PAB (B).
8	2006–2008	Ford	Fusion PAB (C).
8	2005–2006	Ford	GT PAB (C).
8	2009–2009	Ford	Mustang PAB (B).
8	2005–2008	Ford	Mustang PAB (C).
8	2009–2009	Ford	Ranger PAB (B).
8	2007–2008	Ford	Ranger PAB (C).
8	2009–2009	Freightliner	Sprinter PAB (B).
8	2007–2008	Freightliner	Sprinter PAB (C).
8	2009–2009	GMC	Sierra HD PAB (B).
8	2009–2009	GMC	Sierra LD PAB (B).
8	2007–2008	GMC	Sierra LD PAB (C).
8	2009–2009	GMC	Yukon PAB (B).
8	2007–2008	GMC	Yukon PAB (C).
8	2009–2009	GMC	Yukon XL PAB (B).
8	2007–2008	GMC	Yukon XL PAB (C).
8	2009–2009	Honda	ACCORD PAB (B).
8	2008–2008	Honda	ACCORD PAB (C).
8	2009–2009	Honda	CIVIC HYBRID PAB (B).
8	2006–2008	Honda	CIVIC HYBRID PAB (C).
8	2009–2009	Honda	CIVIC NGV PAB (B).
8	2006–2008	Honda	CIVIC NGV PAB (C).
8	2009–2009	Honda	CIVIC PAB (B).
8	2006–2008	Honda	CIVIC PAB (C).
8	2009–2009	Honda	CR–V PAB (B).
8	2006–2008	Honda	CR–V PAB (C).
8	2009–2009	Honda	ELEMENT PAB (B).
8	2005–2008	Honda	ELEMENT PAB (C).
8	2009–2009	Honda	FIT PAB (B).
8	2007–2008	Honda	FIT PAB (C).
8	2009–2009	Honda	PILOT PAB (B).
8	2006–2008	Honda	PILOT PAB (C).
8	2009–2009	Honda	RIDGELINE PAB (B).
8	2007–2008	Honda	RIDGELINE PAB (C).
8	2006–2008	Infiniti	FX PAB (C).
8	2009–2009	Infiniti	M PAB (B).
8	2008–2008	Infiniti	M PAB (C).
8	2009–2009	Jaguar	XF PAB (B).
8	2009–2009	Land Rover	Range Rover PAB (B).

PG	Model years	Make	Model, inflator position & (zone) [23]
8	2007–2008	Land Rover	Range Rover PAB (C).
8	2009–2009	Lexus	ES350 PAB (B).
8	2007–2008	Lexus	ES350 PAB (C).
8	2009–2009	Lexus	IS250/350 PAB (B).
8	2006–2008	Lexus	IS250/350 PAB (C).
8	2009–2009	Lexus	IS–F PAB (B).
8	2008–2008	Lexus	IS–F PAB (C).
8	2009–2009	Lincoln	MKX PAB (B).
8	2007–2008	Lincoln	MKX PAB (C).
8	2009–2009	Lincoln	Zephyr/MKZ PAB (B).
8	2006–2008	Lincoln	Zephyr/MKZ PAB (C).
8	2009–2009	Mazda	B-Series PAB (B).
8	2007–2008	Mazda	B-Series PAB (C).
8	2009–2009	Mazda	CX7 PAB (B).
8	2007–2008	Mazda	CX7 PAB (C).
8	2009–2009	Mazda	CX9 PAB (B).
8	2007–2008	Mazda	CX9 PAB (C).
8	2009–2009	Mazda	Mazda6 PAB (B).
8	2005–2006	Mazda	MPV PAB (C).
8	2009–2009	Mazda	RX8 PAB (B).
8	2012–2012	McLaren	MP4–12C PAB (B).
8	2012–2012	McLaren	MP4–12C PAB (C).
8	2008–2008	Mercedes-Benz	C-Class PAB (C).
8	2009–2009	Mercury	Milan PAB (B).
8	2006–2008	Mercury	Milan PAB (C).
8	2012, 2014	Mitsubishi	i-MiEV PAB (B).
8	2012, 2014	Mitsubishi	i-MiEV PAB (C).
8	2009–2009	Nissan	Versa PAB (B).
8	2008–2008	Nissan	Versa PAB (C).
8	2009–2009	Pontiac	Vibe PAB (B).
8	2006–2006	Saab	9–2x PAB (C).
8	2009–2009	Scion	xB PAB (B).
8	2008–2008	Scion	xB PAB (C).
8	2005–2006	Subaru	Baja PAB (C).
8	2009–2009	Subaru	Forester PAB (B).
8	2009–2009	Subaru	Impreza PAB (B).
8	2006–2008	Subaru	Impreza PAB (C).
8	2009–2009	Subaru	Legacy PAB (B).
8	2009–2009	Subaru	Outback PAB (B).
8	2009–2009	Subaru	Tribeca PAB (B).
8	2006–2008	Subaru	Tribeca PAB (C).
8	2009–2009	Toyota	Corolla PAB (B).
8	2009–2009	Toyota	Matrix PAB (B).
8	2009–2009	Toyota	Yaris (Hatch Back) PAB (B).
8	2007–2008	Toyota	Yaris (Hatch Back) PAB (C).
8	2009–2009	Toyota	Yaris (Sedan) PAB (B).
8	2007–2008	Toyota	Yaris (Sedan) PAB (C).
9	2011–2012	Acura	RL PAB (B).
9	2010–2012	Acura	RL PAB (C).
9	2013–2013	Acura	TSX PAB (A).
9	2014–2014	Acura	TSX PAB (A).
9	2010–2010	Acura	TSX PAB (B).
9	2011–2014	Acura	TSX PAB (B).
9	2009–2009	Acura	TSX PAB (C).
9	2013–2013	Acura	ZDX PAB (A).
9	2010–2010	Acura	ZDX PAB (B).
9	2009–2009	Audi	A4 Cabriolet PAB (C).
9	2010–2010	Audi	A6 Avant PAB (B).
9	2009–2009	Audi	A6 Avant PAB (C).
9	2010–2010	Audi	A6 Sedan PAB (B).
9	2009–2009	Audi	A6 Sedan PAB (C).
9	2010–2010	Audi	S6 Sedan PAB (B).
9	2009–2009	Audi	S6 Sedan PAB (C).
9	2013–2013	BMW	X5 PAB (A).
9	2010–2010	BMW	X5 PAB (B).
9	2009–2011	BMW	X5 PAB (C).
9	2010–2010	BMW	X6 Hybrid PAB (B).
9	2013–2013	BMW	X6 PAB (A).
9	2010–2010	BMW	X6 PAB (B).
9	2009–2009	BMW	X6 PAB (C).
9	2013–2013	Cadillac	Escalade ESV PAB (A).
9	2010–2010	Cadillac	Escalade ESV PAB (B).
9	2009–2009	Cadillac	Escalade ESV PAB (C).

PG	Model years	Make	Model, inflator position & (zone) [23]
9	2013–2013	Cadillac	Escalade EXT PAB (A).
9	2010–2010	Cadillac	Escalade EXT PAB (B).
9	2009–2009	Cadillac	Escalade EXT PAB (C).
9	2013–2013	Cadillac	Escalade PAB (A).
9	2010–2010	Cadillac	Escalade PAB (B).
9	2009–2009	Cadillac	Escalade PAB (C).
9	2013–2013	Chevrolet	Avalanche PAB (A).
9	2010–2010	Chevrolet	Avalanche PAB (B).
9	2009–2009	Chevrolet	Avalanche PAB (C).
9	2013–2013	Chevrolet	Silverado HD PAB (A).
9	2010–2010	Chevrolet	Silverado HD PAB (B).
9	2009–2009	Chevrolet	Silverado HD PAB (C).
9	2013–2013	Chevrolet	Silverado LD PAB (A).
9	2010–2010	Chevrolet	Silverado LD PAB (B).
9	2009–2009	Chevrolet	Silverado LD PAB (C).
9	2013–2013	Chevrolet	Suburban PAB (A).
9	2010–2010	Chevrolet	Suburban PAB (B).
9	2009–2009	Chevrolet	Suburban PAB (C).
9	2013–2013	Chevrolet	Tahoe PAB (A).
9	2010–2010	Chevrolet	Tahoe PAB (B).
9	2009–2009	Chevrolet	Tahoe PAB (C).
9	2013–2013	Chrysler	300 PAB (A).
9	2010–2010	Chrysler	300 PAB (B).
9	2009–2009	Chrysler	300 PAB (C).
9	2009–2009	Chrysler	Aspen PAB (C).
9	2013–2013	Dodge	Challenger PAB (A).
9	2010–2010	Dodge	Challenger PAB (B).
9	2009–2009	Dodge	Challenger PAB (C).
9	2013–2013	Dodge	Charger PAB (A).
9	2010–2010	Dodge	Charger PAB (B).
9	2009–2009	Dodge	Charger PAB (C).
9	2010–2010	Dodge	Dakota PAB (B).
9	2009–2009	Dodge	Dakota PAB (C).
9	2009–2009	Dodge	Durango PAB (C).
9	2009–2009	Dodge	Ram 2500 Pickup PAB (C).
9	2010–2010	Dodge	Ram 3500 Cab Chassis PAB (B).
9	2009–2009	Dodge	Ram 3500 Cab Chassis PAB (C).
9	2009–2009	Dodge	Ram 3500 Pickup PAB (C).
9	2010–2010	Dodge	Ram 4500/5500 Cab Chassis PAB (B).
9	2009–2009	Dodge	Ram 4500/5500 Cab Chassis PAB (C).
9	2013–2013	Ferrari	458 Italia PAB (A).
9	2013–2013	Ferrari	458 Italia PAB (B).
9	2013–2013	Ferrari	458 Italia PAB (C).
9	2013–2013	Ferrari	458 Spider PAB (A).
9	2013–2013	Ferrari	458 Spider PAB (B).
9	2013–2013	Ferrari	458 Spider PAB (C).
9	2013–2013	Ferrari	California PAB (A).
9	2013–2013	Ferrari	California PAB (B).
9	2013–2013	Ferrari	California PAB (C).
9	2013–2013	Ferrari	F12 PAB (A).
9	2013–2013	Ferrari	F12 PAB (B).
9	2013–2013	Ferrari	F12 PAB (C).
9	2013–2013	Ferrari	FF PAB (A).
9	2013–2013	Ferrari	FF PAB (B).
9	2013–2013	Ferrari	FF PAB (C).
9	2010–2010	Ford	Edge PAB (B).
9	2009–2009	Ford	Edge PAB (C).
9	2010–2010	Ford	Fusion PAB (B).
9	2009–2009	Ford	Fusion PAB (C).
9	2013–2013	Ford	Mustang PAB (A).
9	2010–2010	Ford	Mustang PAB (B).
9	2009–2009	Ford	Mustang PAB (C).
9	2010–2010	Ford	Ranger PAB (B).
9	2009–2009	Ford	Ranger PAB (C).
9	2010–2010	Freightliner	Sprinter PAB (B).
9	2009–2009	Freightliner	Sprinter PAB (C).
9	2013–2013	GMC	Sierra HD PAB (A).
9	2010–2010	GMC	Sierra HD PAB (B).
9	2009–2009	GMC	Sierra HD PAB (C).
9	2013–2013	GMC	Sierra LD PAB (A).
9	2010–2010	GMC	Sierra LD PAB (B).
9	2009–2009	GMC	Sierra LD PAB (C).
9	2013–2013	GMC	Yukon PAB (A).

PG	Model years	Make	Model, inflator position & (zone) [23]
9	2010–2010	GMC	Yukon PAB (B).
9	2009–2009	GMC	Yukon PAB (C).
9	2013–2013	GMC	Yukon XL PAB (A).
9	2010–2010	GMC	Yukon XL PAB (B).
9	2009–2009	GMC	Yukon XL PAB (C).
9	2010–2010	Honda	ACCORD PAB (B).
9	2009–2009	Honda	ACCORD PAB (C).
9	2010–2010	Honda	CIVIC HYBRID PAB (B).
9	2009–2009	Honda	CIVIC HYBRID PAB (C).
9	2010–2010	Honda	CIVIC NGV PAB (B).
9	2009–2009	Honda	CIVIC NGV PAB (C).
9	2010–2010	Honda	CIVIC PAB (B).
9	2009–2009	Honda	CIVIC PAB (C).
9	2013–2013	Honda	CROSSTOUR PAB (A).
9	2010–2010	Honda	CROSSTOUR PAB (B).
9	2010–2010	Honda	CR–V PAB (B).
9	2009–2009	Honda	CR–V PAB (C).
9	2010–2010	Honda	ELEMENT PAB (B).
9	2009–2009	Honda	ELEMENT PAB (C).
9	2013–2013	Honda	FCX CLARITY PAB (A).
9	2013–2013	Honda	FIT EV PAB (A).
9	2013–2013	Honda	FIT PAB (A).
9	2010–2010	Honda	FIT PAB (B).
9	2009–2009	Honda	FIT PAB (C).
9	2013–2013	Honda	INSIGHT PAB (A).
9	2010–2010	Honda	INSIGHT PAB (B).
9	2013–2013	Honda	PILOT PAB (A).
9	2010–2010	Honda	PILOT PAB (B).
9	2009–2009	Honda	PILOT PAB (C).
9	2013–2013	Honda	RIDGELINE PAB (A).
9	2010–2010	Honda	RIDGELINE PAB (B).
9	2009–2009	Honda	RIDGELINE PAB (C).
9	2010–2010	Infiniti	M PAB (B).
9	2009–2009	Infiniti	M PAB (C).
9	2013–2013	Jaguar	XF PAB (A).
9	2010–2010	Jaguar	XF PAB (B).
9	2009–2009	Jaguar	XF PAB (C).
9	2013–2013	Jeep	Wrangler PAB (A).
9	2010–2010	Jeep	Wrangler PAB (B).
9	2009–2009	Jeep	Wrangler PAB (C).
9	2010–2010	Land Rover	Range Rover PAB (B).
9	2009–2009	Land Rover	Range Rover PAB (C).
9	2010–2010	Lexus	ES350 PAB (B).
9	2009–2009	Lexus	ES350 PAB (C).
9	2013–2013	Lexus	GX460 PAB (A).
9	2010–2010	Lexus	GX460 PAB (B).
9	2013–2013	Lexus	IS250/350 PAB (A).
9	2010–2010	Lexus	IS250/350 PAB (B).
9	2009–2009	Lexus	IS250/350 PAB (C).
9	2013–2013	Lexus	IS250C/350C PAB (A).
9	2010–2010	Lexus	IS250C/350C PAB (B).
9	2013–2013	Lexus	IS–F PAB (A).
9	2010–2010	Lexus	IS–F PAB (B).
9	2009–2009	Lexus	IS–F PAB (C).
9	2010–2010	Lincoln	MKX PAB (B).
9	2009–2009	Lincoln	MKX PAB (C).
9	2010–2010	Lincoln	Zephyr/MKZ PAB (B).
9	2009–2009	Lincoln	Zephyr/MKZ PAB (C).
9	2009–2009	Mazda	B-Series PAB (C).
9	2010–2010	Mazda	CX7 PAB (B).
9	2009–2009	Mazda	CX7 PAB (C).
9	2013–2013	Mazda	CX9 PAB (A).
9	2010–2010	Mazda	CX9 PAB (B).
9	2009–2009	Mazda	CX9 PAB (C).
9	2010–2010	Mazda	Mazda6 PAB (B).
9	2009–2009	Mazda	Mazda6 PAB (C).
9	2010–2010	Mazda	RX8 PAB (B).
9	2009–2009	Mazda	RX8 PAB (C).
9	2013–2013	McLaren	MP4–12C PAB (A).
9	2013–2013	McLaren	MP4–12C PAB (B).
9	2013–2013	McLaren	MP4–12C PAB (C).
9	2013–2013	McLaren	P1TM PAB (A).
9	2013–2013	Mercedes-Benz	C-Class PAB (A).

PG	Model years	Make	Model, inflator position & (zone) [23]
9	2010–2010	Mercedes-Benz	C-Class PAB (B).
9	2009–2009	Mercedes-Benz	C-Class PAB (C).
9	2013–2013	Mercedes-Benz	E-Class Cabrio PAB (A).
9	2013–2013	Mercedes-Benz	E-Class Coupe PAB (A).
9	2010–2010	Mercedes-Benz	E-Class Coupe PAB (B).
9	2013–2013	Mercedes-Benz	GLK Class PAB (A).
9	2010–2010	Mercedes-Benz	GLK Class PAB (B).
9	2013–2013	Mercedes-Benz	SLS-Class PAB (A).
9	2010–2010	Mercedes-Benz	Sprinter PAB (B).
9	2010–2010	Mercury	Milan PAB (B).
9	2009–2009	Mercury	Milan PAB (C).
9	2009–2009	Mitsubishi	Raider PAB (C).
9	2010–2010	Nissan	Versa PAB (B).
9	2009–2009	Nissan	Versa PAB (C).
9	2010–2010	Pontiac	Vibe PAB (B).
9	2009–2009	Pontiac	Vibe PAB (C).
9	2013–2013	Scion	xB PAB (A).
9	2010–2010	Scion	xB PAB (B).
9	2009–2009	Scion	xB PAB (C).
9	2013–2013	Subaru	Forester PAB (A).
9	2010–2010	Subaru	Forester PAB (B).
9	2009–2009	Subaru	Forester PAB (C).
9	2010–2010	Subaru	Impreza PAB (B).
9	2009–2009	Subaru	Impreza PAB (C).
9	2013–2013	Subaru	Legacy PAB (A).
9	2010–2010	Subaru	Legacy PAB (B).
9	2009–2009	Subaru	Legacy PAB (C).
9	2013–2013	Subaru	Outback PAB (A).
9	2010–2010	Subaru	Outback PAB (B).
9	2009–2009	Subaru	Outback PAB (C).
9	2013–2013	Subaru	Tribeca PAB (A).
9	2010–2010	Subaru	Tribeca PAB (B).
9	2009–2009	Subaru	Tribeca PAB (C).
9	2013–2013	Subaru	WRX/STI PAB (A).
9	2013–2013	Tesla	Model S PAB (A).
9	2013–2013	Toyota	4Runner PAB (A).
9	2010–2010	Toyota	4Runner PAB (B).
9	2013–2013	Toyota	Corolla PAB (A).
9	2010–2010	Toyota	Corolla PAB (B).
9	2009–2009	Toyota	Corolla PAB (C).
9	2013–2013	Toyota	Matrix PAB (A).
9	2010–2010	Toyota	Matrix PAB (B).
9	2009–2009	Toyota	Matrix PAB (C).
9	2013–2013	Toyota	Sienna PAB (A).
9	2010–2010	Toyota	Yaris (Hatch Back) PAB (B).
9	2009–2009	Toyota	Yaris (Hatch Back) PAB (C).
9	2010–2010	Toyota	Yaris (Sedan) PAB (B).
9	2009–2009	Toyota	Yaris (Sedan) PAB (C).
10	2010–2014	Acura	TSX PAB (C).
10	2011–2013	Acura	ZDX PAB (B).
10	2010–2013	Acura	ZDX PAB (C).
10	2011–2011	Audi	A6 Avant PAB (B).
10	2010–2011	Audi	A6 Avant PAB (C).
10	2011–2011	Audi	A6 Sedan PAB (B).
10	2010–2011	Audi	A6 Sedan PAB (C).
10	2017–2017	Audi	R8 DAB (A).
10	2017–2017	Audi	R8 DAB (B).
10	2017–2017	Audi	R8 DAB (C).
10	2011–2011	Audi	S6 Sedan PAB (B).
10	2010–2011	Audi	S6 Sedan PAB (C).
10	2016–2017	Audi	TT DAB (A).
10	2016–2017	Audi	TT DAB (B).
10	2016–2017	Audi	TT DAB (C).
10	2015–2015	BMW	X1 DAB (A).
10	2015–2015	BMW	X1 DAB (B).
10	2015–2015	BMW	X1 DAB (C).
10	2011–2013	BMW	X5 PAB (B).
10	2012–2013	BMW	X5 PAB (C).
10	2011–2011	BMW	X6 Hybrid PAB (B).
10	2010–2011	BMW	X6 Hybrid PAB (C).
10	2014–2014	BMW	X6 PAB (A).
10	2011–2014	BMW	X6 PAB (B).
10	2010–2014	BMW	X6 PAB (C).

PG	Model years	Make	Model, inflator position & (zone) [23]
10	2014–2014	Cadillac	Escalade ESV PAB (A).
10	2011–2014	Cadillac	Escalade ESV PAB (B).
10	2010–2014	Cadillac	Escalade ESV PAB (C).
10	2011–2013	Cadillac	Escalade EXT PAB (B).
10	2010–2013	Cadillac	Escalade EXT PAB (C).
10	2014–2014	Cadillac	Escalade PAB (A).
10	2011–2014	Cadillac	Escalade PAB (B).
10	2010–2014	Cadillac	Escalade PAB (C).
10	2011–2013	Chevrolet	Avalanche PAB (B).
10	2010–2013	Chevrolet	Avalanche PAB (C).
10	2014–2014	Chevrolet	Silverado HD PAB (A).
10	2011–2014	Chevrolet	Silverado HD PAB (B).
10	2010–2014	Chevrolet	Silverado HD PAB (C).
10	2011–2013	Chevrolet	Silverado LD PAB (B).
10	2010–2013	Chevrolet	Silverado LD PAB (C).
10	2014–2014	Chevrolet	Suburban PAB (A).
10	2011–2014	Chevrolet	Suburban PAB (B).
10	2010–2014	Chevrolet	Suburban PAB (C).
10	2014–2014	Chevrolet	Tahoe PAB (A).
10	2011–2014	Chevrolet	Tahoe PAB (B).
10	2010–2014	Chevrolet	Tahoe PAB (C).
10	2014–2015	Chrysler	300 PAB (A).
10	2011–2015	Chrysler	300 PAB (B).
10	2010–2015	Chrysler	300 PAB (C).
10	2014–2014	Dodge	Challenger PAB (A).
10	2011–2014	Dodge	Challenger PAB (B).
10	2010–2014	Dodge	Challenger PAB (C).
10	2014–2015	Dodge	Charger PAB (A).
10	2011–2015	Dodge	Charger PAB (B).
10	2010–2015	Dodge	Charger PAB (C).
10	2011–2011	Dodge	Dakota PAB (B).
10	2010–2011	Dodge	Dakota PAB (C).
10	2010–2010	Dodge	Ram 3500 Cab Chassis PAB (C).
10	2010–2010	Dodge	Ram 4500/5500 Cab Chassis PAB (C).
10	2014–2015	Ferrari	458 Italia PAB (A).
10	2014–2015	Ferrari	458 Italia PAB (B).
10	2014–2015	Ferrari	458 Italia PAB (C).
10	2015–2015	Ferrari	458 Speciale A PAB (A).
10	2015–2015	Ferrari	458 Speciale A PAB (B).
10	2015–2015	Ferrari	458 Speciale A PAB (C).
10	2014–2015	Ferrari	458 Speciale PAB (A).
10	2014–2015	Ferrari	458 Speciale PAB (B).
10	2014–2015	Ferrari	458 Speciale PAB (C).
10	2014–2015	Ferrari	458 Spider PAB (A).
10	2014–2015	Ferrari	458 Spider PAB (B).
10	2014–2015	Ferrari	458 Spider PAB (C).
10	2016–2017	Ferrari	488 GTB PAB (A).
10	2016–2017	Ferrari	488 GTB PAB (B).
10	2016–2017	Ferrari	488 GTB PAB (C).
10	2016–2017	Ferrari	488 Spider PAB (A).
10	2016–2017	Ferrari	488 Spider PAB (B).
10	2016–2017	Ferrari	488 Spider PAB (C).
10	2014–2014	Ferrari	California PAB (A).
10	2014–2014	Ferrari	California PAB (B).
10	2014–2014	Ferrari	California PAB (C).
10	2015–2017	Ferrari	California T PAB (A).
10	2015–2017	Ferrari	California T PAB (B).
10	2015–2017	Ferrari	California T PAB (C).
10	2014–2017	Ferrari	F12 PAB (A).
10	2014–2017	Ferrari	F12 PAB (B).
10	2014–2017	Ferrari	F12 PAB (C).
10	2016–2017	Ferrari	F12 tdf PAB (A).
10	2016–2017	Ferrari	F12 tdf PAB (B).
10	2016–2017	Ferrari	F12 tdf PAB (C).
10	2016–2016	Ferrari	F60 PAB (A).
10	2016–2016	Ferrari	F60 PAB (B).
10	2016–2016	Ferrari	F60 PAB (C).
10	2014–2016	Ferrari	FF PAB (A).
10	2014–2016	Ferrari	FF PAB (B).
10	2014–2016	Ferrari	FF PAB (C).
10	2017–2017	Ferrari	GTC4Lusso PAB (A).
10	2017–2017	Ferrari	GTC4Lusso PAB (B).
10	2017–2017	Ferrari	GTC4Lusso PAB (C).

PG	Model years	Make	Model, inflator position & (zone) [23]
10	2012–2012	Fisker	Karma PAB (B).
10	2012–2012	Fisker	Karma PAB (C).
10	2010–2010	Ford	Edge PAB (C).
10	2011–2012	Ford	Fusion PAB (B).
10	2010–2012	Ford	Fusion PAB (C).
10	2014–2014	Ford	Mustang PAB (A).
10	2011–2014	Ford	Mustang PAB (B).
10	2010–2014	Ford	Mustang PAB (C).
10	2011–2011	Ford	Ranger PAB (B).
10	2010–2011	Ford	Ranger PAB (C).
10	2015–2017	Freightliner	Sprinter DAB (A).
10	2015–2017	Freightliner	Sprinter DAB (B).
10	2015–2017	Freightliner	Sprinter DAB (C).
10	2011–2011	Freightliner	Sprinter PAB (B).
10	2010–2011	Freightliner	Sprinter PAB (C).
10	2014–2014	GMC	Sierra HD PAB (A).
10	2011–2014	GMC	Sierra HD PAB (B).
10	2010–2014	GMC	Sierra HD PAB (C).
10	2011–2013	GMC	Sierra LD PAB (B).
10	2010–2013	GMC	Sierra LD PAB (C).
10	2014–2014	GMC	Yukon PAB (A).
10	2011–2014	GMC	Yukon PAB (B).
10	2010–2014	GMC	Yukon PAB (C).
10	2014–2014	GMC	Yukon XL PAB (A).
10	2011–2014	GMC	Yukon XL PAB (B).
10	2010–2014	GMC	Yukon XL PAB (C).
10	2011–2012	Honda	ACCORD PAB (B).
10	2010–2012	Honda	ACCORD PAB (C).
10	2011–2011	Honda	CIVIC HYBRID PAB (B).
10	2010–2011	Honda	CIVIC HYBRID PAB (C).
10	2011–2011	Honda	CIVIC NGV PAB (B).
10	2010–2011	Honda	CIVIC NGV PAB (C).
10	2011–2011	Honda	CIVIC PAB (B).
10	2010–2011	Honda	CIVIC PAB (C).
10	2014–2015	Honda	CROSSTOUR PAB (A).
10	2011–2015	Honda	CROSSTOUR PAB (B).
10	2010–2015	Honda	CROSSTOUR PAB (C).
10	2011–2011	Honda	CR–V PAB (B).
10	2010–2011	Honda	CR–V PAB (C).
10	2011–2011	Honda	ELEMENT PAB (B).
10	2010–2011	Honda	ELEMENT PAB (C).
10	2014–2014	Honda	FCX CLARITY PAB (A).
10	2014–2014	Honda	FIT EV PAB (A).
10	2011–2013	Honda	FIT PAB (B).
10	2010–2013	Honda	FIT PAB (C).
10	2014–2014	Honda	INSIGHT PAB (A).
10	2011–2014	Honda	INSIGHT PAB (B).
10	2010–2014	Honda	INSIGHT PAB (C).
10	2014–2015	Honda	PILOT PAB (A).
10	2011–2015	Honda	PILOT PAB (B).
10	2010–2015	Honda	PILOT PAB (C).
10	2014–2014	Honda	RIDGELINE PAB (A).
10	2011–2014	Honda	RIDGELINE PAB (B).
10	2010–2014	Honda	RIDGELINE PAB (C).
10	2010–2010	Infiniti	M PAB (C).
10	2014–2015	Jaguar	XF PAB (A).
10	2011–2015	Jaguar	XF PAB (B).
10	2010–2015	Jaguar	XF PAB (C).
10	2014–2016	Jeep	Wrangler PAB (A).
10	2011–2016	Jeep	Wrangler PAB (B).
10	2010–2016	Jeep	Wrangler PAB (C).
10	2011–2012	Land Rover	Range Rover PAB (B).
10	2010–2012	Land Rover	Range Rover PAB (C).
10	2011–2012	Lexus	ES350 PAB (B).
10	2010–2012	Lexus	ES350 PAB (C).
10	2014–2017	Lexus	GX460 PAB (A).
10	2011–2017	Lexus	GX460 PAB (B).
10	2010–2017	Lexus	GX460 PAB (C).
10	2011–2013	Lexus	IS250/350 PAB (B).
10	2010–2013	Lexus	IS250/350 PAB (C).
10	2014–2015	Lexus	IS250C/350C PAB (A).
10	2011–2015	Lexus	IS250C/350C PAB (B).
10	2010–2015	Lexus	IS250C/350C PAB (C).

PG	Model years	Make	Model, inflator position & (zone) [23]
10	2014–2014	Lexus	IS–F PAB (A).
10	2011–2014	Lexus	IS–F PAB (B).
10	2010–2014	Lexus	IS–F PAB (C).
10	2012–2012	Lexus	LFA PAB (B).
10	2012–2012	Lexus	LFA PAB (C).
10	2010–2010	Lincoln	MKX PAB (C).
10	2011–2012	Lincoln	Zephyr/MKZ PAB (B).
10	2010–2012	Lincoln	Zephyr/MKZ PAB (C).
10	2011–2012	Mazda	CX7 PAB (B).
10	2010–2012	Mazda	CX7 PAB (C).
10	2014–2015	Mazda	CX9 PAB (A).
10	2011–2015	Mazda	CX9 PAB (B).
10	2010–2015	Mazda	CX9 PAB (C).
10	2011–2011	Mazda	Mazda6 PAB (B).
10	2010–2011	Mazda	Mazda6 PAB (C).
10	2011–2011	Mazda	RX8 PAB (B).
10	2010–2011	Mazda	RX8 PAB (C).
10	2016–2017	McLaren	570 PAB (A).
10	2016–2017	McLaren	570 PAB (B).
10	2016–2017	McLaren	570 PAB (C).
10	2015–2016	McLaren	650S PAB (A).
10	2015–2016	McLaren	650S PAB (B).
10	2015–2016	McLaren	650S PAB (C).
10	2016–2016	McLaren	675LT PAB (A).
10	2016–2016	McLaren	675LT PAB (B).
10	2016–2016	McLaren	675LT PAB (C).
10	2014–2014	McLaren	MP4–12C PAB (A).
10	2014–2014	McLaren	MP4–12C PAB (B).
10	2014–2014	McLaren	MP4–12C PAB (C).
10	2014–2015	McLaren	P1TM PAB (A).
10	2014–2015	McLaren	P1TM PAB (B).
10	2014–2015	McLaren	P1TM PAB (C).
10	2014–2014	Mercedes-Benz	C-Class PAB (A).
10	2011–2014	Mercedes-Benz	C-Class PAB (B).
10	2010–2014	Mercedes-Benz	C-Class PAB (C).
10	2014–2017	Mercedes-Benz	E-Class Cabrio PAB (A).
10	2011–2017	Mercedes-Benz	E-Class Cabrio PAB (B).
10	2011–2017	Mercedes-Benz	E-Class Cabrio PAB (C).
10	2014–2017	Mercedes-Benz	E-Class Coupe PAB (A).
10	2011–2017	Mercedes-Benz	E-Class Coupe PAB (B).
10	2010–2017	Mercedes-Benz	E-Class Coupe PAB (C).
10	2014–2015	Mercedes-Benz	GLK Class PAB (A).
10	2011–2015	Mercedes-Benz	GLK Class PAB (B).
10	2010–2015	Mercedes-Benz	GLK Class PAB (C).
10	2015–2015	Mercedes-Benz	SLS-Class DAB (A).
10	2015–2015	Mercedes-Benz	SLS-Class DAB (B).
10	2015–2015	Mercedes-Benz	SLS-Class DAB (C).
10	2014–2015	Mercedes-Benz	SLS-Class PAB (A).
10	2011–2015	Mercedes-Benz	SLS-Class PAB (B).
10	2011–2015	Mercedes-Benz	SLS-Class PAB (C).
10	2015–2017	Mercedes-Benz	Sprinter DAB (A).
10	2015–2017	Mercedes-Benz	Sprinter DAB (B).
10	2015–2017	Mercedes-Benz	Sprinter DAB (C).
10	2011–2011	Mercedes-Benz	Sprinter PAB (B).
10	2010–2011	Mercedes-Benz	Sprinter PAB (C).
10	2011–2011	Mercury	Milan PAB (B).
10	2010–2011	Mercury	Milan PAB (C).
10	2016–2017	Mitsubishi	i-MiEV PAB (A).
10	2016–2017	Mitsubishi	i-MiEV PAB (B).
10	2016–2017	Mitsubishi	i-MiEV PAB (C).
10	2011–2012	Nissan	Versa PAB (B).
10	2010–2012	Nissan	Versa PAB (C).
10	2010–2010	Pontiac	Vibe PAB (C).
10	2014–2015	Scion	xB PAB (A).
10	2011–2015	Scion	xB PAB (B).
10	2010–2015	Scion	xB PAB (C).
10	2011–2013	Subaru	Forester PAB (B).
10	2010–2013	Subaru	Forester PAB (C).
10	2011–2011	Subaru	Impreza PAB (B).
10	2010–2011	Subaru	Impreza PAB (C).
10	2014–2014	Subaru	Legacy PAB (A).
10	2011–2014	Subaru	Legacy PAB (B).
10	2010–2014	Subaru	Legacy PAB (C).

PG	Model years	Make	Model, inflator position & (zone) [23]
10	2014–2014	Subaru	Outback PAB (A).
10	2011–2014	Subaru	Outback PAB (B).
10	2010–2014	Subaru	Outback PAB (C).
10	2014–2014	Subaru	Tribeca PAB (A).
10	2011–2014	Subaru	Tribeca PAB (B).
10	2010–2014	Subaru	Tribeca PAB (C).
10	2014–2014	Subaru	WRX/STI PAB (A).
10	2012–2014	Subaru	WRX/STI PAB (B).
10	2012–2014	Subaru	WRX/STI PAB (C).
10	2014–2016	Tesla	Model S PAB (A).
10	2012–2016	Tesla	Model S PAB (B).
10	2012–2016	Tesla	Model S PAB (C).
10	2014–2016	Toyota	4Runner PAB (A).
10	2011–2016	Toyota	4Runner PAB (B).
10	2010–2016	Toyota	4Runner PAB (C).
10	2011–2013	Toyota	Corolla PAB (B).
10	2010–2013	Toyota	Corolla PAB (C).
10	2011–2013	Toyota	Matrix PAB (B).
10	2010–2013	Toyota	Matrix PAB (C).
10	2014–2014	Toyota	Sienna PAB (A).
10	2011–2014	Toyota	Sienna PAB (B).
10	2011–2014	Toyota	Sienna PAB (C).
10	2011–2011	Toyota	Yaris (Hatch Back) PAB (B).
10	2010–2011	Toyota	Yaris (Hatch Back) PAB (C).
10	2011–2012	Toyota	Yaris (Sedan) PAB (B).
10	2010–2012	Toyota	Yaris (Sedan) PAB (C).
10	2016–2017	Volkswagen	CC DAB (A).
10	2016–2017	Volkswagen	CC DAB (A).
10	2016–2017	Volkswagen	CC DAB (A).
10	2016–2017	Volkswagen	CC DAB (B).
10	2016–2017	Volkswagen	CC DAB (B).
10	2016–2017	Volkswagen	CC DAB (B).
10	2016–2017	Volkswagen	CC DAB (C).
10	2016–2017	Volkswagen	CC DAB (C).
10	2016–2017	Volkswagen	CC DAB (C).

End of Annex

[FR Doc. 2016–31065 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2016–0147]

Pipeline Safety: Random Drug Testing Rate; Contractor Management Information System Reporting; and Obtaining Drug and Alcohol Management Information System Sign-In Information

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Calendar Year 2017 Minimum Annual Percentage Rate for Random Drug Testing; Reminder for Operators To Report Contractor MIS Data; and Reminder of Method for Operators To Obtain User Name and Password for Electronic Reporting.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 25 percent during calendar year 2017. Operators are reminded that drug and alcohol testing information must be submitted for contractors performing or ready to perform covered functions. For calendar year 2016 reporting, PHMSA will not attempt to mail the ''user name'' and ''password'' for the Drug and Alcohol Management Information System (DAMIS) to operators, but will make the user name and password available in the PHMSA Portal (*https://portal.phmsa.dot.gov/pipeline*).

DATES: Effective January 1, 2017, through December 31, 2017.

FOR FURTHER INFORMATION CONTACT: Blaine Keener, Director of Safety Data Systems and Analysis, by telephone at 202–366–0970 or by email at *blaine.keener@dot.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Calendar Year 2017 Minimum Annual Percentage Rate for Random Drug Testing

Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must randomly select and test a percentage of covered employees for prohibited drug use. Pursuant to 49 CFR 199.105(c)(2), (3), and (4), the PHMSA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the pipeline industry. The data considered by the Administrator comes from operators' annual submissions of Management Information System (MIS) reports required by § 199.119(a). If the reported random drug test positive rate is less than one percent, the Administrator may continue the minimum random drug testing rate at 25 percent. In calendar year 2015, the random drug test positive rate was less than one percent. Therefore, the *PHMSA minimum annual random drug testing selection rate will remain at 25 percent for calendar year 2017.*

Reminder for Operators To Report Contractor MIS Data

On January 19, 2010, PHMSA published an Advisory Bulletin (75 FR 2926) implementing the annual collection of contractor MIS drug and alcohol testing data. An operator's report to PHMSA is not considered complete until an MIS report is submitted for each contractor that

performed covered functions as defined in § 199.3.

Reminder of Method for Operators To Obtain User Name and Password for Electronic Reporting

In previous years, PHMSA attempted to mail the DAMIS user name and password to operator staff with responsibility for submitting DAMIS reports. Based on the number of phone calls to PHMSA each year requesting this information, the mailing process has not been effective. Pipeline operators have been submitting reports required by Parts 191 and 195 through the PHMSA Portal (*https://portal.phmsa.dot.gov/pipeline*) since 2011. Each company with an Office of Pipeline Safety issued Operator Identification Number should employ staff with access to the PHMSA Portal.

The user name and password required for an operator to access DAMIS and enter calendar year 2016 data will be available to all staff with access to the PHMSA Portal in late December 2016. When the DAMIS user name and password is available in the PHMSA Portal, all registered users will receive an email to that effect. Operator staff with responsibility for submitting DAMIS reports should coordinate with registered PHMSA Portal users to obtain the DAMIS user name and password. Registered PHMSA Portal users for an operator typically include the U.S. Department of Transportation Compliance Officer and staff or consultants with responsibility for submitting annual and incident reports on PHMSA F 7000- and 7100-series forms.

For operators that have failed to register staff in the PHMSA Portal for Parts 191 and 195 reporting purposes, operator staff responsible for submitting DAMIS reports can register in the PHMSA Portal by following the instructions at: *http://opsweb.phmsa.dot.gov/portal_message/PHMSA_Portal_Registration.pdf*.

Pursuant to §§ 199.119(a) and 199.229(a), operators with 50 or more covered employees, including both operator and contractor staff, are required to submit DAMIS reports annually. Operators with less than 50 total covered employees are required to report only upon written request from PHMSA. If an operator has submitted a calendar year 2014 or later DAMIS report with less than 50 total covered employees, the PHMSA Portal message may state that no calendar year 2016 DAMIS report is required. Some of these operators may have grown to more than 50 covered employees during calendar year 2016. The PHMSA Portal message will include instructions for how these operators can obtain a calendar year 2016 DAMIS user name and password.

Issued in Washington, DC, on December 21, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2016–31220 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2015–0205]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: On May 13, 2016, in accordance with the Paperwork Reduction Act of 1995, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice in the **Federal Register** to invite comments on an information collection under Office of Management and Budget (OMB) Control No. 2137–0522 to revise three forms: (1) PHMSA F 7100.1 Incident Report—Gas Distribution System; (2) PHMSA F 7100.2 Incident Report—Natural and Other Gas Transmission and Gathering Pipeline Systems; and (3) PHMSA F 7100.3 Incident Report—Liquefied Natural Gas (LNG) Facilities, and the instructions associated with the Forms. PHMSA also invited comments on PHMSA F 7000–1 Accident Report-Hazardous Liquid Pipeline Systems and its associated instruction under OMB control number 2137–0047.

During the 60-day comment period, PHMSA received 10 comments from stakeholders in response to the proposed form revisions. All commenters, except one, supported the overall proposed changes to enhance pipeline safety. PHMSA is publishing this notice to respond to the specific comments received and to announce that the information collection will be submitted to OMB for approval.

DATES: Comments must be submitted on or before January 26, 2017.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. You may also send comments by email to *OIRA-submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1320.8(d), title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected entities an opportunity to comment on information collection and recordkeeping requests. This notice identifies proposed changes to information collections that PHMSA will submit to OMB for approval. In order to streamline and improve the data collection processes, PHMSA is revising the incident report forms for both hazardous liquid and gas operators.

OMB Control Number 2137–0047, which covers the collection of hazardous liquid incident data, expires on December 31, 2016. OMB Control Number 2137–0522, which currently covers the collection of both annual report and incident data for gas operators, expires on October 31, 2017. To simplify the renewal process of these data collections in the future, PHMSA proposes collecting gas incident and gas annual reports under separate OMB control numbers. To achieve this, PHMSA plans to request a new OMB control number for the three gas incident forms currently under OMB Control No. 2137–0522. The remaining reports under this information collection—the Gas Transmission, LNG, and Mechanical Fitting Failure annual reports—will remain under their current OMB control number.

The 10 comments that PHMSA received in response to the May 13, 2016, **Federal Register** notice and request for comment, 81 FR 29943, came from the following parties: one public interest group (Pipeline Safety Trust (PST)); five from industry organizations (American Petroleum Institute (API)-Association of Oil Pipelines (AOPL) joint submission, API, American Gas Association (AGA), Interstate Natural Gas Association of America (INGAA), and Common Ground Alliance (CGA)); three natural gas operators (DTE Gas Company (DTE), Southwest Gas Corporation (SW), Paiute Pipeline Company (PPC)); and one manufacturer of compression fitting (Norton

McMurray Manufacturing Company (NORMAC)).

A. PHMSA F 7100.1 Incident Report—Gas Distribution System

AGA, DTE, and, SW commented on PHMSA F 7100.1, Gas Distribution Incident Report. The comments are summarized and addressed below.

1. DTE noted that ''Day Light Savings'' in A4.b should be ''Day Light Saving.'' PHMSA has made the correction.

2. In response to removing the questions about ''Incident Resulted From'' (previous A8), DTE recommended retaining the ability for operators to report ''NO RELEASE OF GAS'' or a volume of zero in the form, particularly Parts A7 and A8. PHMSA has ensured the electronic submittal of the gas distribution form accepts ''zero'' in Parts A7 and A8.

3. DTE noted that there does not appear to be a data entry field provided for the ''Initial Operator NRC Report Number'' in Part A18 and suggested adding one. PHMSA confirms that Part A19 reads ''Initial Operator National Response Center Report Number'' and the electronic submission will allow the entry of the report number or the operator can choose ''NRC Notification Required But Not Made.''

4. DTE noted that ''the statement in the **Federal Register** Notice for this Information Collection Activity inferring that gas distribution systems are not typically shut down during an incident is inaccurate. While it is true that operators generally wish to minimize the effect of incidents on customer supply, portions of the gas distribution system may be isolated and shut down to make repairs by closing valves or by squeezing pipe on both sides of the damage. However, there are infrequent occurrences of having to shut down an entire distribution system.'' In acknowledgement to the ''infrequent occurrence'' of having to shut down distribution systems, PHMSA has proposed to remove those specific questions for ''shut downs.'' PHMSA acknowledges that pipeline operators typically control the flow of gas in the smallest possible portion of the system. This change would allow stakeholders to understand the actions taken by the operator to control the flow of gas during incident response and Part A20 should provide a more complete understanding of the operator's response.

5. DTE recommended adding ''unknown'' to Parts A21a and A21c. AGA recommended adding ''unknown'' to Part A21c. PHMSA does not believe ''unknown'' should be an option in Part A21 ''Did the gas ignite?'' Operators should have that information during a reportable incident. SW recommended revising Part A21c to ''Estimated Volume of Gas Consumed by Fire'' from ''Volume of Gas Consumed by Fire.'' PHMSA agrees and revised the form to accommodate estimation rather than precise volume information. PHMSA understands that the calculation of gas consumed by fire requires some assumptions and estimates. However, PHMSA believes this information is important to understand the consequence of gas releases.

6. DTE commented that it will be unduly burdensome to determine the number of persons evacuated and the duration of each person's evacuation in order to provide a mathematical average length of evacuation for Part A23. On the current form, PHMSA collects the number of persons evacuated from buildings. To estimate the impact of evacuations, it is necessary to determine their length. This data would enable a more thorough determination of the benefit of proposed regulations. When an incident includes evacuations, pipeline operators may have to estimate the length of evacuation for each building and estimate the number people evacuated from each building. PHMSA revised Part A23 to say ''Estimated Average Length of Evacuation.''

7. DTE recommended that PHMSA allow the ability to report ''zero'' for ''Depth of Cover'' in Part B3a. PHMSA confirms that operators will be able to enter ''zero'' for the ''Depth of Cover'' in Part B3a.

8. PHMSA will add ''unable to determine'' as an option to Part C2e ''Did the EFV activate?'' as DTE recommended. Actions taken by persons other than the operator may not leave sufficient evidence to discern if an EFV activated.

9. DTE recommended the cost of gas in Part D7 should be the unit cost rather than the billed unit costs, exclusive of operator overheads and taxes. PHMSA is seeking market price of gas to calculate the consequence of the incident. The unit cost should include all operator overheads, but not taxes. PHMSA has revised the instructions accordingly.

10. DTE recommends retaining the cost of ''operator's emergency response'' in Part D2c. PHMSA is seeking to capture the consequence of an incident in Part D2 where Part D2a is the cost of public and non-operator property damage and Part D2b is the estimated cost of operator's property damage and repairs. AGA recommends that the question be re-worded to ''estimated cost of emergency response incurred by operator.'' PHMSA understands that emergency responses are provided by both non-operator resources (city/town) and operator's resources and sometimes operators reimburse the non-operator emergency response portion. Therefore, PHMSA is proposing to collect one emergency response cost irrespective of who provides the service. PHMSA does not believe it should add ''incurred by operator'' since it is requesting the estimated cost of emergency response for the incident. PHMSA understands it is an estimated cost.

11. SW recommends ''Total Cost'' be revised to ''Estimated Total Cost'' in D2i to remain consistent with the ''estimated'' costs used to calculate this total. PHMSA agrees and has made the changes on the form.

12. In Part D PHMSA is proposing to collect number of persons injured, but not requiring overnight inpatient hospitalization, in two categories. The category proposed in D4 is for persons treated in a medical facility, but not admitted overnight. The category proposed in D5 is for persons treated by emergency medical technicians at the scene of an incident. These additional categories would more fully capture the consequences of an incident. DTE is concerned that PHMSA would ''expect a gas operator to chase ambulances to determine how many on-site treatments were administered by EMT.'' Currently, operators report the number of overnight, inpatient hospitalizations resulting from an incident. In order to accurately report, operators must communicate with injured parties or medical providers to determine the number of overnight, inpatient hospitalizations. Operators need this same communication to determine the number of persons treated at a medical facility but not admitted overnight. Under the Health Insurance Portability and Accountability Act of 1996, medical providers are permitted, but not required, to disclose protected health information without an individual's authorization in a number of situations. PHMSA encourages operators to communicate directly with injured parties and seek disclosure from medical providers as a last resort. PHMSA expects the number of persons treated on scene, but not in a medical facility, will be readily available. AGA suggested allowing ''Unknown'' to be reported instead of the number of injuries. When an operator has no knowledge of injuries in the new proposed categories, PHMSA expects the operator to report zero, not unknown.

13. DTE requested that PHMSA remove Parts D6 and D7 to report the number of residential buildings and business buildings affected. SW requests PHMSA to define ''affected.'' In the instructions, PHMSA proposes to define ''affected'' as ''evacuated or required repair.'' PHMSA has added ''Evacuated or Required Repair'' next to ''Buildings Affected'' on the form.

14. AGA recommended that PHMSA add § 192.621 (MAOP High pressure distribution system) and § 192.623 (MAOP Low pressure distribution systems) as sections listed under Part E3a. PHMSA agrees and revised the form to remove the option for ''Other'' and add code references § 192.621 and § 192.623.

15. DTE noted that the threshold of 110 percent of the MAOP in Part E4 is not appropriate for all distribution systems and recommended incorporating the pressure limits allowed in § 192.201(a). PHMSA agrees and has revised Part E4 by removing ''110% MAOP'' and adding ''the applicable allowance in § 192.201.''

16. DTE questioned the relevance of the type of odorization system used for gas at the point of failure. PHMSA believes types of odorization in E5 is important information it needs in its incident report because it will help PHMSA and its state partners to correlate incident investigation findings with the information submitted by the operator on the form. PHMSA also notes this information is easily available to operators.

17. DTE noted that information regarding the type and source of stray current required in Parts G1.2a and G1.2b may not be easily obtained and readily available within the 30-day reporting period. PHMSA already collects information regarding whether ''Stray Current'' was the ''Type of Corrosion.'' When an operator determines stray current is the type of corrosion, it will also know the data required in Parts G1.2a and G1.2b. PHMSA agrees with DTE that determining the type of corrosion typically requires metallurgical analysis and comprehensive investigation of the pipe environment. PHMSA expects that operators would report the type of corrosion in a supplemental report. PHMSA does not believe this information will cause any undue hardship for gas distribution operators since only one out of 701 gas distribution incident reports submitted to PHMSA since 2010 indicated stray current as the type of corrosion.

18. DTE asks PHMSA to clarify Part G2. PHMSA's instruction on Part G2 says ''High Winds'' includes damage caused by wind induced forces. Select this category if the damage is due to the force of the wind itself. Damages caused by impact from objects blown by wind are to be reported under Part G4—Other Outside Force Damage. PHMSA provided Tree/Vegetation Root as a separate category under Part G2 and as per the instruction ''Tree/Vegetation Roots includes damages caused by tree and vegetation roots.'' Therefore, if high winds topple trees or vegetation and cause tree/vegetation roots to pull and damage distribution mains or service lines, the cause should be reported Under Part G2 ''Trees/Vegetation Roots,'' not under Part G4 ''Other Outside Force Damage.''

19. PHMSA agrees with AGA's recommendation that ''Damage from Snow/Ice Impact or Accumulation'' should be added to Part G2, Natural Force Damage.

20. DTE was unable to identify new reporting requirements for excavation damage. The redlined form and instructions in the docket reflect the proposed addition of Parts E3b and E3c, which address reporting requirements for excavation damage.

21. API/AOPL recommended that PHMSA add two additional fields to Part G3 of the hazardous liquid accident report form. The two additional fields are ''exempting authority'' and ''exempting criteria.'' PHMSA agrees this additional information would be valuable on all PHMSA incident forms, so it proposes adding them to the gas distribution incident report as Parts G3.3d and G3.3e.

22. While AGA commends PHMSA for collecting additional information on ''Damage by Car, Truck, or Other Motorized Vehicle/Equipment NOT Engaged in Excavation'' in Part G4, DTE alleges that it is not an operator's responsibility to investigate and determine whether a driver violated laws. PHMSA understands that operators may not have answers to all questions about driver conduct, and points out that ''unknown'' is an option. PHMSA will accept AGA's recommendation and clarify in the instruction for Part G4.8 to note that operator should answer ''no'' if the driver was experiencing a medical condition at the time of incident.

23. AGA noted that Part G4.12 should refer to Part G4.11 and not Part G4.10. PHMSA has revised the question.

24. AGA and DTE advised PHMSA to consider Part G5 mechanical fitting failure data in light of requirements under § 192.1009, which requires the submittal of PHMSA F 7100.1–2 Mechanical Fitting Failures after an incident. In response, PHMSA proposes to replace all data about ''Mechanical Fitting'' and ''Compression Fitting'' failures in Part G5 with the report ID for PHMSA F 7100.1–2 Mechanical Fitting Failures. If the PHMSA F 7100.1–2 report has not been submitted before the incident report, ''Report Pending'' can be submitted in Part G5. This change will alleviate the concern of SW about the lot number and model number for mechanical fittings.

25. DTE requested an option of ''Unknown'' in Part G6.4b for ''manufactured by'' and in Part G6.4c for ''Year Manufactured.'' Part G6.4b is a text field and operators can type unknown in the field. PHMSA has added ''Unknown'' as an option in Part G6.4c.

26. DTE requested PHMSA remove the ''Contributing Factors'' in Part J and does not believe that the National Transportation Safety Board's (NTSB) recommendation is applicable to gas distribution system. PHMSA believes this information would help stakeholders develop a more thorough understanding of the incident and ways to prevent future incidents in all pipeline systems. PHMSA agrees with AGA's recommendation to clarify that Part J pertains only to the contribution factor(s) while the apparent cause is reported in Part G.

PHMSA F 7100.2 Incident Report—Natural and Other Gas Transmission and Gathering Pipeline Systems

PST, AGA, DTE, SW, PPC, and INGA, and API commented on PHMSA F 7100.2, Gas Transmission and Gathering Systems Incident Report. The comments are summarized and addressed below.

1. DTE noted that ''Day Light Savings'' in Part A4b should be ''Day Light Saving.'' PHMSA has made the correction.

2. INGAA recommended that PHMSA incorporate logic in the online form to require all times to be later than the time entered in Part A4 for time and date of the incident. API indicated it believes ''PHMSA is requesting the same information in both A4 and A13'' and requested that Part A4 be deleted. PHMSA believes there are certain cases where Part A4 will not represent the earliest time reported. Part A4 represents the earliest date and time when one or more definitions of an incident in § 191.3 is met. Part A13 represents the earliest time the operator identified the failure. In some cases, the operator may become aware of a failure before an incident reporting criteria is met. In other cases, one or more incident reporting criteria may be met before the operator becomes aware of the failure.

3. API questioned whether the time zone specified in Part A4a is the default time zone for the remaining questions in the form. PHMSA confirms that the time zone identified in Part A4a is the default time zone (including day light saving time in Part A4b) for the rest of the form.

4. INGAA and DTE recommended retaining Part A8 ''Incident resulted from'' since those incidents that do not involve a release of gas can be analyzed separately. DTE recommended that PHMSA should retain the ability for operators to report ''NO RELEASE OF GAS'' or a volume of zero in the form, particularly Parts A7 and A8. PHMSA has ensured the electronic submittal of the form accepts zero in Parts A7 and A8. INGAA recommended that PHMSA keep Part A8 so that those incidents without release of gas can be analyzed separately from those that involve release of gas. As PHMSA noted before, volumes of zero in Parts A7 and A8 will accomplish that goal.

5. API opined that the term ''identified'' is vague in Part A12 and requested that it be replaced with ''initial indication.'' PHMSA does not have any evidence that Part A12 wording ''How was the incident initially identified by the operator'' is confusing to operators as this question has been in place since 2010 without issue. PHMSA does not think API's recommendation ''What was the Operator's initial indication of the Accident'' would add value to the data collected.

6. API recommended replacing the phrase ''Local/State/Federal Emergency Responders'' with ''Emergency Responders (local/state/federal)'' in Part A17a–c. PHMSA does not believe this change would add value to the data collected.

7. API suggests that PHMSA define ''Confirmed Discovery'' in Part A19. On July 10, 2015, PHMSA published a proposed rule that includes defining ''Confirmed Discovery'' and adding it to the form. 80 FR 39916. PHMSA is currently reserving Part A19 for ''Confirmed Discovery'' until a Final Rule is published.

8. DTE noted that there does not appear to be a data entry field provided for the Initial Operator NRC Report Number in Part A20b and suggested that PHMSA add one. PHMSA confirms that Part A20 reads ''Initial Operator National Response Center Report Number'' and the electronic submission will allow the data entry for the report number or the operator can choose ''NRC Notification Required But Not Made.''

9. DTE recommends adding ''UNKNOWN'' to Parts A21a and A21c. AGA recommends PHMSA adds ''unknown'' to A21c. PHMSA does not believe ''unknown'' should be an option in A21a ''Did the gas ignite?'' Operators should have that information during a reportable incident. PPC and SW recommend that PHMSA revise A21c to ''Estimated Volume of Gas Consumed by Fire'' from ''Volume of Gas Consumed by Fire.'' PHMSA agrees and revised the form to accommodate estimation rather than precise volume information. PHMSA understands it is sometimes difficult for operators to accurately determine the volume of gas consumed by fire. However, PHMSA believes an estimate is important to understand the consequences of a gas release.

10. DTE recommended adding ''Not Applicable—One Way Feed,'' and ''Not Applicable—No Downstream Valve'' or similar language in Parts 22d through 22f. PHMSA believes the option for Operator Control (and associated mandatory text field) in Parts A22a and A22d will allow operators to enter an explanation more efficiently than adding an exhaustive list of options.

11. DTE noted that it has experienced situations where a pipeline facility was involved that had no unique milepost or survey station associated with it, or had multiple mileposts or survey stations associated with it due to it being a junction of several pipelines. DTE requests PHMSA to expand Part B6 to allow for a free entry of a facility name. Part B6 is free text entry. PHMSA has added an option to choose ''Not Applicable'' in Part B6, which would require no data in Part B7.

12. PHMSA does not believe INGAA's suggestion to change ''Area of Incident (as found)'' in Part B10 to ''Area of Incident (at the time of incident)'' would improve the quality of the data collected. ''As found'' ensures that operators report what they found upon arrival at the incident site.

13. API noted there should be additional questions and clarifications on Part B11. API requested PHMSA to add the option to select ''Bored/Drilled'' for water crossing under Part B11, and also to add ''Is this water crossing 100 feet or more in length from high water mark to high water mark?'' PHMSA agrees with the API suggestions and has revised the form accordingly.

14. DTE recommended adding ''Unknown'' as a response option for Parts C2 through C5. In Part C2, operators can choose ''Material other than Carbon Steel or Plastic'' and specify ''Unknown'' in the text field. PHMSA does not believe ''Unknown'' should be an option for Part C3. If the operator is reporting an incident, it will know within 30 days which Part C3 option is applicable. Operators already have the option to choose ''Unknown'' for Part C5 and PHMSA has added the option for ''Unknown'' in Part C4.

15. PHMSA incorporated API's suggestion to add ''Was this a Puddle/Spot Weld?'' when ''Pipe'' is chosen in Part C3. API also recommended removing ''auxiliary piping'' from all items listed in C3 and keeping the term as a separate item. PHMSA understands that removing auxiliary piping will impact long term trending, but is proposing to look at the items, such as compressor and regulator/control valve, as whole items that include auxiliary piping, connections, valves, and equipment.

16. INGAA recommended entering the original test pressure at the time of construction in Part C3 if ''Pipe or Weld/Fusion, including heat affected zone'' is selected. PHMSA is proposing to collect the ''Post- construction pressure test value'' in Part G5.4. PHMSA does not want to collect the same data in multiple places.

17. INGAA recommended removing ''Not Flammable'' as an option in Part D3. PHMSA believes the option for ''Not Flammable'' is necessary since not all pipelines subject to reporting on the form transport flammable gas.

18. DTE recommended the cost of gas in Part D7 should be the unit cost rather than the billed unit costs, exclusive of operator overheads and taxes. PHMSA is seeking market price of gas to calculate the consequence of the incident. The unit cost should include all operator overheads, but not taxes. PHMSA has revised the instructions accordingly.

19. PST recommended clarifying the instructions for Part D7d, Property Damage—Other, to state that any cost of security used during investigation or repairs following an incident must be included in the property damage calculation on the incident report. PHMSA agrees and has modified the instructions accordingly.

20. PPC recommended that ''Total Cost'' be revised to ''Estimated Total Cost'' to remain consistent with the estimated costs used to calculate the total. PHMSA agrees and has replaced ''Total Cost'' with ''Estimated Total Cost'' in Part D7i.

21. AGA noted that Part D7c should be consistent with gas distribution incident form. PHMSA agrees and has revised Part D7c to say ''Estimated cost of emergency response.'' AGA recommended that the question be re-worded as ''Estimated cost of emergency response as incurred by the operator.'' PHMSA does not think re-wording is necessary because the instructions

clarify Part D7c is seeking to collect information regarding the costs incurred by the operator.

22. PPC believes that operators will be unable to account for persons seeking outpatient care the in the days following an incident. DTE believes that an operator of a transmission system must not be expected to ''chase ambulances'' to determine how many on-site treatments were administered by EMTs or the number of people treated at medical facilities without admission. PHMSA is proposing to collect number of persons injured, but not requiring overnight, inpatient hospitalization in two categories. The first proposed category is persons treated in a medical facility, but not admitted overnight. The second proposed category is persons treated on scene. These additional categories would more fully capture the consequences of an incident. Currently, operators report the number of overnight, inpatient hospitalizations resulting from an incident. In order to accurately report, operators must communicate with injured parties or medical providers to determine the number of overnight, inpatient hospitalizations. Operators need this same communication to determine the number of persons treated at a medical facility but not admitted overnight. Under the Health Insurance Portability and Accountability Act of 1996, medical providers are permitted, but not required, to disclose protected health information without an individual's authorization in a number of situations. PHMSA encourages operators to communicate directly with injured parties and seek disclosure from medical providers as a last resort. PHMSA expects the number of persons treated on scene, but not in a medical facility, will be readily available.

23. API recommended combining Parts D8 and D9 to report the number of individuals who sustained OSHA recordable incidents. Parts D8 and D9 are not the same as OSHA recordable incidents as the injured person may not be a pipeline worker. PHMSA does not need an OSHA recordable incident number. PHMSA needs to collect the data proposed in Parts D8 and D9 to understand the total human consequence of incidents.

24. INGAA recommended the word ''affected'' in Parts D10 and D11 be changed to ''damaged.'' API offered adding the words ''evacuated or required repair'' next to ''Buildings Affected.'' PHMSA accepts the wording offered by API and added ''Evacuated or Required Repair'' next to ''Buildings Affected.'' This change alleviates INGAA's and DTE's concern about the subjective nature of the word ''affected.''

25. INGAA noted that ''if any ignition occurs, there could be some terrestrial impact. There could be a single bird involved in the fire.'' The questions about terrestrial and wildlife impacts have been part of the PHMSA hazardous liquid accident report form since 2010 and pipeline operators have not expressed any confusion over its intent. Since INGAA has not proposed more adequate instructions, PHMSA has made no change in response to the comment. Operators are able to explain the extent of terrestrial and wildlife in the Part H text field.

26. AGA noted that the reference to maximum operating pressure (MOP) in Part E2c is not appropriate for gas transmission and gathering systems and should be removed. DTE noted that Part E2c should refer to maximum allowable operating pressure (MAOP) rather than MOP. PHMSA has revised Part E2c from MOP to MAOP.

27. DTE recommended incorporating all of the pressure limits allowed in § 192.201(a)(2), particularly for pipelines operating near 75% of SMYS, those at or above 12 psig but below 60 psig, and those operating below 12 psig. PHMSA has revised the Part E3 to remove 100% MAOP and adding ''The applicable allowance in § 192.201.''

28. DTE recommended changing Part E5 from ''Was the gas odorized at the point of failure?'' to ''whether the gas was required to odorized in accordance with § 192.615,'' and ''whether the gas was odorized in accordance with § 192.615.'' PHMSA acknowledges the need for clarification and will revise Part E5 to ''Was gas at the point of failure required to be odorized in accordance with § 192.615?'' and, if yes, ''Was gas at the point of the failure odorized in accordance with § 192.615?''

29. API suggested changing Part E10c to replace the word ''detection'' with the phrase ''initial indication.'' PHMSA does not believe this change would improve the quality of the data collected by the question. API also recommended changing Part E10d to replace the word ''confirmation'' with the phrase ''confirmed discovery.'' On July 10, 2015, PHMSA published a proposed rule that includes defining ''confirmed discovery.'' 80 FR 39916. PHMSA will not add the term ''confirmed discovery'' to the form as part of this information collection.

30. PHMSA acknowledges DTE's note that Parts G1.2a and G1.2.b may not be readily available within 30 days of the incident. This data can be submitted through a supplemental report after the information becomes available.

31. AGA recommended adding ''Damage from Snow/Ice Impact or Accumulation'' under the Part G2 sub-cause. PHMSA has added it. DTE asked which cause section should be used when high winds topple tress and cause tree roots to damage pipelines. In this example, PHMSA advises the operator to select ''Tree/Vegetation Root'' under Part G2 because the tree roots created the damage.

32. DTE was unable to identify new reporting requirements for excavation damage. The redlined form and instructions in the docket reflect the proposed addition of Parts E3.3b and E3.3c, which address reporting requirements for excavation damage.

33. API/AOPL recommended that PHMSA add two additional fields to Part G3 of the hazardous liquid accident report form. The two additional fields are ''exempting authority'' and ''exempting criteria.'' PHMSA acknowledges this additional information would be valuable on all PHMSA incident forms, so it proposes adding them to the gas transmission and gathering incident report as Parts G3.3d and G3.3e.

34. API requested adding a statement on the form to ensure that operators are aware they need to complete questions 5 through 11 when G4, ''Damage by Car, Truck, or Other Motorized Vehicle/Equipment NOT Engaged in Excavation'' is selected. PHMSA's proposal includes the phrase recommended by API prior to questions 5 through 11 in Part G4.

35. PHMSA acknowledges DTE, INGAA, and API's concerns that operators may not have answers to questions 5 through 11 under G4, ''Damage by Car, Truck, or Other Vehicle/Equipment NOT Engaged in Excavation.'' PHMSA's proposal includes ''Unknown'' as an option for questions about driver conduct. PHMSA does not believe these questions need to be removed.

36. API requested examples or clarification of the term ''Design-related'' proposed in Part G5. PHMSA has revised the instructions to include an example of improper design practices.

37. PHMSA understands that information regarding ''Hard Spot'' in Part G5.3 may not be readily available to the operator as DTE noted. DTE also noted that ''it is not anyone's interest to file supplemental Incident reports to add or correct information not readily available at the time of the incident.'' PHMSA disagrees and expects essential

data may not be available within 30 days of the incident.

38. API requested clarification of ''erosion/abnormal wear'' under question 6 in Part G6, ''Equipment Failure.'' The words used in all 15 factors under question 6 in G6 have common meanings found in the dictionary. PHMSA does not believe that additional definitions would increase the value of the instructions.

39. API suggested updating the list in Part J2 to include more specific tools and currently available In-Line Inspection (ILI) technology. Under API's proposal, two ''Ultrasonic'' tool runs could be entered in Part J2. However, API proposes collecting additional data about the tool once. The additional data proposed by API must be collected for each tool run. API also recommended collecting the tool propulsion system. Under API's proposal, twenty-two tool runs could be reported in Part J2. The tool propulsion system must be collected for each tool run. PHMSA has modified Part J2 in response to API's comments. PHMSA has made additional improvements to the ''Tool Technology'' options and additional tool data for each technology. Also, PHMSA proposes collecting the tool propulsion system and detailed tool data for each run reported in Part J2.

40. INGAA proposed changing Part J2 to read, in part, ''Other than an initial pressure test recorded in G5,'' however, Part J2 is applicable for Parts G1, G3, G4, and G5. PHMSA has added clarification to the form that the initial post-construction pressure test is not to be reported in Part J2.

41. INGAA and AGA recommended revising the introduction to Part K, ''Contributing factors'' to ensure that the apparent cause of the incident is not selected in Part K. PHMSA has revised the introduction to Part K to emphasize that apparent cause is not to be reported in Part K.

42. INGAA recommended providing operators with access to the original report format for all supplemental reports. In January 2015, PHMSA began collecting data regarding the method operators used to establish MAOP in the form, as approved by OMB. All original reports submitted in January 2015 or later include data indicating the method used by the operator to establish the MAOP of the item involved in the incident. When PHMSA added ''MAOP established by'' to the incident report in January 2015, PHMSA populated all existing incident reports with ''NOT ON OMB-APPROVED FORM WHEN SUBMITTED'' as the ''MAOP established by'' value. Operators have since submitted supplemental reports for 500 of the 600 total reports. One hundred one (101) of these supplemental reports actually specify ''MAOP established by.'' Three hundred ninety-nine (399) supplemented reports still have a value of ''NOT ON OMB-APPROVED FORM WHEN SUBMITTED.'' Essentially, operators have had the choice to provide the actual MAOP determination method in supplemental reports, but have not been required to. If PHMSA implemented INGAA's recommendation, operators would not be able to include data approved for collection by OMB after the original report has been submitted. PHMSA prefers to continue giving operators the option to provide newly-approved data in supplemental reports.

43. DTE requested PHMSA revise the burden for each report to 24 hours. PHMSA believes operators may need 24 hours to complete reports for some incidents with serious consequences. However, the majority of reports do not include serious consequences and may take less than 12 hours. PHMSA believes 12 hours per report represents the average burden.

C. PHMSA F 7100.3 Incident Report—Liquefied Natural Gas (LNG) Facilities

PPC, SW and AGA commented on PHMSA F7100.3, Liquefied Natural Gas Incident Report. The comments are summarized and addressed below.

1. To be consistent with PHMSA's other gas incident report forms, PHMSA has added ''Time Zone'' and ''Day Light Saving Time'' in Part A4.

2. PPC and SW recommended that PHMSA revise Part A15a to ''Estimated Volume of Gas Consumed by Fire'' from ''Volume of Gas Consumed by Fire.'' PHMSA agrees and has revised the form to accommodate estimation rather than precise volume information.

3. PPC and SW recommended that ''Total Cost'' be revised to ''Estimated Total Cost'' in Part C1i to remain consistent with the estimated costs used to calculate this total. PHMSA agrees and has made the change on the form.

4. PHMSA is proposing to collect number of persons injured, but not admitted to the hospital overnight to more fully capture the consequence of an incident. DTE commented that PHMSA does not ''expect a gas operator to chase ambulances to determine how many on-site treatments were administered by EMT.'' PHMSA is proposing to collect number of persons injured, but not requiring overnight, inpatient hospitalization in two categories. The first proposed category is persons treated in a medical facility, but not admitted overnight. The second proposed category is persons treated on scene. These additional categories would more fully capture the consequences of an incident. Currently, operators report the number of overnight, inpatient hospitalizations resulting from an incident. In order to accurately report, operators must communicate with injured parties or medical providers to determine the number of overnight, inpatient hospitalizations. Operators need this same communication to determine the number of persons treated at a medical facility but not admitted overnight. Under the Health Insurance Portability and Accountability Act of 1996, medical providers are permitted, but not required, to disclose protected health information without an individual's authorization in a number of situations. PHMSA encourages operators to communicate directly with injured parties and seek disclosure from medical providers as a last resort. PHMSA expects the number of persons treated on scene, but not in a medical facility, will be readily available.

5. SW and PPC requested a definition of ''affected'' in Parts A21 and A22. PHMSA has added ''evacuated or required repair'' to clarify ''affected'' in Parts A21 and A22.

6. AGA noted that PHMSA should be consistent across all its incident reports in its wording of ''Estimated Cost of Operator's Emergency Response'' in Part C1c. PHMSA revised the form to be consistent with its other incident reports and removed the word ''Operator's'' from Part C1c.

D. PHMSA F 7000–1 Accident Report—Hazardous Liquid Pipeline Systems

API/AOPL commented on PHMSA F 7000–1, Hazardous Liquid Pipeline Systems Accident Report. The comments are summarized and addressed below.

1. API/AOPL stated they believe ''PHMSA is requesting the same information in both A4 and A13'' and requested that Part A4 be deleted. PHMSA notes that Parts A4 and A13 represent two distinct times. Per the instructions, the earliest date/time than an accident reporting criteria is met should be reported in Part A4, whereas Part A13 collects the earliest time the operator identified the failure. In some cases, the operator may become aware of a failure before an accident reporting criteria is met. In other cases, one of more accident reporting criteria may be met before the operator becomes aware of the failure. API/AOPL also questioned whether the time zone specified in Part A4a is the default time zone for the remaining questions in the

form. PHMSA confirms that the time zone identified in Part A4a is the default time zone (including day light saving time in Part A4b) for the rest of the form.

2. API/AOPL noted that the term ''identified'' is vague in Part A12 and requested that the sentence be modified to include ''initial indication.'' PHMSA does not have any evidence that Part A12 wording, ''How was the incident initially identified by the operator,'' is confusing to operators as this question has been in place since 2010. PHMSA does not think API/AOPL's recommendation, ''What was the Operator's initial indication of the Accident,'' would improve the quality of the data collected by the current question.

3. API/AOPL recommended replacing the phrase ''Local/State/Federal Emergency Responders'' with ''Emergency Responders (local/state/federal)'' in Part A18a-c. PHMSA does not believe this change would improve the quality of data collected by the current question.

4. API/AOPL suggested defining ''Confirmed Discovery'' in Part A20. On July 10, 2015, PHMSA published a proposed rule that includes defining ''Confirmed Discovery'' and adding it to the form. 80 FR 39916. PHMSA is currently reserving Part A19 for ''Confirmed Discovery'' until a Final Rule is published.

5. API/AOPL recommended defining the terms ''activate'' and ''mobilize'' in Part A24. PHMSA has changed ''activate the plan'' to ''notify a qualified individual.'' PHMSA has changed ''mobilize OSRO'' to ''activate ORSO.'' The terms ''notify'' and ''activate'' in these contexts have common meanings found in the dictionary.

6. API/AOPL noted there should be additional questions and clarifications on Part B12. API requested adding the option ''Bored/Drilled'' for water crossing under Part B12 and adding, ''Is this water crossing 100 feet or more in length from high water mark to high water mark?'' PHMSA agrees with the suggestions and revised the form accordingly.

7. PHMSA incorporated API/AOPL's suggestion to add ''Was this a Puddle/Spot Weld?'' when ''Pipe'' is chosen in C3. API/AOPL also recommended that PHMSA remove ''auxiliary piping'' from all items listed in Part C3 and keeping the term as a separate item. PHMSA understands that removing auxiliary piping will impact long term trending, but is proposing to look at the items, such as pump and control valve, as whole items that include auxiliary piping, connections, valves, and equipment.

8. API/AOPL requested removal of Part D2a, which collects data about the amount of soil hauled away plus the amount treated on site. API/AOPL noted that soil absorption rates will differ based on the product released and the soil type. PHMSA understands that soil absorption rates will differ based on the product released and would like to capture the soil impact of the releases. API/AOPL also noted that operators may remove soil that was not contaminated as precautionary measure during spill response and clean up. Part D2a requests information on the overall impact on soil, including soil removed or treated on site as a result of the spill, therefore, any soil removed as a direct result of the spill would be reported. PHMSA has not removed this question.

9. API/AOPL requested clarification about water contamination in Part D5. Specifically, API/AOPL asked if the answer should be limited to permanent bodies of water. Surface water can be intermittent, especially in arid portions of the country. If a surface waterbody were dry and spilled product entered the surface body, the operator should report no water contamination. API/AOPL also asked for clarification regarding whether rain water caught in a berm should be considered water contamination. Surface waterbodies include creeks and rivers. Rain water caught in a berm is not a surface waterbody.

10. API/AOPL recommended combining Parts D8 and D9 to report the number of individual who sustained OSHA recordable incidents. Parts D8 and D9 are not the same as OSHA recordable incidents as the injured person may not be a pipeline worker. PHMSA does not need the OSHA recordable incident number. PHMSA needs to collect the data proposed in Parts D8 and D9 to understand the human consequence of accidents.

11. API/AOPL offered adding the words ''Evacuated or Required Repair'' next to ''Buildings Affected'' in Parts D11 and D12. PHMSA accepts the wording offered by API/AOPL and added ''Evacuated or Required Repair'' next to ''Buildings Affected.''

12. API/AOPL noted that the response options on the form for Parts E2a are solely focused on a hydrostatic test conducted post-construction. API/AOPL requested that more options be available to the operator and that PHMSA clearly define the current options or reference the appropriate regulation. Part E2a includes four response options. The first option is ''post-construction hydrostatic testing.'' Contrary to the API/AOPL comment, the remaining three options are not focused solely on hydrostatic test during post-construction. PHMSA has added the regulation applicable to each response option to provide clarity.

13. API/AOPL recommended allowing six digits for length of segment in Part E5. PHMSA will ensure that the online application allows six digit entry.

14. API/AOPL suggested changing Parts E9 and E10 to replace the word ''detection'' with the phrase ''initial indication.'' PHMSA does not believe this change would improve the quality of the data collected by the question. API also recommended changing the word ''confirmation'' with the phrase ''confirmed discovery'' in these parts. On July 10, 2015, PHMSA published a proposed rule that includes defining ''confirmed discovery.'' 80 FR 39916. PHMSA will not add the term ''confirmed discovery'' to the form as part of this information collection.

15. API/AOPL recommended adding exempting authority and exempting criteria in G3, Excavation Damage. PHMSA acknowledges this additional information will be helpful and has added the recommended questions.

16. API/AOPL asked for a statement on the form to ensure that operators are aware they need to complete questions 5 through 11 when they pick Part G4-''Damage by Car, Truck, or Other Motorized Vehicle/Equipment NOT Engaged in Excavation. PHMSA's proposal includes the phrase recommended by API prior to questions 5 through 11 in Part G4. PHMSA acknowledges API/AOPL's concern that operators may not have answers to all questions and recognizes that ''unknown'' may be a valid response to those questions.

17. API/AOPL requested examples or clarification of the term ''Design-related'' in Part G5. PHMSA has revised the instruction to include an example of improper design practices.

18. API/AOPL requested clarification of ''erosion/abnormal wear'' in Part G6.6. The words used in all 15 factors under Part G6.6 have common meanings found in the dictionary. PHMSA does not believe that additional definitions would improve the instructions.

19. API suggested updating the list in Part J2 to include more specific tools and currently available ILI technology. Under API's proposal, two ''Ultrasonic'' tool runs could be entered in Part J2. However, API proposes collecting additional data about the tool once. The additional data proposed by API must be collected for each tool run. API also recommended collecting the tool propulsion system. Under API's proposal, twenty-two tool runs could be

reported in Part J2. The tool propulsion system must be collected for each tool run. PHMSA has modified Part J2 in response to API's comments. PHMSA has made additional improvements to the ''Tool Technology'' options and additional tool data for each technology. Also, PHMSA proposes collecting the tool propulsion system and detailed tool data for each run reported in Part J2.

E. Miscellaneous Comments

NORMAC believes that the proposed contributing factors on PHMSA's form should be eliminated. PHMSA added the contributing factors in response to NTSB recommendation P–15–16 and several other commentators agree with the usefulness of the information. PHMSA believes that NORMAC's other comments regarding the data quality are outside the scope of this **Federal Register** notice. PHMSA acknowledges PST's recommendation to lower reporting requirements for natural gas transmission line. However, as PST acknowledges, such a change would require a rulemaking and is beyond the scope of this data collection effort. Common Ground Alliance (CGA) noted that several of PHMSA's questions in Forms 7100.1 and 7100.2 (G3) parallel CGA's Damage Information Reporting Tool and these questions may be revised in 2018. PHMSA participates in CGA and plans to propose changes as needed in response to CGA DIRT question changes.

II. Summary of Impacted Collection

Section 1320.8(d), title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies two information collection requests that PHMSA will submit to OMB for renewal. PHMSA expects many of the new data elements are already known by the operator and that no report requires the completion of all fields on the forms. PHMSA has estimated the burdens below by adding 20% to the previous burdens, resulting 12 hours instead of 10 for the completion of each report.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA will request a three-year term of approval for each information collection activity.

PHMSA requests comments on the following information collections:

1. Title: Incident Reporting for Gas and LNG

OMB Control Number: PHMSA will request from OMB.

Current Expiration Date: N/A.

Type of Request: Approval of a new collection.

Abstract: PHMSA is proposing revision to the following incident report forms to improve the granularity of the data collected in several areas: Gas Distribution Incident Report (PHMSA F. 7100.1); Incident Report—Natural and Other Gas Transmission and Gathering Pipeline System (PHMSA F 7100.2); and Incident Report—Liquefied Natural Gas Facilities (PHMSA F 7100.3). PHMSA is also requesting a new OMB Control Number to collectively cover these forms.

Affected Public: Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 301.

Estimated annual burden hours: 3,612.

Frequency of collection: On occasion.

2. Title: Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting

OMB Control Number: 2137–0047.

Current Expiration Date: 12/31/2016.

Type of Request: Revision.

Abstract: This information collection covers recordkeeping and accident reporting by hazardous liquid pipeline operators who are subject to 49 CFR part 195. PHMSA is proposing to revise the form PHMSA F7000–1 to improve the granularity of the data collected in several areas.

Affected Public: Hazardous liquid pipeline operators.

Annual Reporting and Recordkeeping Burden:

Annual Responses: 847.

Annual Burden Hours: 56,229.

Frequency of collection: On occasion.

Comments are invited on:

(a) The need for the renewal and revision of these collections of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on December 21, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2016–31221 Filed 12–23–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.''

DATES: Comments must be submitted on or before February 27, 2017.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0248, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400

7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information that 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 title 44 requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing this notice of the renewal of the following information collection:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control No.: 1557–0248.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Frequency of Response: On occasion.

Burden Estimate:

Number of Respondents: 3,000.

Total Annual Burden: 2,350.

Description: This generic information collection request (ICR) provides a means to solicit qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Federal government's commitment to improving service delivery. Qualitative feedback is information that provides useful insights on perceptions and opinions but does not include statistical survey or quantitative results that can be attributed to the population of study. This qualitative feedback provides insights into customer or stakeholder perceptions, experiences, and expectations; provides an early warning of issues with service; and/or focuses attention on areas where communication, training, or changes in operations might improve delivery of products or services. It also enables ongoing, collaborative, and actionable communications between the OCC, and its customers and stakeholders, while also utilizing feedback to improve program management.

Soliciting feedback targets areas such as timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues related to service delivery. The responses are used to inform and plan efforts to improve or maintain the quality of service offered to the public. If the OCC does not collect this information, it will not have access to vital feedback from customers and stakeholders.

Under this generic ICR, the OCC will submit a specific information collection for approval only if the collection meets the following conditions:

- It is voluntary;
- It imposes a low burden on respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and a low cost on both respondents and the Federal government;
- It is non-controversial and does not raise issues of concern to other Federal agencies;
- It is targeted to solicit opinions from respondents who have experience with the program or will have such experience in the near future;
- It includes personally identifiable information (PII) only to the extent necessary, and the OCC does not retain the PII [1];
- It gathers information intended to be used internally only for general service improvement and program management purposes and not intended for release outside of the OCC (if released, the OCC must indicate the qualitative nature of the information);
- It does not gather information to be used for the purpose of substantially informing influential policy decisions; and
- It gathers information that will yield qualitative information and will not be designed or expected to yield statistically reliable results or used to reach general conclusions about the population of study.

Feedback collected provides useful information, but it does not yield data that can be attributed to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

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

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

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

Dated: December 20, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2016–31148 Filed 12–23–16; 8:45 am]

BILLING CODE 4810–33–P

[1] The OCC may retain PII only in limited circumstances, and if it does so, the OCC must comply with applicable requirements, restrictions, and prohibitions of the Privacy Act and other privacy and confidentiality laws that govern the collection, retention, use, and/or disclosure of such PII.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Financial Management Policies—Interest Rate Risk

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, ''Financial Management Policies—Interest Rate Risk.''

DATES: Comments must be submitted on or before February 27, 2017.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0299, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information that 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 title 44 requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing this notice of the renewal of the following information collection:

Title: Financial Management Policies—Interest Rate Risk.

OMB Control No.: 1557–0299.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Frequency of Response: On occasion.

Burden Estimate:

Estimated Number of Respondents: 390.

Estimated Annual Burden: 15,600.

Description: This information collection covers the recordkeeping burden for maintaining data in accordance with OCC's regulation on interest rate risk procedures, 12 CFR 163.176. The purpose of the regulation is to ensure that Federal savings associations are managing their exposure to interest rate risk appropriately. To comply with this reporting requirement, institutions need to maintain sufficient records to document how their interest rate risk exposure is monitored and managed internally.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

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

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

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

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

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

Dated: December 20, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2016–31149 Filed 12–23–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Orders 13661, 13662, and 13685

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of 15 persons whose property and interests in property are blocked, and two vessels identified as property in which a specially designated national has an interest and are therefore blocked, pursuant to one or more of the following authorities: Executive Order (E.O.) 13661 and E.O. 13685; and other entities who are subject to the prohibitions of a directive under E.O. 13662.

DATES: OFAC's actions described in this notice were effective on December 20, 2016, as further specified below.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's Web site (*www.treas.gov/ofac*). A complete listing of persons determined to be subject to one or more directives under E.O. 13662, as discussed in detail in this Notice, can be found in the Sectoral Sanctions Identifications List at *http://*

www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi_list.aspx.

Notice of OFAC Actions

On December 20, 2016, OFAC blocked the property and interests in property of the following persons pursuant to E.O. 13661, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'':

Individuals

1. DEDOV, Mikhail Aleksandrovich, Russia; DOB 04 Sep 1952; Gender Male (individual) [UKRAINE–EO13661].
2. KLISHIN, Mikhail Alekseevich, Russia; DOB 09 Oct 1954; Gender Male (individual) [UKRAINE–EO13661].
3. KOVALCHUK, Kirill Mikhailovich, Russia; DOB 1968; Gender Male (individual) [UKRAINE–EO13661].
4. LEBEDEV, Dmitri Alekseevich, Russia; DOB 1968; Gender Male (individual) [UKRAINE–EO13661].
5. MANSUROV, Dmitri Flerovich, Russia; DOB 1977; Gender Male (individual) [UKRAINE–EO13661].
6. MINAEV, Oleg Aleksandrovich, Russia; DOB 1971; Gender Male (individual) [UKRAINE–EO13661].
7. PRIGOZHIN, Yevgeniy Viktorovich (a.k.a. PRIGOZHIN, Evgeny), Russia; DOB 1961; Gender Male (individual) [UKRAINE–EO13661].

On December 20, 2016, OFAC blocked the property and interests in property of the following persons pursuant to E.O. 13685, ''Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine'':

Entities

1. INSTITUT STROIPROEKT, AO (a.k.a. AKTSIONERNOE OBSHCESTVO INSTITUT STROIPROEKT; a.k.a. AO INSTITUT STROIPROEKT; a.k.a. AO INSTITUTE STROYPROEKT; f.k.a. INSTITUT STROIPROEKT ZAKRYTOE AKTSIONERNOE OBSHCHESTVO; a.k.a. INSTITUTE STROYPROECT; a.k.a. STROYPROEKT; a.k.a. STROYPROEKT ENGINEERING GROUP), D. 13 Korp. 2 LiteraA Prospekt Dunaiski, St. Petersburg 196158, Russia; 13/2 Dunaisky Prospect, St. Petersburg 196158, Russia; Web site *http://www.stpr.ru;* Email Address *Most@stpr.ru;* alt. Email Address *Murina@stpr.ru;* Registration ID 1027810258673; Tax ID No. 7826688390; Government Gazette Number 11117863 [UKRAINE–EO13685].
2. KARST, OOO (a.k.a. CONSTRUCTION HOLDING COMPANY OLD CITY—KARST; a.k.a. OBSHCESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KARST; a.k.a. ''KARST LTD.''; a.k.a. ''LLC KARST''), D. 4 Litera A Pomeshchenie 69 ul. Kapitanskaya, St. Petersburg 199397, Russia; 4 Kapitanskaya Street, Unit A, Office 69–N, St. Petersburg 199397, Russia; Web site *http://www.oldcitykarst.ru;* Registration ID 1037800012711; Tax ID No. 7801106690; Government Gazette Number 48937526 [UKRAINE–EO13685].
3. CRIMEAN PORTS (a.k.a. STATE UNITARY ENTERPRISE OF THE REPUBLIC OF CRIMEA 'CRIMEAN PORTS'; a.k.a. SUE RK 'CRIMEAN PORTS'; a.k.a. ''SUE RC 'KMP' ''), 28 Kirov Street, Kerch, Republic of Crimea 98312, Ukraine; Email Address *crimeaport@mail.ru;* Registration ID 1149102012620; V.A.T. Number 9111000450 [UKRAINE–EO13685].
4. CRIMEAN RAILWAY (a.k.a. FEDERAL STATE UNITARY ENTERPRISE 'CRIMEAN RAILWAY'; a.k.a. KRYMZHD; a.k.a. THE RAILWAYS OF CRIMEA), 34 Pavlenko Street, Simferopol, Republic of Crimea 95006, Ukraine; Web site *http://www.crimearw.ru;* Email Address *ngkkjd@mail.ru;* Registration ID 1159102022738; V.A.T. Number 9102157783 [UKRAINE–EO13685].
5. LLC RUSCHEMTRADE, st. Mashinostroitelnyj, 3, Rostov-on-Don 344090, Russia; 86/1, Temryuk, Krasnodar 353500, Russia; Web site *http://ruschemtrade.com* [UKRAINE–EO13685] (Linked To: OJSC SOVFRACHT).
6. SOLID LTD (a.k.a. OOO SOLID), ul Mira 4, Novorossiysk, Krasnodarskiy kray 630024, Russia [UKRAINE–EO13685] (Linked To: OJSC SOVFRACHT).
7. TRANS–FLOT JSC (a.k.a. JSC TRANS–FLOT), ul Ventseka 1/97, Samara 443099, Russia; Web site *www.trans-flot.ru* [UKRAINE–EO13685] (Linked To: OJSC SOVFRACHT).
8. TRANSPETROCHART CO LTD, prospekt Engelsa 30, St Petersburg 194156, Russia [UKRAINE–EO13685] (Linked To: OJSC SOVFRACHT).

In addition, on December 20, 2016, OFAC identified the following vessels as property in which Trans-Flot JSC, an entity whose property and interests in property are blocked pursuant to E.O. 13685, has an interest:

Vessels

1. MARSHAL ZHUKOV Russia flag; Vessel Registration Identification IMO 9690224 (vessel) [UKRAINE–EO13685] (Linked To: TRANS–FLOT JSC).
2. STALINGRAD Russia flag; Vessel Registration Identification IMO 9690212 (vessel) [UKRAINE–EO13685] (Linked To: TRANS–FLOT JSC).

On December 20, 2016, OFAC determined that Russian Agricultural Bank owns, directly or indirectly, a 50 percent or greater interest in the entities listed below. As a result, these entities are subject to the prohibitions of Directive 1 (as amended) of September 12, 2014, issued pursuant to E.O. 13662, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' and 31 CFR 589.406 and 589.802, and following the Secretary of the Treasury's determination of July 16, 2014 pursuant to section l(a)(i) of E.O. 13662 with respect to the financial services sector of the Russian Federation economy.

Entities

1. AGROKREDIT–INFORM, AO (a.k.a. AKTSIONERNOE OBSHCHESTVO 'AGROKREDIT–INFORM'; a.k.a. CLOSED JOINT–STOCK COMPANY 'AGROCREDIT–INFORM'), 3 per. Gagarinski, Moscow 119034, Russia; 3 Gagarinsky Pereulok, Moscow, Russia; Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1087746334400; Tax ID No. 7704681172; Government Gazette Number 85651516; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).
2. ALBASHSKI ELEVATOR, OAO (f.k.a. AKTSIONERNOE OBSHCHESTVO OTKRYTOGO TIPA ALBASHKI ELEVATOR; a.k.a. OAO 'ALBASHSKI ELEVATOR'; a.k.a. OPEN JOINT STOCK COMPANY 'ALBASHSKIY ELEVATOR'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'ALBASHSKI ELEVATOR'), 15 per. Zaporozhski Stanitsa Novominskaya, Kanevskoi Raion, Krasnodarski Kr. 353701, Russia; 15 Zaporogskiy Pereulok, Novominskaya Village, Kanevskoy District, Krasnodar Region, Russia; Email Address *albashskiy@mail.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1022303977112; Tax ID No. 2334001310; Government Gazette Number 00940430; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).
3. BELOGLINSKI ELEVATOR, OAO (f.k.a. AKTSIONERNOE OBSHCHESTVO OTKRYTOGO TIPA

BELOGLINSKI ELEVATOR; a.k.a. OAO 'BELOGLINSKI ELEVATOR'; a.k.a. OPEN JOINT STOCK COMPANY 'BELOGLINSKIY ELEVATOR'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'BELOGLINSKI ELEVATOR'), 1 ul. Privokzalnaya S. Belaya Glina, Beloglinski Raion, Krasnodarski Kr. 353040, Russia; 1 Privokzalnaya Str., Belaya Glina Village, Leningradsky District, Krasnodar Region, Russia; Email Address *belnep00@mail.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1022303499074; Tax ID No. 2326002180; Government Gazette Number 00940482; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

4. EYANSKI ELEVATOR, OAO (a.k.a. OPEN JOINT STOCK COMPANY 'EYANSKI ELEVATOR'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'EYANSKI ELEVATOR'; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO OTKRYTOGO TIPA EYANSKI ELEVATOR), 29 ul. Grigoreva Stanitsa Novopokrovskaya, Novopokrovski Raion, Krasnodarski Kr. 353020, Russia; 29 Grigorieva Str., Novopokrovskaya Village, Novopokrovskiy District, Krasnodar Region, Russia; Email Address *eya_silo@mail.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1022304420478; Tax ID No. 2344003814; Government Gazette Number 00940588; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

5. KHOMYAKOVSKI KHLADOKOMBINAT, ZAO (a.k.a. CLOSED JOINT STOCK COMPANY 'HOMIAKOVSKIY COLD STORAGE COMPLEX'; a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO 'KHOMYAKOVSKI KHLADOKOMBINAT'; f.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO KHOMYAKOVSKI KHLADOKOMBINAT), 16V ul. Khomyakovskaya Pos. Khomyakova, Tula, Tulskaya Obl. 300098, Russia; 16 Homiakovskaya Str., Homiakovo, Tula, Russia; Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1047100123586; Government Gazette Number 59192911; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

6. KRYLOVSKI ELEVATOR, OAO (a.k.a. OAO 'KRYLOVSKI ELEVATOR'; a.k.a. OPEN JOINT STOCK COMPANY 'KRYLOVSKIY ELEVATOR'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'KRYLOVSKI ELVATOR'; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO OTKRYTOGO TIPA KRYLOVSKI ELEVATOR), 1 ul. Krasnogvardeiskaya Stanitsa Oktyabrskaya, Krylovski Raion, Krasnodarski Kr. 352085, Russia; 1 Krasnogvardeiskaya Str., Oktiabrskaya Village, Krylovski District, Krasnodar Region, Russia; Email Address *klv_el@ibox.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1022304103678; Tax ID No. 2338003767; Government Gazette Number 26982360; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

7. LADOZHSKI ELEVATOR, OAO (f.k.a. AKTSIONERNOE OBSHCHESTVO OTKRYTOGO TIPA LADOZHSKI ELEVATOR; a.k.a. OAO 'LADOZHSKI ELEVATOR'; a.k.a. OPEN JOINT STOCK COMPANY 'LADOGSKIY ELEVATOR'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'LADOZHSKI ELEVATOR'), 115 ul. Konshinykh Stanitsa Ladozhskaya, Ust-Labinski Raion, Krasnodarski Kr. 352320, Russia; 115 Konshinykh Str., Ladogskaya Village, Ust-Labinskiy District, Krasnodar Region, Russia; Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1022304972029; Tax ID No. 2356007563; Government Gazette Number 26370125; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

8. MALOROSSISKI ELEVATOR, OAO (f.k.a. AKTSIONERNOE OBSHCHESTVO OTKRYTOGO TIPA MALOROSSISKI ELEVATOR RUS; a.k.a. OPEN JOINT STOCK COMPANY 'MALOROSSIYSKIY ELEVATOR'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'MALOROSSISKI ELEVATOR'), 1 ul. Sadovaya Stanitsa Arkhangelskaya, Tikhoretski Raion, Krasnodarski Kr. 352118, Russia; 1 Sadovaya Str., Arkhangelskaya Village, Tikhoretskiy District, Krasnodar Region, Russia; Email Address *72307@mail.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1022304872754; Tax ID No. 2354003059; Government Gazette Number 00940708; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

9. RASSVET, OAO (a.k.a. OAO 'RASSVET'; a.k.a. OPEN JOINT STOCK COMPANY 'RASSVET'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'RASSVET'; f.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO RASSVET), D. Retyum, Luzhski Raion, Leningradskaya Obl. 188230, Russia; Retiun Village, Lujskiy District, Leningrad Region, Russia; Web site *www.emitent-spb.ru;* Email Address *lugarassvet@mail.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1024701557726; Tax ID No. 4710004180; Government Gazette Number 00547371; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

10. ROVNENSKI ELEVATOR, OAO (f.k.a. AKTSIONERNOE OBSHCHESTVO OTKRYTOGO TIPA ROVNENSKI ELEVATOR; a.k.a. OAO 'ROVNENSKI ELEVATOR'; a.k.a. OPEN JOINT STOCK COMPANY 'ROVNENSKIY ELEVATOR'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'ROVNENSKI ELEVATOR'), 1 ul. Mira Pos. Kubanski, Novopokrovski Raion, Krasnodarski Kr. 353011, Russia; 1 Mira Str., Kubanskiy Village, Novopokrovskiy District, Krasnodar Region, Russia; Email Address *rovnenskiy@mail.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1022304420709; Tax ID No. 2344007569; Government Gazette Number 00940743; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–

EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

11. STEPNYANSKI ELEVATOR, OAO (f.k.a. AKTSIONERNOE OBSHCHESTVO OTKRYTOGO TIPA STEPNYANSKI ELEVATOR; a.k.a. OAO 'STEPNYANSKI ELEVATOR'; a.k.a. OPEN JOINT STOCK COMPANY 'STEPNYANSIKY ELEVATOR'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'STEPNYANSKI ELEVATOR'), 2 ul. Krupskaya S. Krasnoe, Kushchevski Raion, Krasnodarski Kr. 352010, Russia; 2 Krupskoi Str., Krasnoe Village, Kutshevskiy District, Krasnodar Region, Russia; Email Address *step_el@inbox.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1022304243279; Tax ID No. 2340003980; Government Gazette Number 00940648; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

12. TD AGROTORG, OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'TORGOVY' DOM 'AGROTORG'; a.k.a. TRADING COMPANY 'AGROTORG' LTD.), 3 per. Gagarinski, Moscow 119034, Russia; 3 Gagarinsky Pereulok, Moscow, Russia; Email Address *fednev@rshb.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1047796863916; Tax ID No. 7704537299; Government Gazette Number 75319328; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

13. UMANSKI ELEVATOR, OAO (a.k.a. OPEN JOINT STOCK COMPANY 'UMANSKIY ELEVATOR'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'UMANSKI ELEVATOR'; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO OTKRYTOGO TIPA UMANSKI ELEVATOR), 1 per. Elevatorny Stanitsa Leningradskaya, Leningradski Raion, Krasnodarski Kr. 353740, Russia; 1 Elevatorniy Pereulok, Leningradskaya Village, Leningradskiy District, Krasnodar Region, Russia; Email Address *umansk-el-yr@mail.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1022304292416; Tax ID No. 2341000195; Government Gazette Number 00940849; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

14. VELICHKOVSKI ELEVATOR, OAO (a.k.a. OPEN JOINT STOCK COMPANY 'VELICHKOVSKIY ELEVATOR'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'VELICHKOVSKI ELEVATOR'; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO OTKRYTOGO TIPA VELICHKOVSKI ELEVATOR), 1 ul. Elevatornaya Stanitsa Straovelichkovskaya, Kalininski Raion, Karsnodarski Kr. 353793, Russia; 1 Elevatornaya Str., Starovelichkovskaya Village, Kalininskiy District, Krasnodar Region, Russia; Email Address *velsilos@mail.ru;* Executive Order 13662 Directive Determination—Subject to Directive 1; Registration ID 1022303950360; Tax ID No. 2333003442; Government Gazette Number 00940536; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: RUSSIAN AGRICULTURAL BANK).

On December 20, 2016, OFAC determined that OAO Novatek owns, directly or indirectly, a 50 percent or greater interest in the entities listed below. As a result, these entities are subject to the prohibitions of Directive 2 (as amended) of September 12, 2014, issued pursuant to E.O. 13662, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' and 31 CFR 589.406 and 589.802, and following the Secretary of the Treasury's determination of July 16, 2014 pursuant to section l(a)(i) of E.O. 13662 with respect to the energy sector of the Russian Federation economy.

Entities

1. NOVATEK SEVERO–ZAPAD, OOO (a.k.a. LIMITED LIABILITY COMPANY 'NOVATEK NORTH–WEST'; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'NOVATEK SEVERO–ZAPAD'; a.k.a. OOO NOVATEK SEVERO–ZAPAD), d. 7 Litera A ul. Paradnaya, St. Petersburg 191014, Russia; Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 5067847486229 (Russia); Government Gazette Number 96782616 (Russia); For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

2. NOVATEK–CHELYABINSK, OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'NOVATEK–CHELYABINSK'; a.k.a. OOO NOVATEK–CHELYABINSK; f.k.a. YAMALGAZRESURS–CHELYABINSK OOO), 42 prospekt Lenina, Chelyabinsk, Chelyabinskaya Obl. 454091, Russia; Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1107404003376; Tax ID No. 7404056114; Government Gazette Number 68628371; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

3. NOVATEK–KOSTROMA, OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'NOVATEK–KOSTROMA'; f.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KOSTROMSKAYA REGIONALNAYA KOMPANIYA PO REALIZATSII GAZA; a.k.a. OOO NOVATEK–KOSTROMA), 37 ul. Lesnaya, Kostroma, Kostromskaya Obl. 156005, Russia; Web site *http://www.kostroma.novatek.ru/;* Email Address *p.marchenko@gas-kostroma.ru;* Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1024400511794; Tax ID No. 4401017834; Government Gazette Number 50101120; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

4. NOVATEK–PERM, OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'NOVATEK–PERM'; a.k.a. OOO 'NOVATEK–PERM'), 41 ul. Petropavlovskaya, Perm, Permski Kr. 614000, Russia; Email Address *info@perm.novatek.ru;* Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1105904008297; Tax ID No. 5904230529; Government Gazette Number 65136070; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

5. NOVATEK–PUROVSKI ZPK, OOO (f.k.a. NOVA ZPK OOO; a.k.a. OBSHCHESTVO S OGRANICHENNOI

OTVETSTVENNOSTYU 'NOVATEK–PUROVSKI ZPK'; a.k.a. OOO NOVATEK–PUROVSKY ZPK), D. Limbei, Purovski Raion, Yamalo–Nenetski Okr. 629880, Russia; Email Address *comon@zpk.novatek.ru;* Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1048900851515; Tax ID No. 8911020197; Government Gazette Number 73157577; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

6. NOVATEK–TARKOSALENEFTEGAZ, OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'NOVATEK–TARKOSALENEFTEGAZ'; f.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU PUR LEND; a.k.a. OOO NOVATEK–TARKOSALENEFTGAS), 28 ul. Tarasova, Tarko-Sale, Purovski Raion, Yamalo–Nentski Okr. 629850, Russia; Email Address *global@tsng.novatek.ru;* Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1058901201920; Tax ID No. 8911020768; Government Gazette Number 33589611; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

7. NOVATEK–TRANSERVIS, OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'NOVATEK–TRANSERVIS'; a.k.a. OOO NOVATEK–TRANSERVICE), D. Limbei, Purovski Raion, Yamalo–Nenetski Okr. 629880, Russia; Email Address *novatek-ts@ts.novatek.ru;* Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1036301402576; Tax ID No. 6330024410; Government Gazette Number 14563310; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

8. NOVATEK–UST–LUGA, OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'NOVATEK–UST–LUGA'; a.k.a. OOO 'NOVATEK–UST–LUGA'), 5 ul. Shkolnaya D. Vistino, Kingiseppski Raion, Leningradskaya Obl. 188477, Russia; Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1074707002457; Tax ID No. 4707026057; Government Gazette Number 80675261; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

9. NOVATEK–YARSALENEFTEGAZ, OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'NOVATEK–YARSALENEFTEGAZ'), 9 ul. Respubliki, Salekhard, Yamalo–Nenetski Okr., Russia; Email Address *v.solovyh@novatek.ru;* Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1138901001194; Tax ID No. 8901028126; Government Gazette Number 27013953; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

10. SHERVUD PREMER, OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'SHERVUD PREMER'; a.k.a. SHERVUD PREMIER OOO), 8 per. Olsufevski, Moscow 119021, Russia; Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1027700226707; Tax ID No. 7716160907; Government Gazette Number 18470373; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

11. TERNEFTEGAZ, ZAO (a.k.a. ZAO TERNEFTGAS), str. 2 ter. Promyshlenaya zone No. 11 Krasnoselkup, Krasnoselkupski Raion, Yamalo-Nenetski A.O. 629380, Russia; Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1098911000473; Tax ID No. 8912002715; Government Gazette Number 71216169; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

12. YARGEO, OOO (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU 'YARGEO'; a.k.a. OOO YARGEO), 12/2 ul. Zvereva, Nadym, Yamalo–Nenetski Okr. 629730, Russia; Email Address *loskutova@yargeo.novatek.ru;* Executive Order 13662 Directive Determination—Subject to Directive 2; Registration ID 1038900502728; Tax ID No. 8901014564; Government Gazette Number 71215589; For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] (Linked To: OAO NOVATEK).

Dated: December 20, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–31073 Filed 12–23–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notices 2013–39 and 2013–40

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Notice 2013–39, Temporary Shelter for Individuals Displaced by Severe Storms and Tornadoes in Oklahoma; Notice 2013–40, Low-Income Housing Credit Disaster Relief for Oklahoma Severe Storms and Tornadoes.

DATES: Written comments should be received on or before February 27, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Titles: Temporary Shelter for Individuals Displaced by Severe Storms and Tornadoes in Oklahoma; Low-

Income Housing Credit Disaster Relief for Oklahoma Severe Storms and Tornadoes Disaster Relief.

OMB Number: 1545–2244.

Notice Numbers: Notices 2013–39 and 2013–40.

Abstract: The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects to provide emergency housing relief needed as a result of the devastation caused by severe storms and tornadoes in the State of Oklahoma beginning May 18, 2013. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42–13(a) of the Income Tax Regulations.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households.

Notice 2013–39:

Estimated Number of Respondents: 50.

Estimated Time per Response: 30 min.

Estimated Total Annual Burden Hours: 25.

Notice 2013–40:

Estimated Number of Respondents: 1200.

Estimated Time per Response: 15 min.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 19, 2016.

Tuawana Pinkston,

Supervisory Tax Analyst.

[FR Doc. 2016–31204 Filed 12–23–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1120–C, U.S. Income Tax Return for Cooperative Associations.

DATES: Written comments should be received on or before February 27, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Cooperative Associations.

OMB Number: 1545–2052.

Form Number: 1120–C.

Abstract: IRS Code section 1381 requires subchapter T cooperatives to file returns. Previously, farmers' cooperatives filed Form 990–C and other subchapter T cooperatives filed Form 1120. If the subchapter T cooperative does not meet certain requirements, the due date of their return is two and one-half months after the end of their tax year which is the same as the due date for all other corporations. The due date for income tax returns filed by subchapter T cooperatives who meet certain requirements is eight and one-half months after the end of their tax year. Cooperatives who filed their income tax returns on Form 1120 were considered to be late and penalties were assessed since they had not filed by the normal due date for Form 1120. Due to the assessment of the penalties, burden was placed on the taxpayer and on the IRS employees to resolve the issue. Proposed regulations (Reg–149436–04) published in the **Federal Register** (71 FR 43811), proposes that all subchapter T cooperatives will file Form 1120–C, U.S. Income Tax Return for Cooperative Associations.

Current Actions: There are no changes being made to this collection at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time per Respondent: 111 hours, 54 minutes.

Estimated Total Annual Burden Hours: 335,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 21, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016–31202 Filed 12–23–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 21, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 26, 2017 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0934, or viewing the entire information collection request at *www.reginfo.gov*.

Internal Revenue Service (IRS)

OMB Control Number: 1545–0242.

Type of Review: Extension without change of a currently approved collection.

Title: Gas Guzzler Tax.

Forms: 6197.

Abstract: Form 6197 is used to compute the gas guzzler tax on automobiles whose fuel economy does not meet certain standard for fuel economy. The tax is reported quarterly on Form 720. Form 6197 is filed each quarter with Form 720 for manufacturers. Individuals can make a one-time filing if they import a gas guzzler auto for personal use. The IRS uses the information to verify computation of the tax and compliance with the law.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 4659.

OMB Control Number: 1545–1013.

Type of Review: Extension without change of a currently approved collection.

Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

Abstract: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.

Form: 8612.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 196.

OMB Control Number: 1545–1068.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8618—Definition of a Controlled Foreign Corporation, Foreign Base Company Income, and Foreign Personal Holding Company Income of a Controlled Foreign Corporation (INTL–362–88).

Abstract: The election and recordkeeping requirements are necessary to exclude certain high-taxed or active business income from subpart F income or to include certain income in the appropriate category of subpart F income. The recordkeeping and election procedures allow the U.S. shareholders and the IRS to know the amount of the controlled foreign corporation's subpart F income.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 50,417.

OMB Control Number: 1545–1709.

Type of Review: Revision of a currently approved collection.

Title: Application for Automatic Extension of Time to File an Exempt Organization Return (Form-8868).

Form: 8868.

Abstract: 26 U.S.C. 6081 of the Internal Revenue Code grants a reasonable extension of time for filing any return. This form is used by fiduciaries and certain exempt organizations, to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

Affected Public: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 1,048,290.

OMB Control Number: 1545–1729.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9114 (Final) Electronic Payee Statements.

Abstract: In general, under these regulations, a person required to furnish a statement on Form W–2 under Code sections 6041(d) or 6051, or Forms 1098–T or 1098–E under Code section 6050S, may furnish these statements electronically if the recipient consents to receive them electronically, and if the person furnishing the statement (1) makes certain disclosures to the recipient, (2) annually notifies the recipient that the statement is available on a Web site, and (3) provides access to the statement on that Web site for a prescribed period of time.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 2,844,950.

OMB Control Number: 1545–1733.

Type of Review: Revision of a currently approved collection.

Title: Form 720–CS, Carrier Summary Report, Form 720–TO, Terminal Operator Report, and Form 8809–EX, Request for Extension of Time to File an ExSTARS Information Return.

Form: 720–CS, 720–TO, 8809–EX

Abstract: Representatives of the motor fuel industry, state governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effort has resulted in a system to track the movement of all products to and from terminals. Form 720–CS is an information return that will be used by carriers to report their monthly deliveries and receipts of products to and from terminals. Form 720–TO is completed by bulk transport carriers (barges, vessels, and pipeline) who deliver fuel product to the terminals. Form 8809–EX is used to request a 30-day extension of time to file an Excise Summary terminal Activity Reporting System (ExSTARS) information report (Form 720CS, Carrier Summary Report or Form 720TO, Terminal operator Report).

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 2,530,383.

OMB Control Number: 1545–1908.

Type of Review: Extension without change of a currently approved collection.

Title: REG–121475–03 (TD 9495-Final) Qualified Zone Academy Bonds: Obligations of States and Political Subdivisions.

Abstract: The regulations that provide guidance to state and local governments that issue qualified zone academy bonds and to banks, insurance companies, and other taxpayers that hold those bonds on the program requirements for qualified zone academy bonds. The final regulations implement the amendments to section 1397E and provide guidance on the maximum term, permissible use of proceeds, and remedial actions for qualified zone academy bonds.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Annual Burden Hours: 3.

Bob Faber,

Acting Treasury PRA Clearance Officer.

[FR Doc. 2016–31212 Filed 12–23–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Data Collection and Comments in Aid of Analyses of the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Request for comments.

SUMMARY: The Terrorism Risk Insurance Act of 2002 (TRIA) created the Terrorism Risk Insurance Program (Program) to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events. The Program has been reauthorized on a number of occasions, most recently in the Terrorism Risk Insurance Program Reauthorization Act of 2015. TRIA requires the Secretary of the Treasury (Secretary) to perform periodic analyses of certain matters concerning the Program. In order to assist the Secretary with this process, TRIA requires insurers to submit on an annual basis certain insurance data and information regarding participation in the Program. Treasury requests stakeholder feedback on the data collection forms proposed for use in the 2017 data collection process, pursuant to 31 CFR 50.51(c). Copies of these forms and associated explanatory materials are available for electronic review at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx*. Treasury also seeks comments from interested parties on issues that Treasury will be analyzing in connection with its next report concerning the Program, which will address the participation of small insurers in the Program, including any competitive challenges such insurers face in the terrorism risk insurance marketplace.

DATES: Submit comments on or before February 27, 2017.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail to the Federal Insurance Office, Attn: Richard Ifft, Room 1140 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Because postal mail may be subject to processing delays, it is recommended that comments be submitted electronically. If submitting comments by mail, please submit an original version with two copies. Comments concerning the proposed data collection forms should be captioned with ''2017 TRIA Data Collection Form Comments.'' Comments addressing the participation of small insurers in the Program should be captioned with ''2017 TRIA Small Insurer Study Comments.'' Please include your name, group affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, a comment should include a short Executive Summary (no more than five single-spaced pages).

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–2922 (not a toll-free number), Kevin Meehan, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, at (202) 622–7009 (not a toll-free number), or Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, at (202) 622–3220 (not a toll free number). Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

TRIA [1] directs the Secretary, beginning in calendar year 2016, to ''require insurers participating in the Program to submit to the Secretary such information regarding insurance coverage for terrorism losses of such insurers as the Secretary considers appropriate to analyze the effectiveness of the Program[.]'' [2] This information and data includes information regarding: (1) Lines of insurance with exposure to such losses; (2) premiums earned on such coverage; (3) geographical location of exposures; (4) pricing of such coverage; (5) the take-up rate for such coverage; (6) the amount of private reinsurance for acts of terrorism purchased; and (7) such other matters as the Secretary considers appropriate.

31 CFR 50.51 outlines the data collection process and requires insurers to submit the specified data and information relating to Program participation no later than May 15 of each calendar year. Treasury, through an insurance statistical aggregator, intends to establish a web portal, through which insurers will be able to submit the requested data. All information submitted via the web portal will be subject to the confidentiality and data protection provisions of applicable Federal law.

The first year of data collection under Section 104(h) was 2016. In March 2016, Treasury requested that participating insurers voluntarily submit 2015 insurance data.[3] This was done to ensure that Treasury data collection was both limited and meaningful. This voluntary collection identified the types of data and information sought by Treasury, and provided insurers with time to make adjustments to ease the burden of compliance with subsequent mandatory data collections. The collection templates proposed for use in calendar year 2017 follow from the form created for use in calendar year 2016, although certain changes have been made due to experience developed through the 2016 voluntary data call.

In addition, Section 108(h) of TRIA requires the Secretary to conduct, by June 30, 2017, a study of small insurers (to be defined by regulation by the Secretary, as has been done under 31 CFR 50.4(z)) participating in the Program to identify any competitive challenges that small insurers face in the terrorism risk insurance marketplace. Treasury's rules provide for the collection of data in connection with these small insurers (31 CFR 50.52), and Treasury has also identified several questions regarding the role of small insurers in the Program, to which comments are sought for use in the study that Treasury must conduct

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. As the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] TRIA sec. 104(h).

[3] 81 FR 11649 (Mar. 4, 2016).

concerning the participation of such insurers in the Program.

II. Data Collection Templates: Request for Comments

Pursuant to Section 104(h)(4) of TRIA, Treasury has determined that the needed information will not be available in a timely or meaningful manner from other sources. Accordingly, Treasury is requesting certain data and information directly from insurers, and will continue to work with publicly-available sources to gather additional information.

Based on feedback received following the voluntary 2016 data collection, and pursuant to 31 CFR 50.51(c), Treasury proposes to use four different data collection templates for future data collection. Insurers will fill out the template identified ''Insurer (Non-Small) Groups or Companies,'' unless the insurer meets the definition of a small insurer, captive insurer, or alien surplus lines insurer as set forth in 31 CFR 50.4. These insurers will be required to complete different and separate forms that have been more specifically tailored to their operations. Each form is accompanied by a separate ''data dictionary'' applicable to the form, in which specific instructions concerning each data element are provided.

Small insurers are defined in 31 CFR 50.4(z) as insurers (or an affiliated group of insurers) whose policyholder surplus for the immediately preceding year is less than five times the Program Trigger amount [4] for the current year, and whose TRIP-eligible lines direct earned premium for the previous year is also five times less than the Program Trigger amount. For the 2017 data collection, which is otherwise requesting information from calendar year 2016, this will require an insurer to have 2015 policyholder surplus and 2015 direct earned premium of less than $600,000,000 (or five times the 2016 Program Trigger of $120,000,000). In addition, and at least for purposes of data collection in calendar year 2017, to the extent a small insurer had less than $10,000,000 in TRIP-eligible lines direct earned premium in calendar year 2016, such insurer is not required to provide data. This $10,000,000 threshold is designed to further reduce the burden on small insurers that write only small amounts of TRIP-eligible lines insurance.[5]

Captive insurers are defined in 31 CFR 50.4(g) as insurers licensed under the captive insurance laws or regulations of any state. All captive insurers as defined, regardless of size, are required to complete the captive insurer template if the captive insurer writes some amount of terrorism risk insurance subject to the Program. To the extent a captive insurer writes policies in TRIP-eligible lines of insurance, but does not actually provide its insureds with any terrorism risk insurance subject to the Program, the captive insurer is not required to provide data.

Alien surplus lines insurers are defined in 31 CFR 50.4(o)(1)(i)(B) as insurers not licensed or admitted to engage in the business of providing primary or excess insurance in any state, but that are eligible surplus line insurers listed on the NAIC Quarterly Listing of Alien Insurers. To the extent an alien surplus lines insurer is part of a larger group that is subject to reporting under either the ''Insurer (Non-Small) Groups or Companies'' or ''Small Insurers'' template, the information for that alien surplus lines insurer should be reported as part of the larger group, using the proper template. The ''Alien Surplus Lines'' template is to be used by any other alien surplus lines insurer, regardless of size, that is not part of a larger group. Such alien surplus lines insurers must report, at least for calendar year 2017, even if they fall within the $10,000,000 premium threshold otherwise required for small insurers to report.

Insurers will be required to complete these forms online through a web portal that will be established for the calendar year 2017 collection, the link for which will be provided at a later date. Reporting for all Program participants for calendar year 2017 is mandatory, unless an insurer falls within the exceptions for certain small insurers and captive insurers as identified above. As was the case with the voluntary data call in calendar year 2016, Treasury intends to provide training and make available additional resources for insurers with questions during the data process about proper completion of the forms. To ensure efficient and accurate completion of the forms by affected insurers, Treasury is requesting the public's feedback on the content of these forms, which are now available through the Web site listed above.

III. Solicitation for Comments on Small Insurer Participation in the Program

Section 108(h) of TRIA requires the Secretary to conduct a study to identify any competitive challenges that small insurers, as now defined in 31 CFR 50.4(z), participating in the Program face in the terrorism risk insurance marketplace. As discussed above, Treasury will be collecting certain data from small insurers in calendar year 2017 which will be used in connection with the study. In addition, Treasury also requests comments concerning the participation of small insurers in the Program. Treasury welcomes comments concerning small insurer participation in the Program generally, and invites responses to the following particular issues:

(1) Changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers.

(2) How the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils.

(3) The impact of the Program's mandatory availability requirement under Section 103(c) of TRIA on small insurers.

(4) The effect of increasing the trigger amount for the Program under Section 103(e)(1)(B) of TRIA for small insurers.

(5) The availability and cost of private reinsurance for small insurers.

(6) The impact that State workers compensation laws have on small insurers and workers compensation carriers in the terrorism risk insurance marketplace.

IV. Procedural Requirements

Paperwork Reduction Act. The collection of information contained in this notice has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). Organizations and individuals desiring to submit comments concerning the collection of information in the notice should direct them to: Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy of the comments should also be sent to Treasury at the addresses previously specified. Comments on the collection of information should be received by February 27, 2017.

[4] The Program Trigger amount is the amount of aggregate industry insured losses that must be exceeded before any Federal payments are made, even if a particular participating insurer has exceeded its deductible. *See* 31 CFR 50.4(p) and (v).

[5] To the extent an insurer with this level of TRIP-eligible lines direct earned premium is part of a larger group that is required to report, the experience of this insurer, even if it is under the $10,000,000 direct earned premium threshold, must be reported in connection with the appropriate form for the group as a whole.

Treasury specifically invites comments on: (a) Whether the proposed collection is responsive to the statutory requirement; (b) the accuracy of the estimate of the burden of the collections of information (*see below*); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to use automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

Comments are being sought with respect to the collection of information in connection with data collection.

Treasury previously analyzed the potential burdens associated with the data collection process. See 81 FR 18950 (April 1, 2016). As explained previously, the data collection rules propose a mandatory annual data collection process (beginning in 2017) which will continue from year to year as the Program remains in effect. The information sought by Treasury will comprise data elements that insurers currently collect or generate, although not necessarily grouped together the way in which insurers currently collect and evaluate the data. Treasury currently anticipates that approximately 100 Program participants will be required to submit the ''Insurer (Non-Small) Groups or Companies'' data collection form, 300 Program participants will submit the ''Small Insurer'' form, 400 Program participants will submit the ''Captive Insurer'' form, and 75 Program participants will submit the ''Alien Surplus Lines Insurers'' form.

Each set of data collection forms is expected to incur a different level of burden. Treasury anticipates approximately 75 hours will be required to collect, process, and report the data for each Insurer (Non-Small) Group or Company, approximately 25 hours to collect, process, and report data for each Small Insurer, and approximately 50 hours to collect, process, and report data for each Captive Insurer and Alien Surplus Lines Insurer.

Assuming this breakdown, the estimated annual burden would be 38,750 hours (100 insurers × 75 hours + 300 insurers × 25 hours + 400 insurers × 50 hours + 75 insurers × 50 hours). At a blended, fully loaded hourly rate of $85, the cost would be $3,293,750 across the industry as a whole, or $6,375 per Insurer (Non-Small) Group or Company, $2,125 per Small Insurer, and $4,250 per Captive Insurer or Alien Surplus Lines Insurer.

Dated: December 20, 2016.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2016–31238 Filed 12–23–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Guidance Concerning Stand-Alone Cyber Liability Insurance Policies Under the Terrorism Risk Insurance Program

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of guidance.

SUMMARY: This notice provides guidance (Guidance) concerning the Terrorism Risk Insurance Program (Program) under the Terrorism Risk Insurance Act of 2002, as amended (''TRIA'' or ''the Act''). In this notice, the Department of the Treasury (Treasury) provides guidance regarding how insurance recently classified as ''Cyber Liability'' for purposes of reporting premiums and losses to state insurance regulators will be treated under TRIA and Treasury's regulations for the Program (Program regulations).

DATES: December 27, 2016.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202–622–2922 (not a toll free number), Kevin Meehan, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202–622–7009 (not a toll free number), or Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, 202–622–3220 (not a toll free number).

SUPPLEMENTARY INFORMATION:

This Guidance addresses the application of certain provisions of TRIA [1] and the Program regulations [2] with respect to certain insurance policies covering cyber-related risks. This Guidance may be relied upon by the members of the public unless superseded by subsequent amendments to the Program regulations, or by subsequent guidance.

I. Background

TRIA was enacted following the attacks on September 11, 2001, to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events. TRIA requires insurers to ''make available'' terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (insured losses), and provides for shared public and private compensation for such insured losses. The Secretary of the Treasury (Secretary) administers the Program; pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Insurance Office assists the Secretary in administering the Program.[3] The Program has been reauthorized three times, most recently on January 12, 2015, when President Obama signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2015, extending the Program until December 31, 2020.[4]

TRIA requires participating insurers to ''make available'' terrorism risk insurance in connection with ''property and casualty insurance'' as defined in the Act.[5] By regulation, Treasury has further defined ''property and casualty insurance'' by reference to the classification of certain lines of commercial insurance set forth in the National Association of Insurance Commissioner's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).[6] Pursuant to the Program regulations, insurance reported on Statutory Page 14 under ''Line 17—Other Liability'' is generally subject to TRIP. However, insurance reported on that page as ''Professional Errors and Omissions Liability Insurance,'' a sub-line within ''Other Liability'' for state regulatory purposes, is expressly excluded from TRIP by the Act.[7] Under the Program regulations, ''professional liability insurance'' is defined consistently with ''Professional Errors and Omissions Liability Insurance'' as that term is defined for state law purposes.[8]

Cyber risk insurance is a broad term that includes insurance products covering risks arising ''from the use of

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. As the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified below by the sections of the law.

[2] 31 CFR part 50.

[3] 31 U.S.C. 313(c)(1)(D).

[4] Public Law 114–1, 129 Stat. 3.

[5] TRIA sec. 103(c) (''make available'' requirement); *id.,* sec. 102(11) (definition of ''property and casualty insurance'').

[6] 31 CFR 50.4(w).

[7] TRIA sec. 102(11)(xi) (excluding ''professional liability insurance''); *see also* 31 CFR 50.4(w)(2)(xi).

[8] 31 CFR 50.4(t); *compare* National Association of Insurance Commissioners, Uniform Property & Casualty Product Coding Matrix (Effective January 1, 2016) (NAIC 2016 P/C Product Coding Matrix), p. 9, *available at http://www.naic.org/documents/industry_pcm_p_c_2016.pdf.*

electronic data and its transmission, including technology tools such as the internet and telecommunications networks,'' as well as ''physical damage that can be caused by cyber attacks, fraud committed by misuse of data, any liability arising from data storage, and the availability, integrity, and confidentiality of electronic information.''[9] The cyber risk insurance market has evolved significantly since it first emerged approximately two decades ago and is expected to continue experiencing rapid growth.[10] A 2016 report on cyber insurance noted that 19 different categories of coverage are available to a greater or lesser extent in the cyber insurance market, including first and third party coverage related to data breaches, cyber extortion, business interruption, data and software loss, physical damage, and death and bodily injury.[11]

Cyber risk insurance remains an evolving insurance market, both in terms of product development and regulatory oversight. Certain insurance policies that may contain a ''cyber risk'' component or which do not exclude losses arising from a cyber event continue to be written in existing TRIP-eligible lines of insurance and are thus subject to the provisions of the Program.[12] Prior to 2016, some insurers that wrote stand-alone cyber risk insurance may have offered and reported it for state regulatory purposes as Professional Errors and Omissions Liability Insurance, which, as noted above, is expressly excluded under TRIA from the definition of ''property and casualty insurance.''

As of January 1, 2016, however, state regulators introduced a new sub-line of insurance, identified as ''Cyber Liability,'' under the broader ''Other Liability'' line. ''Cyber Liability'' is defined for state regulatory purposes as follows:

Stand-alone comprehensive coverage for liability arising out of claims related to unauthorized access to or use of personally identifiable or sensitive information due to events including but not limited to viruses, malicious attacks or system errors or omissions. This coverage could also include expense coverage for business interruption, breach management and/or mitigation services. When cyber liability is provided as an endorsement or as part of a multi-peril policy, as opposed to a stand-alone policy, use the appropriate Sub-TOI of the product to which the coverage will be attached.[13]

This Guidance confirms that stand-alone cyber insurance policies reported under the ''Cyber Liability'' line are included in the definition of ''property and casualty insurance'' under TRIA and are thus subject to the disclosure requirements and other requirements in TRIA and the Program regulations as specified in the following Section.

II. Guidance

Treasury provides this Guidance to clarify that the requirements of TRIP apply to stand-alone cyber insurance policies reported under a TRIP-eligible line of insurance.[14] This Guidance is designed to address the application of TRIA and the Program regulations to such cyber risk insurance policies due to the aforementioned developments in this area, which may have caused some marketplace uncertainty.

Guidance One (Cyber Liability Included in Property and Casualty Insurance)

Effective January 1, 2016, policies reported for state regulatory purposes under the Cyber Liability sub-line on Line 17—Other Liability of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14) are considered ''property and casualty insurance'' under TRIA.

Guidance Two (Application to In-Force Policies)

(a) An in-force policy reported under the Cyber Liability sub-line on Line 17—Other Liability of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14), and which provides coverage for insured losses under TRIA, is not eligible for reimbursement of the Federal share of compensation unless:

(i) The insurer offered coverage for insured losses subject to the required disclosures under 31 CFR 50 Subpart B; or

(ii) The insurer demonstrates that the appropriate disclosures were provided to the policyholder before the date of any certification of an act of terrorism.[15]

(b) An insurer that did not make an offer for coverage for insured losses under an in-force policy reported under the Cyber Liability sub-line on Line 17—Other Liability of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14) is not required to do so at this time.

Guidance Three (Application to New Offers and Renewals of Coverage)

Effective April 1, 2017, and consistent with TRIA and the Program regulations, an insurer must provide disclosures and offers that comply with TRIA and the Program regulations on any new or renewal policies reported under the Cyber Liability sub-line on Line 17—Other Liability of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).

Dated: December 20, 2016.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2016–31244 Filed 12–23–16; 8:45 am]

BILLING CODE 4810–25–P

[9] CRO Forum, ''Cyber Resilience: The Cyber Risk Challenge and the Role of Insurance'' (December 2014), p. 5, *available at http://www.thecroforum.org/cyber-resilience-cyber-risk-challenge-role-insurance/.*

[10] PricewaterhouseCoopers, ''Insurance 2020 & Beyond: Reaping the dividends of cyber resilience'' (2015), p. 10 (estimating that the global premium market will reach $5 billion by 2018 and at least $7.5 billion by 2020) (PwC Cyber Insurance Report), *available at http://www.pwc.com/gx/en/insurance/publications/assets/reaping-dividends-cyber-resilience.pdf.*

[11] Cambridge Centre for Risk Studies and Risk Management Solutions, ''Managing Cyber Insurance Accumulation Risk'' (February 2016), pp. 10–11, *available at http://static.rms.com/email/documents/managing-cyber-insurance-accumulation-risk-rms-crs-jan2016.pdf.*

[12] *See, e.g.,* PwC Cyber Insurance Report, p. 9 (noting likely existence of cyber risk coverage ''within your wider property, business interruption, [and] general liability . . . coverage'').

[13] NAIC 2016 P/C Product Coding Matrix, p. 10. ''Sub-TOI'' refers to ''Sub-Type of Insurance.''

[14] As is the case with all other coverages subject to TRIA, policy losses that do not arise from an ''act of terrorism'' certified by the Secretary of the Treasury would not trigger the Program backstop. For example, an act cannot be certified as an ''act of terrorism'' unless it is, among other things, ''a violent act or an act that is dangerous to human life, property, or infrastructure. . . .'' 31 CFR 50.4(b)(1)(ii). To the extent a cyber event did not satisfy this requirement, the backstop provisions of TRIP would not be implicated. Any specific determination in that regard could not be made in advance and would depend upon the circumstances and considerations presented in any particular case.

[15] *See* 31 CFR part 50, subpart G.

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0051]

Agency Information Collection Activity: (State Approving Agency Reports and Notices 38 CFR 21.4154, 21.4250(b), 21.4258, 21.4259)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public

comment in response to the notice. This notice solicits comments on information needed to determine a claimant's entitlement to education benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 27, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0051'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supporting Statement for State Approving Agency Reports and Notices 38 CFR 21.4154, 21.4250(b), 21.4258, 21.4259.

OMB Control Number: 2900–0051.

Type of Review: Extension of a currently approved collection.

Abstract: 2900–0051 is for information reports provided by State Approving Agencies. VA will use data collected to determine the number of annual disapprovals and approvals for programs of education.

Affected Public: State Approving Agencies.

Estimated Annual Burden: 97,012 hours.

Estimated Average Burden per Respondent: 11 hours.

Frequency of Response: Annual.

Estimated Number of Respondents: 53.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Agency Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–31118 Filed 12–23–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 81 Tuesday,

No. 248 December 27, 2016

Part II

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Endangered Species Act Compensatory Mitigation Policy; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–ES–2015–0165; FXES11140900000–178nmdash;FF09E33000]

Endangered and Threatened Wildlife and Plants; Endangered Species Act Compensatory Mitigation Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of final policy.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), announce the final Endangered Species Act (ESA) Compensatory Mitigation Policy. The new policy steps down and implements recent Executive Office, Department of the Interior, and Service mitigation policies that reflect a shift from project-by-project to landscape-scale approaches to planning and implementing compensatory mitigation. The new policy is established to improve consistency and effectiveness in the use of compensatory mitigation as recommended or required under the ESA. The ESA Compensatory Mitigation Policy covers permittee-responsible mitigation, conservation banking, in-lieu fee programs, and other third-party mitigation mechanisms, and stresses the need to hold all compensatory mitigation mechanisms to equivalent and effective standards.

DATES: This policy is effective on December 27, 2016.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this policy, including an environmental assessment, are available on the Internet at *http://www.regulations.gov* at Docket Number FWS–HQ–ES–2015–0165.

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, U.S. Fish and Wildlife Service, Division of Environmental Review, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2442. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The mission of the U.S. Fish and Wildlife Service (Service or USFWS) is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. As part of our mission, we continually seek opportunities to engage both the public and private sectors to work with us to conserve species and the ecosystems on which they depend. This collaborative effort includes conservation of endangered and threatened (listed) species and their designated critical habitat protected under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and other species proposed for listing or at-risk of being listed. The purposes of the ESA are to provide a means whereby the ecosystems upon which listed species depend may be conserved, and to provide a program for the conservation of such species. The Service and National Oceanic and Atmospheric Administration's National Marine Fisheries Service share responsibilities for administering the ESA. However, this policy only applies to the Service and species under our jurisdiction.

This policy is the first comprehensive treatment of compensatory mitigation under authority of the ESA to be issued by the Service. Both the 1995 interagency policy on the establishment and operation of wetland mitigation banks (60 FR 58605, November 28, 1995) and the 2000 interagency policy on the use of in-lieu fee arrangements (65 FR 66914, November 7, 2000) are specific to wetland mitigation, but provide guidance that is generally applicable to conservation banking and in-lieu fee programs for species associated with wetlands or uplands. These interagency policies were superseded by the Environmental Protection Agency—U.S. Army Corps of Engineers 2008 Compensatory Mitigation Rule for Losses of Aquatic Resources (73 FR 19594, April 10, 2008). In 2003, the Service issued guidance on the establishment, use, and operation of conservation banks (68 FR 24753, May 8, 2003). In 2008, we issued recovery crediting guidance (73 FR 44761, July 31, 2008). This ESA Compensatory Mitigation Policy clarifies Service expectations regarding all compensatory mitigation mechanisms recommended or supported by the Service when implementing the ESA, including, but not limited to, conservation banks, in-lieu fee programs, habitat credit exchanges, and permittee-responsible mitigation.

Purpose and Importance of the Policy

The primary intent of the policy is to provide Service personnel with direction and guidance in the planning and implementation of compensatory mitigation, primarily through encouraging strategic planning at the landscape level and setting standards that mitigation programs and projects must meet to achieve conservation that is effective and sustainable. Compensatory mitigation is defined in this policy as compensation for remaining unavoidable impacts after all appropriate and practicable avoidance and minimization measures have been applied, by replacing or providing substitute resources or environments (see 40 CFR 1508.20) through the restoration, establishment, enhancement, or preservation of resources and their values, services, and functions (part 600, chapter 6 of the Departmental Manual (600 DM 6.4C)). While this policy addresses only the role of compensatory mitigation under the ESA, avoidance and minimization of impacts retain their central role in both the section 7 and section 10 processes. Guidance on the application of the mitigation hierarchy is provided in our Mitigation Policy (81 FR 83440, November 21, 2016), regulations implementing the ESA, and other policies and guidance documents specific to various sections of the ESA.

Alignment of the Policy With Existing Directives

By memorandum (80 FR 68743, November 6, 2015), the President directed all Federal agencies that manage natural resources, ''to avoid and then minimize harmful effects to land, water, wildlife, and other ecological resources (natural resources) caused by land- or water-disturbing activities, and to ensure that any remaining harmful effects are effectively addressed, consistent with existing mission and legal authorities.'' This policy is consistent with the Presidential memorandum (''Mitigating Impacts on Natural Resources From Development and Encouraging Related Private Investment'') issued November 3, 2015; the Department of the Interior (Department) Secretarial Order 3330 entitled, ''Improving Mitigation Policies and Practices of the Department of the Interior,'' issued October 31, 2013; the new Interior Departmental Manual Chapter on Landscape-Scale Mitigation Policy, 600 DM 6 (October 23, 2015); and is intended to institute the policies and procedures reflected in the guiding principles on mitigation established by the Department through the report to the Secretary entitled, ''A Strategy for Improving the Mitigation Policies and Practices of The Department of the Interior,'' issued in April 2014 (Clement et al. 2014). These directives emphasize a comprehensive landscape-scale approach to planning and implementing mitigation programs, and they also include a mitigation goal to improve

(*i.e.,* ''net gain'') or, at a minimum, to maintain (*i.e.,* ''no net loss'') the current status of affected resources, as allowed by applicable statutory authority and consistent with the responsibilities of action proponents under such authority, primarily for important, scarce, or sensitive resources, or as required or appropriate.

The mitigation principles set forth in the above directives, including the landscape scale approach and the goal of ''net gain,'' have been adopted in both the Service's Mitigation Policy (81 FR 83440, November 21, 2016), and in this policy. The landscape-scale approach to mitigation is not a new concept. For example, in 2013, the Service issued mitigation guidance for two listed songbirds in central Texas based on recovery goals for these species. The songbird mitigation guidance sets minimum standards that must be met by mitigation providers and encourages the use of consolidated compensatory mitigation in the form of permanent protection and management of large, contiguous patches of the species' habitat. Proactive approaches, such as this example, provide greater regulatory certainty for project proponents and encourage the establishment of conservation banks and other mitigation opportunities by mitigation sponsors for use by project proponents.

The mitigation goal (*i.e.,* ''net gain'' or, at a minimum, ''no net loss'') is not necessarily based on habitat area, but on numbers of individuals, size and distribution of populations, the quality and carrying capacity of habitat, or the capacity of the landscape to support stable or increasing populations of the affected species after the action (including all proposed conservation measures) is implemented. In other words, it is based on those factors that determine the ability of the species to be conserved.

Benefits of the Policy

This policy sets forth standards for compensatory mitigation that implement the tenets in the directives cited above and reflect the many lessons learned by the Service during our more than 40-year history implementing the ESA, particularly sections 7 and 10 of the ESA. The standards apply to all compensatory mitigation mechanisms (*i.e.,* permittee-responsible mitigation, conservation banks, in-lieu fee programs, habitat exchanges, and other third-party mitigation arrangements), which are instrumental to achieving effective compensatory mitigation on the landscape and encouraging private investment in compensatory mitigation.

Adherence to the mitigation principles and compensatory mitigation standards identified in this policy will achieve greater consistency, predictability, and transparency in implementation of the ESA. Service offices are encouraged to work with Federal agencies and other partners to establish compensatory mitigation programs based on landscape-scale conservation plans, such as more efficient, better coordinated, and expedited regulatory processes, which can provide project applicants with incentives to mitigate their actions. Compensatory mitigation programs and projects designed and implemented in accordance with the standards set forth in this policy are expected to achieve the best conservation outcomes for listed, proposed, and at-risk species through effective management of the risks associated with compensatory mitigation.

This policy encourages the use of market-based compensatory mitigation programs such as conservation banking in conjunction with programmatic approaches to ESA section 7 consultations and habitat conservation plans (HCPs) that can be designed to achieve a ''no net loss'' or a ''net gain'' mitigation goal. Consultations and HCPs that establish a ''program'' to address multiple, similar actions and/or impacts to one or more species operate on a larger landscape scale and expedite regulatory processes. Market-based mitigation programs improve regulatory predictability, provide efficiencies of scale, and incentivize private investment in species conservation (Fox and Nino-Murcia 2005). The benefits provided by these mitigation programs generally encourage Federal agencies and incentivize applicants to develop proposed actions that fully compensate for adverse impacts to affected species anticipated as a result of their actions.

Discussion

''In enacting the ESA, Congress recognized that individual species should not be viewed in isolation, but must be viewed in terms of their relationship to the ecosystem of which they form a constituent element. Although the regulatory mechanisms of the [ESA] focus on species that are formally listed as endangered or threatened, the purposes and policies of the [ESA] are far broader than simply providing for the conservation of individual species or individual members of listed species'' (Conference Report No. 97–835 House of Representatives, September 17, 1982). This comment, made over 30 years ago during reauthorization of the ESA, is a reminder of the challenges still before us.

Incorporating a landscape-scale approach to development and conservation planning, including mitigation, that ensures a ''net gain'' or, at a minimum, ''no net loss'' in the status of affected resources, as directed by the Presidential memorandum (80 FR 68743, November 6, 2015), helps address the additive impacts that lead to significant deterioration of resources over time and has the potential to foster recovery of listed species and avoid listing of additional species.

As discussed later in this document, the Service's authority to require compensatory mitigation under the ESA is limited and differs under sections 7 and 10. However, we can more broadly recommend the use of compensatory mitigation to offset the adverse impacts of actions under certain provisions of the ESA and under other authorities, such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*) and the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). This policy encourages Service offices to work with Federal agencies and applicants, and to recommend or require, if appropriate, the inclusion of compensatory mitigation for all unavoidable adverse impacts to listed, proposed, and at-risk species and their habitat anticipated as a result of any proposed action. While this practice currently exists for some species, it is not used broadly throughout the Service. Recommending, where applicable, that Federal agencies use their authorities to fully mitigate the adverse effects of their actions (*i.e.,* ensure ''no net loss'' in the status of affected resources) is consistent with the Presidential memorandum (80 FR 68743, November 6, 2015), the Department's and the Service's mitigation planning goals, and the purposes of the ESA. Effective mitigation that fully offsets the impacts of an action prevents that action from causing a decline in the status of affected species (*i.e.,* achieves ''no net loss'').

Compensatory Mitigation Under Sections 7 and 10 of the ESA

The additive effects of impacts adversely affecting listed and at-risk species as a result of many past and current human-caused actions are significant. The number of listed species has increased from slightly more than 300 in 1982 (when the ESA was reauthorized) to more than 1,500 by the end of 2016. While some listed species have been reclassified from endangered to threatened (*i.e.,* ''downlisted'') or

removed from either the Federal List of Endangered and Threatened Wildlife or List of Endangered and Threatened Plants (*i.e.,* ''delisted'') within the last 40 years, the projected increase in human population growth, increasing demand on our natural resources associated with this projected population growth, accelerated climate change, continued introductions of invasive species, and other stressors are putting even more species at risk and compromising the essential functions of ecosystems necessary to improve the status and recover these species. We cannot expect to change the status trajectories of these species without a commitment to responsible and implementable standards for accomplishing effective, sustainable compensatory mitigation that fully offsets the adverse impacts of actions to species and other resources of concern.

Compensatory mitigation is a conservation measure that can be used within an appropriate context under section 7 of the ESA to address proposed actions that may result in adverse impacts to listed species that cannot be avoided. For example, under section 7(a)(1) of the ESA, all Federal agencies are required to use their authorities to carry out conservation programs for listed species. Federal agencies may choose to develop and implement section 7(a)(1) conservation programs for listed species in conjunction with section 7(a)(2) consultation through a coordinated program. The Service supports these efforts, and we encourage Federal agencies to coordinate with us on development of such programs.

Compensatory mitigation can be used under section 10(a)(1)(B) of the ESA through HCPs developed to address adverse impacts of non-Federal actions on listed and other covered species that cannot be avoided. Landscape-scale HCPs developed for use by multiple applicants to conserve multiple resources are generally the most efficient and effective approaches. The Service supports these efforts and encourages applicants, particularly local and State agencies and organizations, to coordinate with us on the development of such plans.

Landscape-Level Approaches to Compensatory Mitigation

Taking a landscape-level approach to mitigation will assist the Service to modernize our compensatory mitigation procedures and practices and better meet the challenges posed by the growing human population's demands on our natural resources and changing conditions such as those resulting from climate change. Conservation banking is a market-based compensatory mitigation mechanism based on a landscape approach to mitigation that achieves compensation for listed and other resources of concern in advance of project impacts. In-lieu fee programs also establish compensatory mitigation sites but generally not in advance of impacts and often not through a market-based approach. Habitat credit exchanges are a relatively new market-based compensatory mitigation mechanism based on a clearinghouse model that may or may not accomplish mitigation in advance of project impacts. All three of these mitigation mechanisms use a landscape-level approach to consolidate and locate compensatory mitigation in areas identified as conservation priorities. These programs have designated service areas within which proposed actions that meet certain criteria may be mitigated with Service approval. The functions and services provided for listed, proposed, and at-risk species by these compensatory mitigation programs are represented by credits. Credits are used to offset impacts (often referred to as debits). Most credit transactions involve a permittee purchasing the amount of credits needed to offset the anticipated adverse effects of an action from the mitigation project sponsor. The Service must approve credit transactions as to their conservation value and appropriate application for use related to any authorization or permit issued under the ESA.

The conservation banking model is generally perceived as successful at achieving effective conservation outcomes and, when used in conjunction with section 7 consultations and section 10 HCPs, has achieved notable regulatory efficiencies. Results include ecological performance that usually achieves ''no net loss,'' and often a net benefit, in species conservation; increased regulatory predictability for Federal agencies and applicants; and more efficient and better coordinated permitting processes, especially when multiple agencies with overlapping regulatory jurisdictions are involved.

Permittee-responsible mitigation for many small to moderate impacts often cannot provide adequate compensation because it is often difficult to achieve effective conservation on a small scale. Small mitigation sites are often not ecologically defensible, and it is often difficult to ensure long-term stewardship of these sites. Most individual actions result in small or moderate impacts to species and habitat, yet the additive effects of these actions (often referred to as ''death by a thousand cuts''), when not compensated for, can have substantial adverse effects on these resources by degrading the environmental baseline and impairing the potential for future actions. In general, conservation banking, in-lieu fee programs, and similar mitigation mechanisms that consolidate compensatory mitigation on larger landscapes are designed to serve project proponents with small to moderate impact actions, are ecologically more effective, and provide more economical options to achieve compensation than permittee-responsible mitigation.

Furthermore, larger landscape-scale conservation programs with market-based compensatory mitigation opportunities create an economic incentive for private landowners, investors, and mitigation project sponsors to participate in these programs. The most robust programs generate competition among mitigation sponsors and may provide cost-effective means for complying with natural resource laws such as the ESA. To be successful, these market-based and other compensatory mitigation programs must operate transparently and be held to high standards that are uniformly applied across all compensatory mitigation mechanisms. Equally important is transparency in the implementation of the ESA and the development of mitigation programs for use by regulated communities.

Mitigation Defined

Because endangered and threatened species are by definition in danger of extinction or likely to become so in the foreseeable future, avoiding, minimizing, and compensating for impacts to their populations are all forms of mitigation that the Service may consider when administering the ESA. The Council on Environmental Quality (CEQ) NEPA regulations (40 CFR 1508.20) state that mitigation includes:

- Avoiding the impact altogether by not taking a certain action or parts of an action;
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- Compensating for the impact by replacing or providing substitute resources or environments.

In 600 DM 6, the Department of the Interior states that mitigation, as

enumerated by CEQ, is compatible with Departmental policy; however, as a practical matter, the mitigation elements are categorized into three general types that form a sequence: Avoidance, minimization, and compensatory mitigation for remaining unavoidable (also known as residual) impacts. Historically, those administering the ESA have often used a condensed mitigation sequence—avoid, minimize, and compensate; or avoid, minimize, and mitigate. This policy adopts the Department's definition of compensatory mitigation: Compensation for remaining unavoidable impacts after all appropriate and practicable avoidance and minimization measures have been applied, by replacing or providing substitute resources or environments (see 40 CFR 1508.20) through the restoration, establishment, enhancement, or preservation of resources and their values, services, and functions (600 DM 6.4C). Throughout this policy, ''compensatory mitigation'' or ''compensation'' is used in this broad sense to include any measure that would rectify, reduce, or compensate for an impact to an affected resource. We also use the term ''minimize'' in the broad sense throughout this policy to include any conservation measure, including compensation, which would lessen the impact of the action on the species or other affected resource. We recognize there is some overlap in the use of these terms but, as a practical matter, this use in practice is consistent with the intent of the ESA. Information regarding avoidance and observance of the mitigation sequence can be found at our Mitigation Policy (81 FR 83440, November 21, 2016). This ESA Compensatory Mitigation Policy covers permittee-responsible mitigation, conservation banking, in-lieu fee programs, and all other compensatory mitigation mechanisms.

Implementation

The Service will issue interim guidance containing specific operational steps to assist Service staff in implementing this policy. This interim guidance will be issued in the form of a Director's memorandum, which will be used to develop a Service Manual chapter at a later date. Throughout this policy, the term ''implementation guidance'' will be used when referencing the interim guidance and future Service Manual chapter.

Changes From the Draft Policy

This final policy differs from the draft policy in a few substantive respects, which we list below, and contains editorial changes in response to comments we received that requested greater clarity of expression regarding various aspects of the policy's purpose, authorities, scope, general principles, framework for formulating mitigation measures, and definitions. The most common editorial change to the final policy addresses the concern that the Service lacks authority to apply compensatory mitigation to the ESA. Reasons cited by the commenters for not applying compensatory mitigation to the ESA included: (a) The ESA does not provide authority to require mitigation; and (b) policy concepts such as ''net conservation gain'' and a ''landscape approach'' to conservation are inconsistent with ESA statutory authority and regulatory requirements. This final policy adds new text to 2. Authorities and Coordination that identifies those circumstances under which we have specific authority to require, consistent with other applicable laws and regulations, one or more forms of compensatory mitigation for impacts to federally listed species, proposed species, and candidates as defined in the ESA. This policy provides a common framework for the Service when identifying and implementing compensatory mitigation measures pursuant to the ESA. The policy, however, cannot and does not alter or substitute for the regulations implementing the ESA. We summarize below the few substantive changes from the draft policy, listed by section.

Section 5 in the draft policy, Application of Compensatory Mitigation Under the ESA, was moved in its entirety to replace section 4, as we felt it more appropriate to discuss the policy's application under the ESA after section 2. Authorities and Coordination, and section 3. Scope. Section 4 in the draft policy, Compensatory Mitigation Standards, is now section 5 in this final policy.

In section 5.1, *Siting Sustainable Compensatory Mitigation,* this final policy focuses on overarching considerations and leaves specific factors or examples to be explained in the implementation guidance.

In section 6.1.3, ''Preference for Consolidated Compensatory Mitigation,'' we removed habitat credit exchanges as a specifically identified preference for compensatory mitigation because we do not yet have the record of success with this mechanism that we have with other mechanisms such as conservation banks.

The bulk of sections 6.2.3, ''Ensuring Durability on Public Lands,'', and 6.2.4, ''Transfer of Private Mitigation Lands to Public Agencies,'' was removed from the policy and will be discussed in the implementation guidance, as well as the prescriptive operational detail from section 6.6, *Managing Risk and Uncertainty.*

In section 7.1.4 ''Habitat Credit Exchange,'' we added text indicating that habitat credit exchanges are a relatively new mitigation mechanism, and warrant additional care and consideration when implementing them. We also removed section 7.1.5, ''Other Third-party Compensatory Mitigation,'' as this is a purely hypothetical mechanism which seems to differ little from proponent-responsible mitigation, and it was redundant with section 7.3, *Other Compensatory Mitigation Programs or Projects.*

In Table 1. ''Comparison of Habitat-based Compensatory Mitigation Sites Established Under Different Mechanisms,'' we removed the column ''Instrument Required'' because all discussion of instruments will be in the implementation guidance, and we removed the final row of the table: ''Other Third-party Mitigation Site.''

We removed the draft policy's section 8, Establishment and Operation of Compensatory Mitigation Programs and Projects; it will form the basis of the implementation guidance.

Section 9 of the draft policy, Criteria for Use of Third-party Mitigation, has been re-numbered in this policy, and is now section 8.

The majority of section 10, Compliance and Tracking, has been removed from the policy, and will be discussed in the implementation guidance; accordingly, the remaining paragraph has been renumbered in this policy as section 9.

Regarding appendix B, Glossary of Terms Related to Compensatory Mitigation, we removed several terms that are more appropriate for the implementation guidance document as well as items that could be confused with terms used in the ESA's implementing regulations.

Finally, we have removed appendix C, Requirement of the Marine Mammal Protection Act, to avoid confusion with the policy's focus on implementing the ESA.

Summary of Comments and Responses

The September 2, 2016, notice announcing our draft Endangered Species Act Compensatory Mitigation Policy (draft policy) (81 FR 61032) requested written comments, information, and recommendations from governmental agencies, tribes, the scientific community, industry groups, environmental interest groups, and any other interested members of the public.

That notice established a 45-day comment period, ending October 17, 2016, on the draft policy. Several commenters (1) requested an extension of time to provide their comments; (2) asked the Service to revise and recirculate the draft policy for comment; or (3) asked the Service to withdraw the draft policy to allow interested parties additional time to comment. The November 3, 2015, Presidential Memorandum on Mitigation states, ''Within 1 year of the date of this memorandum, the Department of the Interior, through the U.S. Fish and Wildlife Service, shall finalize a revised mitigation policy that applies to all of the U. S. Fish and Wildlife Service's authorities and trust responsibilities. The U.S. Fish and Wildlife Service shall also finalize an additional policy that applies to compensatory mitigation associated with its responsibilities under the Endangered Species Act of 1973.'' In order to finalize the policy as close as possible to the date outlined in the Presidential Memorandum on Mitigation, we were unable to publish an extension or reopen the comment period.

During the comment period, we received approximately 150 public comment letters, including comments from Federal, State, and local government entities; industry; trade associations; conservation organizations; nongovernmental organizations; private citizens; and others. The range of comments varied from those that provided general statements of support or opposition to the draft policy, to those that provided extensive comments and information supporting or opposing the draft policy in its entirety or specific aspects of the draft policy. The majority of comments submitted included detailed suggestions for revisions addressing major concepts, as well as editorial suggestions for specific wording or line edits.

All comments submitted during the comment period have been fully considered in preparing this final policy. All substantive information provided has been incorporated, where appropriate, directly into this final policy or is addressed below. The comments we received were grouped into general issues specifically relating to the draft policy, and are presented below along with the Service's responses to these substantive comments.

We received several comments requesting clarification on various aspects of the draft policy, including: Reporting; monitoring; financial instruments; coordination with States, tribes, and local groups; the compensatory mitigation mechanisms; and other implementation elements. We recognize the value of these comments and are giving them due consideration. We have removed these elements from this policy and will address them in the implementation guidance.

A. Definitions

Comment (1): One commenter suggested a more precise definition of compensatory mitigation. The commenter stated the draft policy's definition suggests any remaining impacts must be ''unavoidable'' and not simply ''un-avoided.'' The commenter suggests the draft policy's definition is confusing and inconsistent with the ESA language that uses ''minimize'' and ''mitigate.''

Response: The definition of ''compensatory mitigation'' in this policy derives from the Department of the Interior's Department Manual (600 DM 6.4C). This definition gives more flexibility in the use of avoidance and minimization measures for listed species than the recommendation provided in the comment. The use of the terms ''appropriate and practicable'' in this policy's definition give deference to project proponents and Federal agencies.

Comment (2): Comments included a statement that the definition of landscape-scale approach is unclear.

Response: Our definition of landscape-scale approach is informed by the definition used in 600 DM 6 and our Service's mitigation policy. The landscape approach to conservation considers the functional context of the species or habitat under consideration. For example, activities involving fairy shrimp might be evaluated at a vernal pool complex or regional scale. Issues affecting sturgeon may require strategies that consider an entire river system, thousands of miles long. Fundamental to this approach is an understanding of what is important to ensure the ecological function of the species or habitat in question, at the appropriate scale. Examples include the North American Waterfowl Management Plan, many fisheries management plans, recovery plans for federally listed species, watershed restoration plans, and State wildlife plans.

B. Policy Is Based on Existing Authority

i. ESA Sections 7 and 10

Comment (3): Several commenters stated that the mitigation sequence that uses ''avoidance'' cannot be required under sections 7 and 10 of the ESA, unless it alleviates a jeopardy situation. One of the commenters noted that ''avoidance'' is voluntary on the part of an action agency or applicant.

Response: The use of ''avoidance'' in the mitigation sequence is not a requirement in the sense that all impacts to listed species or critical habitat must be avoided. Through the policy, we are neither requiring nor mandating avoidance. One of the stated purposes of the ESA at section 2(b) is to ''provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.'' Developing options to avoid impacts to listed resources under sections 7 and 10 is important to furthering this purpose and effectively implementing the ESA.

The policy is consistent with the Presidential memorandum (''Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment'') issued November 3, 2015 (see 80 FR 68743, November 6, 2015), in which the President directed all Federal agencies that manage natural resources ''to avoid and then minimize harmful effects to land, water, wildlife, and other ecological resources (natural resources) caused by land- or water-disturbing activities, and to ensure that any remaining harmful effects are effectively addressed, consistent with existing mission and legal authorities.'' The Service agrees that some impacts to listed species or critical habitat may be unavoidable and that the ESA provides a mechanism for both Federal agencies (section 7) and non-Federal entities (section 10) to receive take coverage in the case of any unavoidable impacts. There are multiple sections of our implementing regulations in title 50 of the Code of Federal Regulations (CFR) at 50 CFR part 402 (§§ 402.10, 402.13) that direct the Service to suggest modifications or make advisory recommendations to Federal action agencies and applicants to avoid the likelihood of adverse effects to listed species or critical habitat. Additionally, if the Service is required to provide a reasonable and prudent alternative under section 7 consultation, the regulations state that such an alternative must be one ''that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat'' (50 CFR 402.02). Use of the full mitigation sequence including avoidance and minimization of impacts to listed species is consistent with the purposes and mandates set forth in the ESA.

Comment (4): Several commenters suggested compensatory mitigation cannot be required under section 7 of

the ESA, and that there is no authority to include such mitigation in reasonable and prudent measures (RPMs) and the accompanying mandatory terms and conditions that the Service includes in incidental take statements. Some stated that compensation is limited to voluntary actions on behalf of the action agency and recommendations on the part of the Service. One comment stated compensation was not appropriate in both RPMs and reasonable and prudent alternatives (RPAs). Another suggested that compensation under section 7 consultation was appropriate but not under section 7(a)(4) conference. Commenters cited the ESA, its implementing regulations, and the Service's 1998 Consultation Handbook.

Response: As discussed in sections 4.1.2 and 4.1.3 of this policy, compensatory mitigation can play an important role in section 7(a)(2) consultations and 7(a)(4) conferences. Compensatory mitigation can appropriately be included as part of an action subject to consultation, or in reasonable and prudent alternatives to avoid the likelihood of jeopardy, in order to reduce the net adverse effect of an action on proposed or listed species or designated critical habitat. This policy clarifies those circumstances where it may be appropriate to incorporate mitigation into reasonable and prudent measures and terms and conditions as part of a section 7(a)(2) consultation. For example, throughout this policy, ''compensatory mitigation'' or ''compensation'' is used to include any measure that would rectify, reduce, or compensate for an impact to an affected resource. Rectifying the impact means ''repairing, rehabilitating, or restoring the affected environment'' (40 CFR 1508.20). Restoring impacted habitat is a commonly used reasonable and prudent measure that meets the definition of compensatory mitigation in this policy, minimizes the amount or extent of incidental take, and can be accomplished consistent with the ESA and its implementing regulations at 50 CFR part 402.

Comment (5): Commenters said the policy's emphasis on the role of conservation in the section 7 consultation process is misdirected. Section 7(a)(2) does not include a conservation requirement for Federal agencies.

Response: The Service respectfully disagrees. Section 7(a)(2) requires that Federal agencies ensure their actions do not jeopardize the continued existence of endangered and threatened species or result in the destruction or adverse modification of critical habitat. This requirement is accomplished through the consultation process, which concludes with the Service's biological opinion. In the event a section 7 consultation concludes with a jeopardy or adverse modification determination, the Service will include reasonable and prudent alternatives (RPAs), when possible, that the action agency can implement to avoid violation of section 7(a)(2) of the ESA. Options for RPAs can include compensatory mitigation in order to avoid a jeopardy or adverse modification situation, as long as they are consistent with the definitions at 50 CFR 402.02. When the Service's biological opinion concludes that the agency action would not result in jeopardy or adverse modification, the Service will include reasonable and prudent measures (RPMs) to minimize any incidental take associated with the action. As described in the policy, minimization of impacts of the taking on the species may include compensation as consistent with the ESA implementing regulations. The Service provides technical assistance during the section 7(a)(2) consultation process to help reduce the need for RPMs and RPAs. These measures fall within the ESA's definition of ''conserve,'' which means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary.''

Comment (6): Several commenters expressed concern that the policy would complicate the process for sections 7 and 10, and cause project delays. The commenters stated that such delays could create increased project costs.

Response: The Service respectfully disagrees. Mitigation provided in advance of impacts, such as through a conservation banking program, can expedite project reviews by the Service, because the mitigation is already established and has already gone through the due diligence process. Clear guidance on application of compensatory mitigation mechanisms as provided in this policy, should assist Service staff and project proponents implement their ESA responsibilities in a timely fashion. Furthermore, conducting compensatory mitigation may assist in the compliance with other required laws, which may expedite the project process. For example, compensatory mitigation may lower the level of analysis required by NEPA (allowing a mitigated environmental assessment/finding of no significant impact instead of an environmental impact statement).

Comment (7): One commenter objected to the phrase ''recovery measure'' when discussing section 7(a)(1) of the ESA. The commenter provided substantial information, including a section of the preamble from the Service's 1986 interagency cooperation rulemaking (51 FR 19926, June 3, 1986), noting the ESA does not mandate specific actions under section 7(a)(1), nor does it authorize the Service to mandate how or when Federal agencies should implement their section 7(a)(1) responsibilities. Specifically, the commenter said that section 7(a)(1) is not a recovery measure, and the policy failed to properly state the basis for such a characterization.

Response: We agree that the directive under section 7(a)(1) of the ESA does not give the Service authority over other Federal agencies, nor does it specifically authorize actions to be implemented. It does, however, direct other Federal agencies to consult with the Service when developing conservation programs under section 7(a)(1). To this end, the policy provides guidance and recommendations on how Federal agencies may achieve the greatest effectiveness when implementing their section 7(a)(1) obligations.

The policy clearly describes the basis for the use of the term ''recovery measure'' when describing section 7(a)(1), which comes from the definition of the terms ''conserve,'' ''conserving,'' and ''conservation'' in section 3 of the ESA. Although the word ''recovery'' is not used in the definition, it clearly describes recovery as ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary.'' Additionally, section 7(a)(1) directs all Federal agencies to ''utilize their authorities in furtherance of the purposes of [the ESA]''. One of the stated purposes of the ESA is to ''provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved.'' The intent is that all Federal agencies have a responsibility, using their existing authorities, to help recover listed species.

Comment (8): One commenter stated the policy should focus only on implementation of voluntary mitigation actions under the ESA. The commenter noted that mitigation guidance for sections 7 and 10 under the ESA are provided in the habitat conservation planning and consultation handbooks.

Response: This policy provides greater clarity and detail with regard to mitigation implementation than the

section 7 and habitat conservation planning handbooks. As stated earlier, this policy reflects the many lessons learned by the Service during our more than 40-year history implementing the ESA, particularly sections 7 and 10. We agree that the use of voluntary mitigation programs and actions that further the purposes of the ESA should be encouraged. The development and implementation of voluntary mitigation programs should also be effective and consistent with other forms of mitigation. The policy will guide such voluntary efforts to promote consistency in the same way it will guide mitigation efforts in regulatory processes.

Comment (9): One commenter recommended we add ''and applicants'' following ''Federal agencies'' in two sentences in section 4.1.2.

Response: Applicants are not typically involved in the establishment of mitigation programs such as conservation banks and in-lieu fee programs; moreover, the responsibility for ensuring a Federal action does not violate section 7(a)(2) of the ESA ultimately lies with the Federal agency proposing the action. We did not make the suggested change.

Comment (10): One commenter thought the Service should recognize the importance of the Habitat Conservation Plan (HCP) Assurances (''No Surprises'') Rule (63 FR 8859, February 23, 1998) and explicitly state that remediation and alternative mitigation will not erode protections afforded by the No Surprises Rule.

Response: The Service does recognize the importance of the No Surprises Rule in the section 10 process, and agrees that remediation and alternative mitigation should not erode protections afforded by the No Surprises Rule. The Service works with applicants to develop HCPs that include contingencies for mitigation that does not function as expected, including remediation or alternative mitigation. The No Surprises Rule is not eroded in this case, because these contingencies are included in the HCPs and agreed upon ahead of time.

Comment (11): One commenter requested clarification of how the draft policy would apply to reinitiation of consultations under section 7(a)(2) of the ESA. Specifically, what would be different, especially with regard to the concepts of ''net gain'' and ''no net loss?''

Response: During the reinitiation process under section 7(a)(2), the concepts under this policy and their application to any consultation do not change. The ESA's directive to agencies to ensure any action is not likely to jeopardize the continued existence of any endangered or threatened species or adversely modify its critical habitat guides that process. The Service will recommend actions consistent with this policy, including consideration of the goal of a ''net gain'' or, at a minimum, ''no net loss.'' Considering the variety of actions under consultation, the reasons for reinitiation, and the multitude of species covered, it is not possible for the policy to provide specific details regarding the application of such concepts during the consultation process.

Comment (12): One commenter was concerned about section 4.7 (*Effective Conservation Outcomes and Accountability Through Monitoring, Adaptive Management, and Compliance*) of the draft policy, which states that: ''A process for achieving remediation or alternative mitigation for compensatory mitigation failures beyond the control of the responsible party (*e.g.,* unforeseen circumstances) must be clearly described in the mitigation instrument, biological and/or conference opinion, or permit.'' The commenter asked the Service to the clarify the statement to say that biological opinions issued in connection with section 7 consultations with Federal agencies, other than the Service itself, are not required to provide for unforeseen circumstances, saying that such a requirement is associated with ESA section 10(a) HCPs, but is not required in the context of section 7 consultations by the section 7 handbook, or existing law or regulations. They were concerned the current language of the draft policy could be misinterpreted to mean that section 7 biological opinions must include alternative mitigation for compensatory mitigation failures ''beyond the control of the responsible party,'' and this policy should not change the section 7 requirements for avoiding jeopardy to the species and adverse modification of critical habitat.

Response: The development and implementation of mitigation programs should be effective and consistent among all forms of mitigation offered in sections 7 and 10 of the ESA, regardless of whether the mitigation is voluntary or required. Planning for unforeseen circumstances is part of effective mitigation. The policy will guide efforts to promote consistency, and Service staff will work with applicants and Federal agencies to explain how all mitigation standards can be incorporated into their mitigation plans. Nevertheless, the ESA and its implementing regulations ultimately determine how the Service makes decisions regarding listed species. We do not include the statement in question in this final policy; we will address this topic in implementation guidance.

Comment (13): One commenter stated the Service has no statutory authority to require section 7 consultation on candidate or at-risk species or to include such species in HCPs. If the policy pursues a conservation goal in excess of the Service's actual regulatory and statutory authorities, separate guidance should be issued to draw this clear distinction, in order to provide complete transparency and direction to both Service staff and others in actual implementation.

Response: The commenter is correct that the Service cannot require section 7 consultation for candidate or at-risk species. ESA section 7 regulations provide for a conference between a Federal action agency and the Service for actions that are likely to jeopardize the continued existence of a proposed species or likely to result in destruction or adverse modification of proposed critical habitat (50 CFR 402.10). Including candidate or other at-risk species in conferences would be voluntary on the part of the Federal agency; however, it is encouraged by the Service and through this policy, and other Federal agencies may voluntarily conference to expedite possible future re-consultations. This is consistent with ESA goals of recovering listed species and, ideally, avoiding the need to list species because threats to them have been addressed. Further, intra-Service consultations and conferences will consider effects of the Service's actions on listed, proposed, and candidate species. Candidate species are treated as if they are proposed for listing for purposes of conducting internal Service conferencing.

Additionally, under section 10 of the ESA, HCPs are voluntary and developed by the applicant, in consultation with the Service. It is the applicant who decides which candidate or non-listed at-risk species they wish to include. The Service has found that many applicants elect to include at-risk species to receive ''no surprises'' assurances and preclude the need to amend the associated incidental take permit, should the species become listed in the future. The voluntary inclusion of at-risk species in both the conference and HCP processes are proactive approaches to reduce the need for future listing of the species.

Comment (14): One commenter said the Service mixes the concepts of voluntary conservation recommendations that can be provided under ESA section 7(a)(1) with requirements under ESA section 7(a)(2).

They also commented that neither standard under ESA section 10 imposes a ''no net loss'' requirement.

Response: Federal agencies are directed to consult with the Service under ESA section 7(a)(1) to assist their development of programs to conserve listed species. Technical assistance to agencies with actions that require compliance with section 7(a)(2) is a logical nexus for the Service to advise Federal agencies about section 7(a)(1) conservation opportunities associated with these actions. Similarly, technical assistance to non-Federal applicants for incidental take permits under section 10(a)(1)(B) is a logical nexus to advise them about conservation opportunities associated with these actions. This policy provides a framework for such recommendations, and does not otherwise alter or substitute for standards under the ESA or the regulations implementing ESA sections 7(a)(2) and 10(a)(1)(B). Though not required, striving for ''no net loss'' in the status of the species' conservation is an appropriate mitigation goal, and may be to the benefit of the other agency or private landowner in greater future regulatory certainty or expedited future compliance (*e.g.,* including ''at-risk'' species).

ii. Authorities—Other

Comment (15): One commenter requested that we revise section 5.3 of the draft policy to provide more detail about how compensatory mitigation would work in relation to section 4(d) rules for threatened species.

Response: This policy is intended to be general in nature. More detailed guidance documents covering specific activities may be developed in the future, such as for rules promulgated under section 4(d) of the ESA.

Comment (16): One commenter said that it was unclear how the policy would ''replace'' rules promulgated by other Federal agencies for guiding implementation of Federal laws such as the Clean Water Act (33 U.S.C. 1251 *et seq.*) and natural resources such as ''waters of the United States.'' They requested clarification of how the April 10, 2008, joint rulemaking of the U.S. Army Corps of Engineers (USACE) and the Environmental Protection Agency (EPA) (73 FR 19594) applies to ESA actions and what the impact of the policy would be.

Response: The Service has added clarification to this final policy that it does not replace or alter the referenced April 10, 2008, rule (73 FR 19594). Processes established by applicable statutes and regulations remain in effect and are not superseded by this policy. This policy applies to compensatory mitigation for all species and habitat protected under the ESA and for which the Service has jurisdiction. The April 10, 2008, rule (73 FR 19594) applies to impacts to aquatic resources permitted by section 404 of the Clean Water Act.

Comment (17): One commenter said that issuance of this policy violates the Administrative Procedure Act (APA; 5 U.S.C. subchapter II) or the Regulatory Freedom Act (RFA).

Response: The Service complied with all necessary requirements in publishing the final policy. We are unaware of the Regulatory Freedom Act but for the purposes of this response, will assume the commenter is referring to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The policy does not require compliance with the APA or the RFA because it is not a regulatory document.

Comment (18): One commenter was concerned that voluntary mitigation could be abused if an agency were to unreasonably withhold action for the purpose of applying undue pressure to force an applicant to volunteer mitigation measures. They said the policy should acknowledge and protect against this possibility.

Response: We agree with the commenter that such an approach by Service or other agency staff would be unacceptable. It would also be contrary to this policy and existing authority. Processes established by applicable statutes and regulations remain in effect and are not superseded by this policy.

Comment (19): One commenter stated that the policy goes beyond the authorities granted the Service in both sections 7 and 10 of the ESA. The other authorities relied on by the Service in adopting this policy, including the Presidential directives and memoranda, cannot legally form the basis for the promulgation of the policy.

Response: This policy is designed to improve and clarify implementation of the ESA. Towards that end, it seeks to provide a framework for effecting mitigation that reflects a permissible reading of the law, while fulfilling the conservation purposes of the ESA. Federal agencies are directed to consult with the Service under ESA section 7(a)(1) to assist their development of programs to conserve listed species. A mitigation framework may provide valuable expertise for an agency considering their section 7(a)(1) responsibilities. Additionally, a framework may assist agencies with actions that require compliance with section 7(a)(2) of the ESA. Similarly, technical assistance to non-Federal applicants for incidental take permits under section 10(a)(1)(B) of the ESA is a logical nexus to advise them about conservation opportunities associated with these actions. The policy provides a framework for such recommendations and does not otherwise alter or substitute for the regulations implementing ESA sections 7(a)(2) and 10(a)(1)(B). Authority to make recommendations to mitigate impacts to resources covered by the ESA is provided by that statute. Promulgation of this policy is consistent with not only the ESA, but also the Office of Management and Budget's guidelines on interpretive policies. Those guidelines state that public policies, such as this one, guide administrative processes while increasing an agency's predictability to external parties.

Comment (20): One commenter noted the ESA imposes different standards and prohibitions with respect to pre-listing versus post-listing activities for candidate conservation agreements with assurances (CCAAs) and safe harbor agreements (SHAs). By incorporating the net conservation benefit standard used for SHAs, the Service fails to account for these differences and conflates its treatment of pre-listing and post-listing activities.

Response: The Service does not intend to change the requirements for CCAAs and SHAs. The intent of the policy is to describe the requirements for converting either of these agreements to a mitigation agreement should a landowner desire to make their conservation more permanent and use it for mitigation.

iii. NEPA

Comment (21): One commenter said that the policy should recommend that the Service comment on NEPA documents apart from, or in addition to, section 7 consultation.

Response: We agree that application of the Service's authority to make advisory comments and recommendations under NEPA provides a powerful capability for influencing conservation of a broad array of natural resources while helping agencies and proponents identify appropriate project alternatives. The Service will continue to comment on NEPA documents in addition to conducting section 7 consultations whenever warranted. Our application of NEPA in a mitigation context is covered in the Service mitigation policy (81 FR 83440, November 21, 2016).

Comment (22): One commenter said the policy would increase the time and resources required by Federal agencies to comply with section 7 of the ESA and by proponents of any projects that may

adversely affect an at-risk species. The commenter said that the policy meets the definition of a major Federal action defined at 40 CFR 1508.18 and should be analyzed in an environmental impact statement to comply with NEPA.

Response: As explained in more detail below, neither of the two alternatives evaluated in the NEPA assessment would be expected to result in significant effects to the human environment within the meaning of NEPA and the CEQ regulations. Although we describe potential actions and consequences that could flow from each of the alternatives, the nature and scope of environmental consequences that are likely to result from any of the alternatives would depend on a variety of intervening circumstances that are impossible to identify in this analysis. However, we find there is no basis to infer that any such effects, even viewed generously, would be significant.

In addition, because of the programmatic nature of the draft policy and the breadth of activities under consideration, the analyses of environmental effects must be very general, addressing the consequences from each alternative at a programmatic scale. Regardless of the alternative, we anticipate that the majority of the specific actions covered under the policy would receive additional project-specific NEPA review, either by other Federal agencies during their project review or by the Service during review of an ESA section 10(a)(1)(B) application. Those project-specific reviews would include development of appropriately detailed alternatives based on information necessary to complete informed and meaningful effects analyses. That information (*e.g.,* location, timing, duration, and affected resources, etc.) is currently not available. More detailed information is contained in the environmental assessment, which is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–HQ–ES–2015–0165.

C. Net Conservation Gain/No Net Loss

Comment (23): One commenter stated the policy should more consistently emphasize throughout that ''conservation'' is the goal for protected species and their habitat, using our full suite of authorities including the ESA. While ''no net loss'' is appropriate under certain statutes like the Clean Water Act (as acknowledged in the April 10, 2008, joint rulemaking of USACE and EPA (73 FR 19594), for example), ''no net loss'' is a lower standard than what they have sought in conservation banking and in-lieu fee programs.

Response: The Service's mitigation policy (81 FR 83440, November 21, 2016) sets a mitigation planning goal of ''net conservation gain,'' which seeks to improve the status of affected resources, and, at a minimum, maintain the status of those resources (*i.e.,* ''no net loss''). Adhering to the standards discussed in section 5 of this policy (Compensatory Mitigation Standards) is the best way to attain this goal, although we recognize that achieving a net conservation gain will not be possible in every circumstance, and in those cases will strive for ''no net loss.''

Comment (24): One commenter strongly opposed the goal of a ''net gain'' in the policy, stating the Service lacks the underlying statutory authority to require it under the ESA and it will likely result in an uncompensated taking in violation of the U.S. Constitution. The commenter stated that the obligations under the policy, with the use of mandatory language such as ''must'' and ''shall,'' constitute a rulemaking.

Response: This policy adopts mitigation principles established by the Service's mitigation policy (81 FR 83440, November 21, 2016) and establishes compensatory mitigation standards to guide the use of compensatory mitigation under the ESA. The mitigation goal of ''net gain'' or, at a minimum, ''no net loss,'' is to assist the Service and its partners in developing mitigation programs and projects to further the purposes of the ESA. One of the stated purposes under section 2 of the ESA is to ''provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved.'' Section 3 of the ESA defines ''conserved'' as ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' This conservation purpose of the ESA is served by the policy's goal of a ''net gain'' when developing compensatory mitigation.

In this context, the policy is not a legally binding rulemaking; the ESA and its implementing regulations determine the Service's decisions for listed species. The policy will not effectively compel a property owner to suffer a physical invasion of property and will not deny all economically beneficial or productive use of the land or aquatic resources. This policy provides consistent standards for the Service, and its partners, to apply when developing compensatory mitigation programs or projects, as appropriate under the authority of the ESA. The use of the terms ''must'' and ''shall'' in the policy are directed toward the Service's authority in implementing the ESA.

The policy is broadly framed to encompass all species covered under the ESA, but does not result in any particular actions concerning specific properties. Additionally, this policy substantially advances a legitimate government interest (conservation of species and their habitats) and does not present a barrier to all reasonable and expected beneficial use of private property.

Comment (25): One commenter stated that the Service does not explain how it will determine or impose mitigation measures to meet a mitigation target that is somewhere between maintaining and improving the status of affected resources.

Response: The Service, being national in scope of operations, wrote this policy to allow for further clarification on a regional and local scale. This will allow the Service to work with Federal agencies and applicants to develop mitigation measures that meet objectives based on local conditions and tailored to the specific species that are impacted. A less flexible policy could cause rigid adherence to a protocol, which may be more suitable in one region, or for one species, versus another.

Comment (26): Commenters stated that the ESA requirements to avoid jeopardy or adverse modification and to minimize the impact of any take of listed species do not equate to the no net loss or net gain goal articulated in the draft policy, and the Service has no authority under the ESA to require measures that will result in a ''net gain'' or ''no net loss.'' In addition, one commenter said a ''net gain'' or ''no net loss'' goal is incompatible with well-established standards for administering sections 7 and 10 of the ESA.

Response: Action agencies or proponents may adopt Service recommendations provided under this policy as part of their proposed actions, but electing to do so does not change the applicable standards under the ESA or otherwise alter the processes prescribed under the ESA and its regulations.

The Service does not view a ''net gain'' or ''no net loss'' goal as incompatible with well-established standards for administering sections 7 and 10 of the ESA. Instead, it is complementary to the ESA requirements to avoid jeopardizing the continued existence of any listed species, or destroying or adversely modifying any designated critical habitat. To achieve

this goal, an action agency or applicant need not abandon the actions they have taken to avoid jeopardizing the continued existence of any listed species, or destroying or adversely modifying any designated critical habitat. Instead, they may complement these actions by including additional measures that allow their action to reach the ''net gain'' or ''no net loss'' goal.

Comment (27): One commenter said by encouraging Service staff to work with applicants to implement ''no net loss'' or ''net conservation gain,'' the judgment of applications will no longer be standardized. They said the policy does not state how conservation gain will be measured, whether on a numerical basis or under what circumstances the Service will make a qualitative judgment regarding the level of mitigation that achieves this standard.

Response: This policy is national in scope, and it is beyond the scope of the policy to provide specific quantifiable measures to achieve a ''net conservation gain'' or specify the methodology for assessing or measuring the ''net conservation gain.'' The Service's mitigation goal is to achieve a ''net conservation gain'' or, at a minimum, ''no net loss'' of the affected resources. The policy provides the framework for formulating compensatory mitigation measures to achieve this goal. The geographical and ecological breadth of this policy's coverage combined with the variation in project and impact types affecting species and habitats nationwide make the detailed specifications for calculating ''no net loss'' or ''net gain'' impossible to include. Such determinations will either be made on a case-by-case basis or will be addressed through additional guidance or planning processes.

Comment (28): Commenters said the policy should be revised to help Service staff avoid crossing the line between ''encouraging'' Federal agencies and applicants to achieve ''a net gain or, at a minimum, no net loss in the conservation of listed species'' and incorrectly representing to Federal agencies and applicants that they are somehow ''required'' to achieve a ''net gain'' or, at a minimum, ''no net loss'' in the conservation of listed species. Commenters added that Service staff should be instructed by the policy to clearly disclose to Federal agencies and applicants at all times that section 7 of the ESA does not require such a ''no net loss in the conservation of listed species'' or a ''net gain'' in relation to the ''no jeopardy'' and ''no adverse modification'' standards.

Response: This policy clearly states that the mitigation planning goal is a goal, not a requirement. We expect further clarification on a regional and local scale to reiterate this distinction.

Comment (29): One commenter stated the goal of ''no net loss'' is admirable and adequate with respect to the Presidential Memorandum (80 FR 68743, November 6, 2015); however, the commenter is concerned this new language may unfairly prohibit or require mitigation for agricultural actions without due process of assessment.

Response: The Service will consider the facts specific to the actions that we review under our authorities. This policy does not provide for the Service to categorically deny development or agricultural activities. Instead, our decisions and opinions on those activities will be guided by relevant statutes and regulations.

Comment (30): One commenter said the sentence, ''Losses of habitat that require many years to restore may be best offset by . . . preservation of existing habitat . . .,'' is counter to the ''no net loss policy.''

Response: The entire sentence reads, ''Losses of habitat that require many years to restore may best be offset by a combination of restored habitat, preservation of existing high-quality habitat, and improved management of existing habitat.'' It is the combination and ratios of these three habitat mitigation types that can create a ''no net loss'' scenario. Improved management can create an immediate conservation benefit and habitat restoration creates a long-term conservation benefit, while preservation of high quality habitat protects existing habitat from being lost. Long-term land management is included in the durability standard.

D. Applicability

Comment (31): Several commenters had concerns about the applicability of the policy to existing mitigation programs, HCPs and associated incidental take permits, and ongoing section 7 consultations that were initiated between the Federal agency and the Service prior to the effective date of the final policy. The comments requested clarity that the policy does not apply to existing projects or projects currently under development, including the associated real estate and financial assurances.

Response: The policy states that it applies to Federal and non-Federal actions permitted or otherwise authorized or approved prior to issuance of the policy only under circumstances where the action may require additional compliance review under the ESA. In addition, the policy states that it does not apply where the Service has already agreed in writing to mitigation measures for pending actions, except where new activities or changes in current activities associated with those actions would result in new impacts, or where new authorities or failure to implement agreed-upon recommendations warrant new consideration regarding mitigation. Service offices may elect to apply this policy to actions that are under review as of its effective date (see DATES, above).

Comment (32): The draft policy does not include any de minimus size consideration. While consultation considers the extent of potential impacts to ESA-listed species, the draft policy does not. It talks in general terms about credit valuation and ratios, but at some point, there should be a consideration of a de minimus project size to which this draft policy would not apply.

Response: The policy is intended to guide compensatory mitigation projects for listed and at-risk species regardless of the scope, magnitude, or size of the project. As such, it would not be reasonable to attempt to define ''de minimis'' limits for the application of the policy that would cover all species and mitigation projects across the country. However, step-down guidance derived from this policy for particular species would be more specific for the biological needs of the species and therefore likely consider factors related to the scope of compensatory mitigation projects.

E. Scope of the Policy

Comment (33): One commenter said that the Service should identify activities and projects that are exempt from the policy.

Response: We agree that the scope of coverage should be clearly described and have listed those circumstances when the policy does not apply in section 3, Scope.

Comment (34): One commenter said that it is important for the policy to address species protected under additional Federal laws, including the Bald and Golden Eagle Protection Act (BGEPA; 16 U.S.C. 668–668d) and the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–712).

Response: We agree that conservation of the resources under BGEPA and MBTA is important. However, those resources, and processes specified by those Acts and any implementing regulations or guidance, are beyond the scope of this policy. We discuss these

authorities in the Service mitigation policy (81 FR 83440, November 21, 2016).

Comment (35): One commenter said that the policy should be limited to listed threatened species, listed endangered species, candidate species, and designated critical habitat.

Response: We agree that the commenter's list of covered resources is similar to our description of covered resources in section 3, Scope, of this policy. There we state that the policy applies to all species and habitat protected under the ESA and for which the Service has jurisdiction. Endangered and threatened species, species proposed as endangered or threatened, designated critical habitat, and proposed critical habitat are the primary focus of this policy. We also state that candidates and other at-risk species would benefit from adherence to this policy, and encourage all Service programs to develop programs and tools in cooperation with States and other partners.

F. At-Risk Species

Comment (36): Several commenters suggested only listed species should be covered by the policy, and ''at-risk'' species references should be removed. Commenters suggested there is no ESA basis for including at-risk species in the policy, that no standards exist for the definition of at-risk species, and that it would create additional burdens on the public. One comment requested clarification of the jurisdiction of the Service, States, and tribes regarding at-risk species.

Response: The Service has addressed at-risk species through implementation of the ESA under many voluntary programs. Often partners (*e.g.,* other agencies, private landowners) voluntarily consider ''at-risk'' species for greater regulatory certainty and to expedite future compliance if these ''at-risk'' species are later listed under the ESA. Under section 6 of the ESA, the Service partners with the States to fund research and recovery actions on listed and at-risk species. Candidate conservation agreements with assurances (CCAAs) are a highly successful program for private landowners providing voluntary conservation for at-risk species. Many HCPs under section 10 of the ESA also include voluntary coverage for at-risk species. These and other proactive efforts for at-risk species, including our draft Policy Regarding Voluntary Prelisting Conservation Actions (79 FR 42525, July 22, 2014), focus on preventing the need to list species under the ESA. The Service also values its partnerships with the States and tribes in conservation of fish and wildlife resources. This final policy aims to strengthen these partnerships and does not extend the Service's jurisdiction over at-risk species. We have included at-risk species, as appropriate, in the policy to further these efforts in preventing the decline of species to the point that protection under the ESA is necessary.

G. Equivalent Standards

Comment (37): One commenter thought the policy should emphasize that there are no prescribed standards that will dictate mitigation but that every situation will be considered fact-specific and flexible, and be based upon the voluntary actions of the proponent.

Response: The Service has written this policy in a manner that facilitates further clarification on a regional scale. As with many of the decisions made in impact analysis, determination of when and what type of mitigation should be implemented occurs on a project-by-project basis, under the authority at hand, with information most appropriate for the site or region of impact. Section 7 of this policy, Compensatory Mitigation Mechanisms, allows the Service flexibility in the type of mitigation mechanism used to meet this need. Section 5 of the policy, Compensatory Mitigation Standards, describes the standards we will require or recommend that all mechanisms meet.

H. Landscape-Scale Approach

Comment (38): Individual actions that harm ESA-listed, proposed, and at-risk species must not be discounted or minimized because they are considered to impart only small or moderate impacts within the broader context of the landscape. The policy should consider how these site-specific impacts could be identified and accounted for prior to development of the most appropriate compensatory approach.

Response: The Service agrees that small or moderate impacts that have cumulative effects are important to address. In each situation, the project effects analyses should identify all effects to the species under consideration, as well as measures to avoid, minimize, and compensate adverse effects. These analyses can characterize repeated, ongoing actions that may affect a species at a larger scale, and can help inform recovery efforts at a local or regional level. Ideally, the project proponent and the Service would also identify opportunities to support recovery/conservation of that species and include them in the action, if possible. This is a collaborative approach to conservation, consistent with relevant statutes and regulations, and can help offset the cumulative effects of many actions on the landscape.

Comment (39): One commenter said the draft policy should provide additional guidance on how landscape-scale indirect effects would be evaluated for buffers surrounding existing mitigation sites, including mitigation banks. They recommend clarification regarding the process when additional compensation may be necessary for landscape-scale indirect effects to existing mitigation sites.

Response: It is difficult at this time to provide specific guidance on buffers and indirect effects given the potential universe of actions that could arise and fact-specific situations of each mitigation site. We declined to provide such guidance in this policy.

Comment (40): Some commenters were concerned that the landscape-level approach to mitigation planning would focus too narrowly on certain species to the detriment of others, or that purchasing credits from a conservation bank or in-lieu fee program would not equate to replacing lost habitat.

Response: The goal of a landscape-scale approach to mitigation is to ensure functionally successful compensatory mitigation efforts for the habitats or species under consideration. While no project or habitat benefits all species all the time, using a landscape context to frame mitigation actions should reinforce functionality at the appropriate scale (*i.e.,* tract, regional, range) to benefit the target resource, and in most cases, other resources/species that also rely on that functional system. Using a landscape approach will help ensure the compensatory mitigation measures will meaningfully offset adverse effects to a species/habitat in a way that is ecologically sustainable over the long term. This is a more holistic approach to ensuring the functionality of the ecosystems on which federally listed and at-risk species depend.

Comment (41): One commenter recommends that the Service consider revising the guidance provided under section 5.1.2 of the draft policy to discuss not only economies of scale associated with conservation banks and small impacts, but also to state that large-scale impacts require large-scale mitigation and such development projects have the potential to create landscape-scale conservation benefit for species, which may not be best achieved through banks.

Response: The Service agrees large-scale projects have the potential to

provide large-scale mitigation measures to offset adverse effects and ideally contribute to recovery. The examples given in section 5.1.2 of the draft policy are compensatory mitigation programs that can be established in advance of impacts, such as conservation banking or in-lieu fee programs. A large-scale mitigation project implemented in advance of impacts will likely offset the impacts of multiple projects, and is essentially a conservation bank.

Comment (42): One commenter stated that landscape-scale mitigation is unauthorized and unfeasible. Landscape-scale impact evaluations and required mitigation measures on this basis imports a policy objective into official ESA decisions in excess of statutory authority and is incongruent with the ESA.

Response: The goal of the ESA is to conserve endangered and threatened species and the ecosystems on which they depend. Through science and technological advances, conservation has more tools than ever to effectively evaluate land use, populations, hydrology, and so forth, at scales relevant to the needs of federally listed and at-risk species. To ensure the most effective mitigation measures for these resources, it is critical to put them in an ecologically functional context, *i.e.,* a landscape. That does not mean every action requires advanced, ecosystem-level quantitative evaluations, but rather that the effects of an action and mitigation measures to offset those effects take into consideration truly functional strategies that will continue to provide long-term resource benefits. This does not expand any existing authorities for ESA implementation.

Comment (43): We received comments requesting clarification of when programmatic approaches to mitigation would be appropriate.

Response: This policy does not require the development of programmatic documents to support infrequent compensatory mitigations needs. The decision to develop programmatic approaches to mitigation will be made based upon resource-specific circumstances, such as how frequently agencies and applicants will need to compensate for their impacts.

Comment (44): Comments included concerns about the Service's proposed extension of critical habitat to areas not currently occupied by a listed species, on the basis that an area may become critical because the species' range is expected to expand to that area. In determining the scale of a landscape-level approach to mitigation, the Service should not ignore the need for a rational connection to the area of actual impact of a proposed project. Instead, it should base requirements for landscape-scale mitigation on demonstrable connections between truly foreseeable or predictable impacts, rather than speculative projections of habitat or range modifications due to climate change.

Response: The Service agrees that compensatory mitigation must be based on the best available science, and have a rational connection between project effects and proposed mitigation measures. The landscape approach provides the context within which to frame that connection. As our understanding of species' needs, habitats, and climate change increases, we will be better able to address potential future needs of species and their habitats. In planning mitigation strategies, it is also important to recognize uncertainties in future conditions, including habitats, water supplies, temperatures, etc. Those uncertainties should be built into the mitigation strategies to ensure that the proposed mitigation benefits adequately offset adverse effects over the long term. The policy does not address the designation of critical habitat; the regulations for the designation of critical habitat are found at 50 CFR 424.12.

Comment (45): One commenter said the focus on landscape-scale conservation is laudable, but the draft policy introduces new processes and standards that could make achieving this goal more costly, time-consuming, and burdensome. The policy should include ways to incentivize the creation of landscape-scale mitigation projects that capitalize on the multiple ecosystem services and efficiencies that landscapes provide. More consideration for the self-regulating aspects of natural landscapes that could reduce management and monitoring burdens (lowering costs), and the ability to unstack credits for different listed species when their habitats overlap in space but not in function (increasing market returns), would help make landscapes a priority for the conservation marketplace.

Response: The landscape approach to conservation provides a conceptual framework to design effective and durable mitigation strategies. The intent is to approach mitigation planning and implementation from an ecologically functional perspective for more effective, durable outcomes. Designing mitigation that works with natural landscapes will help reduce management costs and increase effectiveness. Monitoring also will help confirm our underlying understanding of mitigation benefits and may help identify where our assumptions need revision. This is critical to mitigation success.

Bundled or stacked credits cannot be unbundled or unstacked to offset the effects of multiple projects but can only be used to offset the effects of a single project. Once a unit of habitat is used as mitigation for one project, regardless of the number of listed species it supports, it cannot be used as mitigation a second time.

Comment (46): One comment suggested that it is unclear why the required inclusion of adjacent ecosystems and human systems, which is how landscapes are defined, into conservation plans will provide a benefit to species that do not require those habitats or ecosystems for survival. The Service should clarify whether it intends mitigation consistent with a landscape-scale approach to require grouping of permittee proposed compensatory mitigation projects or grouping of project proponents, and in situations where this is desired, the benefits should be explained.

Response: Including consideration of adjacent ecosystems and human systems into a landscape approach to compensatory mitigation recognizes the potential effects those systems may have on the species and habitats under consideration. This is especially important in ensuring long-term ecologic functioning of the compensatory mitigation that benefits the species/habitat. We are increasingly aware that adjacent landscapes and human management actions can significantly affect what was perceived as a protected area. This policy explicitly recognizes those factors in developing long-term, comprehensive conservation strategies for the resources under consideration. Because those strategies will be implemented using market-based and collaborative mitigation tools, the Service will work with our conservation partners to develop effective, feasible measures to put conservation on the ground. The policy does not require permittee proposed mitigation projects to be grouped, but they should be considered in the context of the landscape in which they occur.

Comment (47): One commenter said that most species lack an up-to-date analysis of conservation status, and few have forward-looking strategies that the Service intends to rely on in implementing the policy. Furthermore, not all landscape-scale conservation strategies noted by the Service are peer-reviewed, publicly vetted, scientifically sound, or without controversy. If the Service intends to rely on such strategies in the context of preparing

recovery plans, status reviews, and similar documents, then these landscape-scale conservation strategies and the process for implementing them must be vastly improved. The Service should let the conservation market identify lands that represent valuable conservation targets and take advantage of ''market efficiencies'' that are a benefit of the conservation banking and in-lieu fee forms of mitigation.

Response: The Service agrees on the importance of using the best available scientific information in developing conservation strategies. We rely on our conservation partners to bring their information and expertise into a collaborative process to help us develop those strategies. We also appreciate the assistance of the conservation market in designing, implementing, and expanding our suite of conservation tools to benefit listed and at-risk species.

Comment (48): One commenter said the policy would benefit from greater recognition that activities associated with the management, monitoring, protections, and assurances need not be as robust in some instances, yet will achieve a functional landscape that is capable of supporting the conservation of listed and at-risk species, different from the actions necessary to provide compensatory mitigation for wetlands and other aquatic resources.

Response: The Service agrees that some larger landscapes may require less intensive management than smaller areas. However, in most areas of the country, there are few ''self-regulating'' systems left that are not greatly influenced by invasive species, altered hydrology, ongoing erosion, and climate change. It is important in designing feasible, meaningful mitigation to appropriately scale the monitoring and management actions to most effectively provide resource benefits. This will depend on the resources, landscapes, and scale of the project, and should have a rational connection between the effects being offset and the benefits provided. We declined to modify the policy based on this comment.

Comment (49): One commenter said the draft policy's example of a proactive, landscape-scale mitigation approach provided by songbird mitigation guidance in Texas to encourage compensatory mitigation opportunities is misleading. The commenter cited two instances in which potential conservation banks were precluded from establishing species credits due to the requirements in the guidance.

Response: We respectfully disagree. The example used in the policy is intended to show instances where the Service has taken landscape-scale approaches for species conservation and compensatory mitigation. We recognize that not all proposals developed under the Texas example or other local guidance will ultimately be finalized and implemented, but the intent of this policy is to promote consistency and predictability so that mitigation providers may develop programs that are more likely to be implemented.

Comment (50): Some commenters indicated that the policy should offer far more guidance on when and how the Service would apply a ''landscape-level approach'' to ESA mitigation, questioned whether the Service would apply a landscape approach differently to species with different range sizes, and stated that the draft policy does not explicitly describe how or whether a landscape approach would apply to listed species with narrow ranges.

Response: The landscape approach to conservation considers the functional context of the species or habitat under consideration. Working with our conservation partners and project proponents, the Service will use a landscape context to provide the most effective and durable mitigation for listed and at-risk species, while preserving the greatest flexibility to implement those measures at many scales. Given the breadth of species and landscapes under consideration, it is impossible to give a ''one size fits all'' set of instructions. Using a landscape context to frame mitigation actions should reinforce functionality at the appropriate scale (*i.e.,* tract, regional, range) to benefit the target resource and, in most cases, other resources/species that also rely on that functional system. Though some species may have relatively narrow ranges, their threats may be best addressed at a landscape scale (*e.g.,* invasive species, altered hydrology, climate change). This approach will help ensure the compensatory mitigation measures will meaningfully offset adverse effects to a species/habitat in a way that is ecologically sustainable over the long term.

Comment (51): One commenter noted that the statement requiring compensatory mitigation to be ''sited in locations that have been identified in landscape level conservation plans or mitigation strategies'' does not take into account the limited lands available for acquisition or restoration in some areas of the United States and the need to acquire property from willing sellers.

Response: The Service recognizes conservation opportunities vary across the country by species and habitats. The landscape-scale approach is a way to place those opportunities in an ecologically functional context. The policy allows for compensatory mitigation on public lands (provided certain criteria are met, *e.g.,* ''additionality'') and on private lands. It also encourages market-based tools and incentives to take advantage of the unique circumstances in each area. While there may be limitations in available lands in some regions, the policy includes a suite of tools that should provide meaningful options for feasible, durable compensatory mitigation nationwide.

Comment (52): The policy will result in the creation of a landscape-scale system of conservation banks and other mitigation sites controlled by the Service that will take private land and their resources out of productive use.

Response: The landscape approach to conservation considers the functional context of the species or habitat under consideration. It does not affect land ownership or control. Working with our conservation partners and project proponents, the Service will use a landscape context to provide the most effective and durable mitigation for listed and at-risk species, while preserving the greatest flexibility to implement those measures at many scales. Providing incentives for a market-based approach to conservation allows many tools to better meet the needs of species as well as the needs of landowner/project proponents. Generally, the use of conservation banking and other mitigation projects will not take resources out of ''productive'' use. Rather, conservation banks and other mitigation projects located on private land remain under control of the property owner and often provide other productive uses, such as grazing livestock.

I. Metrics

Comment (53): One commenter stated that the policy should clarify that actions can meet ESA conservation standards using mitigation when adverse effects, and mitigation offsets of those effects, are calculated using tools that consider more than mere gain or loss of animals or habitat. For example, tools like Habitat Equivalency Analysis consider spatial, temporal, and functional parameters that look beyond mere loss or gain to calculate the extent and quality of mitigation required in given situations.

Response: A discussion of tools used to calculate mitigation is not within the scope of this policy.

Comment (54): Several commenters were concerned that adequate detail

about how assessment methodologies are developed and applied was not provided in the draft policy. Commenters were also concerned that the numerical loss and benefit to a site is largely a qualitative measurement, and the no methodology for quantification is offered. They said that transparent formulas to calculate ''mitigation ratios'' are needed to reduce subjectivity and increase transparency. They also noted that equivalent metrics for determining losses due to impacts and gains due to mitigation would aid in the assessment of ''no net loss'' or ''net gain.''

Response: The Service agrees that transparent formulas to calculate ''mitigation ratios'' reduce subjectivity and increase transparency. We also agree that equivalent metrics for determining losses due to impacts and gains due to mitigation would aid in the assessment of ''no net loss'' or ''net gain.'' This policy does include a statement that equivalent metrics should be used whenever possible.

Details about how to develop and apply assessment methodologies that are quantitative and transparent were not included in the draft, or this final, policy, because these details are species-specific and too complex to describe adequately within the framework of the policy. When detailed descriptions of assessment methodology development and application are prepared by the Service for a species-specific mitigation program, these descriptions are routinely shared with the public.

Comment (55): One commenter said that since buffers are so important, they should be counted in the crediting of a mitigation site at some ratio of a full credit.

Response: The Service agrees with this comment. In section 6.6, the policy states, ''If buffers also provide functions and services for the species or other resources of concern, compensatory mitigation credit will be provided at a level commensurate with the level of functions and/or services provided to the species.''

Comment (56): One commenter stated that for the purposes of mitigation, the Service has not shown compelling evidence that adequate assessment methodologies exist to consider adverse and beneficial actions that are fundamentally different in nature. Determining the numerical loss and benefit to a site is largely a qualitative measurement, and the draft policy offers no quantification methodology.

Response: The policy describes types of mitigation programs or projects that do not directly replace species or habitat losses resulting from development projects. These are the types of programs in which the adverse actions, like habitat development, would be offset by an action that is fundamentally different in nature, such as gating of caves that serve as habitat for the species. The Service acknowledges that these types of credit/debit systems can often be more subjective than the traditional habitat-for-habitat type of mitigation. However, this type of mitigation has been the exception rather than the rule, and we expect Service staff to use other programs or projects only when they are the best option to alleviate the greatest threats to the species involved. When these programs or projects are allowed as mitigation, the Service will clearly explain the link between the threat and the selected mitigation.

Comment (57): One commenter was concerned that there was no discussion of how successful ''surrogate'' indicators of incidental take have been in assuring adequate mitigation.

Response: The use of surrogate indicators for the species impacted, such as the species' habitat, when applying compensatory mitigation in accordance with 50 CFR 402.14(i)(1)(i) is discussed at section 5.2 of the policy. We declined to add additional detail to that discussion.

Comment (58): One commenter suggested that the Service require that all credits and debits associated with the same species and region be aggregated and reported across all compensatory mitigation mechanisms. They indicated this is critical to ensure an offset achieves ''net conservation gain,'' to ensure the offsets created by all mechanisms are using the best available science, and to ensure equivalency across multiple mechanisms. They also suggested when the same metric is not used by two different mechanisms; the requirement to define ''the relationship (conservation) between credits and debits'' can also be used to define the relationship between different credit metrics.

Response: Currently, the Service uses the Regulatory In-lieu Fee and Banking Information Tracking System (RIBITS) to track credits and debits for conservation banks. The Service intends to work with the USACE to adapt RIBITS for use by the Service to also track credits and debits for in-lieu fee programs. The type of credits that are acceptable for a given species is determined by the Service when a mitigation program for a specific species is developed and implemented. The Service agrees that tracking the types and amounts of credits used across a species' range is a good idea, as it informs our understanding of the species' status. Collecting this type of information and working to achieve consistency requires coordination among Service staff, including those from different program areas. Describing the actions necessary to ensure this coordination occurs is beyond the scope of this policy.

Comment (59): One commenter suggested a monitoring and verification process should be required of all mitigation. They said the verification process should include a method to verify that the outcomes of the project achieve the performance standard throughout the entire life of the mitigation project, and that method could be the initial assessment method or an abbreviated assessment that still quantifies the quality of the resource. They also suggested the party responsible for conducting the verification should be identified upfront.

Response: We agree that these are important requirements to ensure that mitigation remains adequate over time. Specific methodologies for such verification are beyond the scope of this policy.

Comment (60): One commenter said it should be made explicitly clear that while adaptive management is critical as knowledge and conditions change, the necessary updates to metrics or plans do not invalidate previous metrics or credits. They suggested that each credit, and debit if applicable, should be labeled with the method used at the time of assessment. They also suggested that reports should acknowledge when metrics are modified, but credits should still be aggregated across time. They noted that it may be necessary to use a correction method, and these correction methods should be transparent, scientifically supported, and included in all reports.

Response: We agree in concept; however, this comment goes beyond the scope of the policy.

Comment (61): One commenter asked that we clarify that plans should rely more on the criteria that define high-quality habitat, including criteria for landscape-scale attributes, indicating these criteria should be consistently reflected in the development of metrics used to define credits and debits within the region. They noted that opportunities to enhance and protect habitat may be outside of predefined conservation areas, but they must meet the definition for high-quality habitat and be deemed acceptable.

Response: We agree that metrics should define high-quality habitat. We also agree that opportunities to enhance

and protect habitat may be outside of predefined conservation areas, and regardless of location, they should meet the definition for high-quality habitat and be deemed acceptable. This concept is captured in the final policy.

Comment (62): One commenter liked the concept that ecological performance criteria must be tied to conservation goals and specific objectives identified in compensatory mitigation programs and projects, but they did not think the draft policy adequately describes how to accomplish this objective.

Response: The level of detail necessary to describe how to accomplish this objective is beyond the scope of this policy and may be addressed in implementation guidance.

Comment (63): One commenter stated the draft policy should more explicitly recognize the uncertainty associated with mitigation for certain species and describe a framework for managing the uncertainty. They said the policy should describe a framework the Service would use to assess the appropriate balance of avoidance, minimization, and mitigation, as informed by the likelihood of mitigation effectiveness and the species' recovery needs.

Response: The Service agrees that there is uncertainty associated with mitigation for certain species. This policy includes a discussion of risk management tools. These tools can be used after the Service determines that a mitigation program or project is appropriate. Assessing risks and determining if mitigation is appropriate for a species is not within the scope of this policy, as uncertainty associated with mitigation for certain species will be fact specific.

J. Additionality

Comment (64): We received two comments on the draft policy's use of ''additionality'' when developing compensatory mitigation on both public and private lands. Commenters believed additionality is not feasible when coupled with the ''no net loss'' goal, and that some inconsistencies exist in the descriptions in the text of the draft policy.

Response: One purpose of using ''additionality'' as a standard in the policy is to promote the ''net gain/no net loss'' goal. There are many examples of mitigation sites and programs that have achieved these standards. The concept of compensatory measures providing additional benefits above baseline conditions is described in general terms in the policy. Those descriptions in the text are intended to give context to the conservation benefits of mitigation actions being additive to baseline conditions on both private and public lands.

K. Durability

Comment (65): Some commenters were concerned that the requirement for perpetual management of mitigation sites places an undue burden on mitigation providers, or that perpetual management would be detrimental to the resource. They said that the imposition of perpetual endowment and adaptive management places burdens on all projects, and it would be impossible for industry to manage and maintain mitigation sites in perpetuity.

Response: Perpetual management of mitigation sites is essential to assure durability of compensatory mitigation. The species and resources present on a mitigation site will dictate what management actions are undertaken. Management plans are tailored to the needs of the site. Mitigation providers should carefully consider the long-term commitment they are making when they agree to implement a compensatory mitigation project. Mitigation that is permanent is expected to have appropriate financial and real estate assurances to meet the durability standard in the policy.

L. Collaboration and Coordination

Comment (66): One commenter said the policy would mandate the Service to work directly with landowners, potentially resulting in the loss of confidential information. The commenter noted recent conservation plans produced in Texas were developed by stakeholders and administered through State agencies to preserve confidentiality of private landowners.

Response: The Service has a long history of working with private landowners to conserve fish and wildlife resources, including endangered and threatened species. Our partnerships with private landowners are essential to achieving our conservation mission. The policy does not include a mandate to work directly with landowners, but supports the ESA and its implementing regulations, which allows us to work with a variety of entities towards the recovery of listed species, and encourages cooperative conservation with all of our partners, including the exchange of ideas and information to better inform species management and evaluation. As noted in the policy, transparency in compensatory mitigation programs and ESA implementation is essential to achieving success. The Service is considerate of confidentiality, and any personal information maintained by the Service is protected by law (*e.g.,* Freedom of Information Act, 5 U.S.C. 552; Privacy Act, 5 U.S.C. 552a) to prevent unlawful dissemination.

Comment (67): One commenter was concerned that the Service developed the policy without having addressed concerns raised by States and other parties regarding the Service's mitigation policy. They said that moving forward with this guidance without finalizing the overarching mitigation policy was premature, and created uncertainty and confusion over what the Service was likely to adopt.

Response: This compensatory mitigation policy is a step-down policy under the final Service mitigation policy, which published in the **Federal Register** on November 21, 2016 (81 FR 83440). There were no substantial changes between the draft and final Service mitigation policy. In finalizing the Service's mitigation policy, we fully considered all comments and concerns raised by States and other parties. We also considered those comments as we developed this policy.

Comment (68): Two commenters addressed the relationship between this policy and mitigation policy developments underway in other agencies. One commenter was concerned that while interagency cooperation is addressed in the draft policy, it only provided a history of previous ESA requirements. They were concerned that the draft policy did not address the relationship between similar policies being developed by other Federal land management agencies such as the Bureau of Land Management and the U.S. Forest Service. Another commenter noted that other Federal agencies are also responding to the Presidential memorandum (''Mitigating Impacts on Natural Resources From Development and Encouraging Related Private Investment'') issued November 3, 2015. They said that this created the opportunity for the Service to enter into agreements with other Federal agencies to work together on the implementation of similar mitigation policies and to avoid conflicts, delays, and inefficiencies.

Response: At the time this policy is being finalized, neither the Bureau of Land Management nor the U.S. Forest Service has published final mitigation policies or regulations. The Service did provide comments on their proposed policies, and we did receive comments on this policy from those agencies. This policy, like the Service mitigation policy published November 21, 2016 (81 FR 83440), was developed in accordance with the November 3, 2015, Presidential Memorandum; the

Secretary of the Interior's Order 3330 entitled, ''Improving Mitigation Policies and Practices of the Department of the Interior'' (October 31, 2013); and Departmental Manual chapter (600 DM 6) on Landscape-Scale Mitigation Policy (October 23, 2015). The commenter's concern is anticipated by those documents, which envision the various agencies' mitigation policies applying common principles, terms, and approaches, thereby providing greater consistency and predictability for the public. Subsequent agreements between the Service and other agencies may be developed as need arises.

Comment (69): One commenter said the draft policy would be improved if it built upon and utilized the USACE and EPA's definitions and mitigation policies. They said that a reconciliation of terms and process should be part of the Service's next steps.

Response: We agree that this policy should apply concepts and definitions compatible with those developed through decades of mitigation practice under the Clean Water Act. Accordingly, we have developed this policy to use the same terms and approaches found in regulations and guidance promulgated by the USACE and EPA whenever possible. In some cases, we also recognized the need for language tailored to authorities, processes, and resources covered by the ESA rather than the Clean Water Act; in these cases, the policy's language complies with the Departmental Manual on Landscape-Scale Mitigation Policy (600 DM 6).

Comment (70): One commenter said that the implementation of this policy will establish an inconsistent ESA framework because the National Marine Fisheries Service did not adopt the Service's mitigation policy (81 FR 83440, November 21, 2016). The commenter said this approach is contrary to the typical practice of promulgating joint regulations by the two agencies that provide for uniform application of the ESA. The commenter stated that by unilaterally proposing this policy and the Service mitigation policy (81 FR 83440, November 21, 2016), the Service is creating disparate requirements that will impose significant and additional regulations on project sponsors based on the possibility of a species being affected.

Response: This policy is not a rulemaking and cannot otherwise alter or substitute for the existing regulations applied by both the National Oceanic and Atmospheric Administration (NOAA) and the Service in implementing the ESA. We also have coordinated development of both this policy and the Service mitigation policy (81 FR 83440, November 21, 2016) with NOAA, and incorporated their suggestions and modifications. Also, this policy was required under the Presidential Memorandum on Mitigation, the Department of the Interior Secretarial Order 3330, and 600 DM 6.

Comment (71): One commenter said that the Service and other agencies risk unnecessary duplication of efforts and conflicting requirements, which will further delay project approval. They encouraged the Service to consider mitigation frameworks already in place before adding another layer of mitigation requirements to an already complex and burdensome project approval process.

Response: We agree that existing mitigation programs and frameworks, as well as existing mitigation and conservation plans, should be considered. The Service recognizes that there may be existing plans developed by State and local governments and other stakeholders with characteristics that may be useful in mitigation planning depending on the specific action and the affected resources. The Service will work with project proponents and other stakeholders in reviewing existing programs, frameworks, and plans for applicability in the context of a specific action.

Comment (72): One commenter said the policy would complicate other agencies' processes. They said that it would increase opportunities for the Service to force concessions from other Federal agencies and permittees, and that it has the potential to violate organic acts and will undoubtedly complicate the approval process for mining operations and other land users.

Response: The scope of this policy does not limit the existing discretion of an action agency, or hold the action agency or applicant responsible for mitigation beyond an action agency's own authority, mission, and responsibilities. The Service recognizes that the authorities and processes of different agencies may limit or provide discretion regarding the level of mitigation for a project. This policy is not controlling upon other agencies, and the Service acknowledges that there may be limitations (*e.g.,* agency-specific authorities and 600 DM 6) on the implementation of measures that would achieve the policy's goal of ''net conservation gain'' or a minimum of ''no net loss'' when the costs of such mitigation are reimbursable by project beneficiaries under laws and regulations controlling agencies' activities (*e.g.,* Bureau of Reclamation). Other agencies may voluntarily adopt Service recommendations, which may expedite their other requirements.

Comment (73): Some commenters expressed interest in a collaborative approach to mitigation planning on a landscape level. One commenter expressed support for additional engagement with stakeholders; another commented that the role of State wildlife data, analyses, and expertise should be utilized to the greatest extent possible; another commenter was skeptical of the collaborative approach preferred by the Service.

Response: The Service agrees that developing multi-scale conservation plans and strategies benefits from many invested stakeholders that bring their unique insights and perspectives to ensure a more comprehensive and robust blueprint, and looks forward to building on our conservation partnerships through collaborative planning efforts. Our State partners in particular are critical to successful compensatory mitigation of federally listed and at-risk species. They bring statutory responsibility, data, expertise, and management capabilities to better ensure successful, durable mitigation efforts on the ground.

Comment (74): Several commenters were concerned about the level of coordination undertaken by the Service on establishment of mitigation programs, and encouraged the Service to engage with both mitigation partners and with State agencies, to avoid duplication of effort and cross-jurisdictional issues and to improve outcomes. One commenter urged the Service to expedite reviews by working with agencies that already have established mitigation policies and programs.

Response: The Service agrees that we have common goals with our partners and achieve much better outcomes when we work together on coordinated mitigation programs, especially where our jurisdiction overlaps with that of other agencies as it often does with our State wildlife agency partners. The Service intends to continue working with all of our partners.

M. Transparency

Comment (75): One commenter requested clarification on the Service's meaning of ''direct oversight'' in the draft policy regarding compensatory mitigation programs and projects. The commenter also requested clarification on use of third-party evaluators in preparing monitoring reports for programs or projects.

Response: The policy identifies the Service's authority for direct oversight

of compensatory mitigation programs and projects through sections 7 and 10 of the ESA. Under sections 7 and 10, the Service oversees the terms and conditions of the incidental take permit (section 10) or of the incidental take statement (section 7). Details on the roles of third-party evaluators involved in specific project actions are beyond the scope of the policy.

Comment (76): We received several comments pertaining to the availability of information generated from mitigation programs. Commenters recommended the policy include standards for transparency of data and documents, participation of stakeholders, and consistency of data reported through mitigation programs.

Response: Information on conservation banks is available to the public on the Regulatory In-lieu Fee and Banking Information Tracking System (RIBITS), and the Service intends to work with the USACE to add Service-approved in-lieu fee programs to that platform. As noted in the policy, the Service will share appropriate information concerning mitigation programs with the public, with the exception of personally identifiable information or other information that would be exempt under the Freedom of Information Act. We declined to add specific standards for transparency to the policy. Prescriptive standards for the type of data to be shared would not be reasonable for a policy that covers the myriad listed species across the country. Such standards would be better suited for species-specific guidance.

N. Preference for Advance Mitigation

Comment (77): One commenter stated the policy should adopt an approach similar to that taken in the HCP handbook to identify exceptions to the requirement to mitigate in advance of impacts.

Response: The policy is intended to provide standards and guidance to improve consistency of compensatory mitigation programs and projects for listed, proposed, and at-risk species. The preference for advance mitigation is based on the years of experience with compensatory mitigation programs. We realize that in some cases advance mitigation may not be possible, or even preferable; however, attempting to identify exceptions for this preference would not be reasonable, considering the vast diversity of species and programs that would occur across the country.

Comment (78): Several commenters were concerned about the draft policy's preference for compensatory mitigation in advance of project impacts. One commenter specifically identified that reclamation of mining operations often lacks the ability for advanced mitigation on site. Other commenters cited that: The process of project permitting and financing determinations would likely not allow for advanced mitigation; the Service should provide incentives such as higher ratios for ''after impact mitigation''; advance mitigation would be considered pre-decisional; or it is impossible to provide mitigation in advance of impacts.

Response: We recognize that project scheduling and implementing on-site mitigation may not always align with the Service's preference for advance mitigation; however, conservation banks, in-lieu-fee programs, and other third-party mechanisms provide advanced mitigation options that reduce timing and other constraints. The Service's current practice to recommend mitigation in advance of impacts under sections 7 and 10 of the ESA is based on years of experience in compensatory mitigation practices. This policy promotes the development of advanced mitigation mechanisms, providing more options for mitigation users. The Service agrees that mitigation ratios can be used to incentivize mitigation accomplished in advance of impacts, but the discussion of specifics is beyond the scope of this policy. The Service does not consider advance mitigation to be pre-decisional, as the majority of advance mitigation programs, such as conservation banking, are established prior to any impacts, and projects that will mitigate at such sites may be unknown at the time of bank establishment. In all cases, the Service will evaluate the appropriateness of using a specific site or proposal as compensatory mitigation to offset the unavoidable impacts of a project at the time the Service reviews the project that will likely result in the impacts.

O. Eligible Lands

Comment (79): Several commenters supported mitigation projects and programs on public lands and wanted us to add more flexibility to the policy. One commenter stated that if mitigation projects and programs occur on public lands, the land manager should be prepared to implement and fund alternative mitigation if a change in law allows incompatible uses to occur on mitigation lands. One commenter did not support mitigation projects and programs on Federal lands, but was in favor of it on State lands, and wanted State lands specifically mentioned in the policy.

Response: Compensatory mitigation can occur on public lands, either Federal or State lands, and in some cases, such siting may lead to the best ecological outcome. Compensatory mitigation for impacts on public lands can be sited on both public and private lands. Compensatory mitigation for impacts on private lands can be located on public lands, but it is this combination, or that particular change in ownership classification, where Service staff should be attentive to additional considerations before making such a recommendation. These additional considerations are necessary to achieve the ''net gain'' or, at a minimum ''no net loss,'' goal of the policy.

Comment (80): Several commenters provided comments on split estates. Commenters said the Service is arbitrarily limiting areas on which mitigation can occur by not allowing lands with split estates to qualify as mitigation lands; split estates do not necessarily result in an unsuitable mitigation site; and the holder of the rights would have to secure their own authorization under the ESA from the Service prior to exercising their rights.

Response: The Service agrees that there are cases in which lands with split estates can be used for mitigation. The policy advises caution because we strive to ensure the durability of mitigation projects and programs, but the policy does mention possible remedies and that there could be other approaches to using lands with split estates for mitigation. A detailed discussion of remedies and other approaches is not within the scope of this policy.

P. Tribal Lands/Tribal Rights

Comment (81): We received some comments regarding the siting of mitigation projects on tribal lands or on lands on which tribes hold treaty rights. One commenter expressed the need for local mitigation projects to be sited in or near reservation lands as well as on traditional off-reservation sites, to benefit the natural resources of the native peoples; another commenter was concerned that locating mitigation outside of treaty areas for projects that impact the resources in treaty areas would harm the treaty rights and the resources of the tribes. Other commenters asked that tribes be consulted in the siting and approval of mitigation sites and programs. Others were concerned about the impacts of habitat restoration and long-term management on treaty resources.

Response: The Service is committed to upholding our trust responsibilities to federally recognized tribes to conserve shared natural resources, consistent with the Service's Native American

Policy (revised January 2016; see 81 FR 4638, January 27, 2016). This is accomplished under this policy by ensuring that mitigation projects and programs are located in areas that provide the most benefit to the affected resources, while respecting treaty rights. The Service recognizes the importance of tribal involvement and expertise when siting mitigation projects and when developing service areas and management plans for conservation banks and other types of mitigation mechanisms. Specific guidance on Service coordination with tribes is beyond the scope of this policy.

Comment (82): We received some comments requesting specific guidance on facilitating creation of conservation banks on tribal lands, comments on including tribal cultural uses and practices as allowable uses on mitigation lands, and a suggestion for developing mitigation principles similar to those developed with the USACE in the State of Washington for specific mitigation programs.

Response: The Service agrees that these are all important considerations, and such guidance and suggestions will be more effectively addressed in step-down guidance at a later time.

Comment (83): We received comments regarding the applicability of the policy to tribes, or to a specific HCP under development, and a suggestion that the Service consult with any tribes who so request before finalizing this policy.

Response: The Service notified tribal contacts when we made the draft policy available for review and comment (81 FR 61032, September 2, 2016). We addressed all tribal comments, as appropriate, as we developed the final policy. The policy applies to all forms of compensatory mitigation for all species and habitat protected under the ESA and for which the Service has jurisdiction. The policy is flexible with regard to its application to specific mitigation projects or programs that are under development at the time this policy is finalized, leaving that decision to individual Service offices.

Q. Service Areas

Comment (84): Several commenters requested more detail in the policy about requirements for developing service areas.

Response: Specific considerations for developing service areas are beyond the scope of this policy and will be provided in implementation guidance.

R. Credit Bundling

Comment (85): A few commenters were concerned about credit bundling, also known as credit stacking, where multiple resources exist on the same unit area. One commenter was concerned that any resources bundled or stacked with a listed species would suffer, as the site would be managed only for the benefit of the listed species and not the other resource(s), and wanted multi-agency review teams to be aware of this when authorizing mitigation banks. Other commenters wanted the Service to make it clear that credits could potentially be used for multiple purposes, and another wanted the Service to allow mitigation credits to be used to compensate for multiple impact projects.

Response: The Service encourages credit bundling where multiple resources exist on the same unit area and where management actions benefit those multiple resources. However, bundled credits can only be used to compensate for one impact project (*i.e.,* the credits can never be ''unbundled'' or ''unstacked'' to compensate for multiple projects). If two resources, such as a California red-legged frog (CRLF) and a wetland regulated pursuant to section 404 of the Clean Water Act are bundled together in a credit, that credit may be used to compensate for impacts to both resources from the same project, or to compensate for impacts to CRLF or to wetlands. If the credit were used to compensate for CRLF, then it can no longer be used to compensate for wetlands (*i.e.,* that portion of the credit is ''retired''). Unbundling these functions and services would result in a net loss of habitat and would undermine the Service's efforts to conserve the species. This approach is consistent with the policies and regulations of the USACE, and other State and Federal agencies the Service works with on multi-agency-approved mitigation projects and programs.

S. Mitigation Mechanisms

Comment (86): One commenter suggested the *Benefits of the Draft Policy* section be clarified to include other mitigation mechanisms that may not be market-based. The commenter suggested that the first sentence of the final paragraph of that section be modified to read: ''This draft policy would encourage mitigation in conjunction with programmatic approaches to ESA section 7 consultations and HCPs designed to focus on conservation outcomes that achieve ''no net loss'' or ''net gain'' through the use of market-based approaches (*e.g.,* conservation banks), in-lieu fee programs, permittee-responsible, and other third-party implemented mitigation programs.''

Response: The Service considers that one of the benefits of this policy is the opportunity it creates for a market-based approach to mitigation as highlighted in the Presidential Memorandum of November 3, 2015, on Mitigating Impacts on Natural Resources From Development and Encouraging Related Private Investment (80 FR 68743, November 6, 2015), especially those that can be established in advance of impacts. Conservation banking is a proven example of this approach. The policy does not preclude the other mechanisms mentioned by the commenter. We declined to adopt the commenter's suggested sentence.

Comment (87): Several commenters stated that the draft policy was confusing and complex, citing the Service's definition of compensatory mitigation being too broad, lack of a mitigation protocol, and need for a guidance document to ensure a separation of regulatory and nonregulatory authority, goals, and standards. One comment stated the complexity of obtaining approval, as well as cost, for a mitigation site would discourage investment.

Response: One purpose of the policy is to provide predictability and thereby reduce uncertainty of investment for market-based mitigation programs. We acknowledge that the nature of existing compensatory mitigation mechanisms and programs currently being implemented is complex. We have revised the draft policy so that this final policy addresses overarching goals and standards only, and we will later provide more detailed implementation guidance. However, providing a mitigation ''protocol'' that covers the breadth of species and circumstances across the country would not be reasonable. We anticipate species- or geographic-specific guidance to be developed under the umbrella of this policy.

Comment (88): We received two comments regarding section 7.2, *Short-Term Compensatory Mitigation,* in the draft policy. One comment indicated it may not be helpful, particularly when dealing with aquatic species. The other requested more detail in this section and stressed it should be more widely used.

Response: The use of short-term compensatory mitigation is a novel approach, with long-term results yet to be evaluated. The policy fully acknowledges that it is likely to be limited in use, for a variety of reasons, primarily the ability to predict all temporal losses of an impact in order to provide an appropriate offset for those losses. However, the concept may be

useful in some circumstances. Thus, it is included in the policy in an effort to provide additional flexibility to conserve listed, proposed, and at-risk species.

Comment (89): Several commenters requested that the Service express a preference for conservation bank credits over other forms of compensatory mitigation. One commenter requested the Service add a preference for rehabilitation or restoration over preservation and that the Service prohibit use of alternative forms of mitigation if conservation bank credits are available in the same proposed service area.

Response: As stated in section 6 of this policy, the appropriate form of compensatory mitigation must be based on the species' needs and the nature of the impacts adversely affecting the species. All mitigation tools listed in the policy are capable of being strategically sited, consolidated, and provided in advance of impacts if they are designed to do so. These preferences will provide the best outcomes for species when they are implemented in any mitigation tool, and, therefore, we have retained flexibility for applicants when selecting mitigation tools. We decline to prohibit the use of alternative forms of mitigation where conservation bank credits are available, as that would limit flexibility and inherent choice of the applicant(s).

T. Climate Change

Comment (90): Several commenters addressed sections of the draft policy that referenced climate change for consideration in mitigation planning. Some commenters were concerned about the uncertainty of calculating the effects of climate change for compensatory mitigation and the use of mitigation ratios to address climate change. One commenter said the policy should provide more detail on integrating climate change effects in the analysis of mitigation programs. Another requested the basis for the term ''accelerated'' climate change used in the policy.

Response: Consistent with the Departmental Manual (600 DM 6), the Service recommends that climate change be considered when evaluating the effects of an action and developing appropriate mitigation measures. The Service recognizes the science of climate change is advancing, and assessment methodologies are continually being refined to address the effects of climate change to specific resources and at differing scales. Including specific information on these topics is beyond the scope of this policy. Therefore, the policy is written with language to ensure that it does not become quickly outdated as methodologies evolve. We use the term ''accelerated climate change'' in a general sense to reference a substantial portion of scientific literature and scholarly articles on the subject, including reports produced by the Intergovernmental Panel on Climate Change.

The final policy follows:

U.S. Fish and Wildlife Service

Endangered Species Act Compensatory Mitigation Policy

1. Purposes

This policy adopts the mitigation principles established in the U.S. Fish and Wildlife Service (Service) Mitigation Policy (81 FR 83440, November 21, 2016), establishes compensatory mitigation standards, and provides guidance for the application of compensatory mitigation through implementation of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Compensatory mitigation (compensation) is defined in this policy as compensation for remaining unavoidable impacts after all appropriate and practicable avoidance and minimization measures have been applied, by replacing or providing substitute resources or environments (see 40 CFR 1508.20) through the restoration, establishment, enhancement, or preservation of resources and their values, services, and functions (600 DM 6.4C). This policy applies to all Service compensatory mitigation requirements and recommendations involving ESA compliance. It is also intended to assist other Federal agencies carrying out their statutory and regulatory responsibilities under the ESA and to provide applicants with guidance on the appropriate use of compensatory mitigation for proposed actions. The standards and guidance in the policy will also assist mitigation providers in developing compensatory mitigation project proposals.

Adherence to the principles, standards, and guidance identified in this policy is expected to: (1) Provide greater clarity on applying compensatory mitigation to actions subject to ESA compliance requirements; (2) improve consistency and predictability in the implementation of the ESA by standardizing compensatory mitigation practices; and (3) promote the use of compensatory mitigation at a landscape scale to help achieve the purposes of the ESA.

This policy encourages Service personnel to collaborate with other agencies, academic institutions, nongovernmental organizations, tribes, and other partners to develop and implement compensatory mitigation measures and programs through a landscape-scale approach to achieve the best possible conservation outcomes for activities subject to ESA compliance. It also encourages the use of programmatic approaches to compensatory mitigation that have the advantages of advance planning and economies of scale to: (1) Achieve a net gain in species' conservation; (2) reduce the unit cost of compensatory mitigation; and (3) improve regulatory procedural efficiency.

Appendices A and B provide a list of acronyms and a glossary of terms used in this policy, respectively.

2. Authorities and Coordination

This policy is focused on compensatory mitigation that can be achieved under the ESA. The Service's authority to require mitigation is limited, and our authority to require a ''net gain'' in the status of endangered and threatened (listed) or at-risk species has little or no application under the ESA. However, we can recommend the use of mitigation, and in particular compensatory mitigation, to offset the adverse impacts of actions under the ESA. Other statutes also provide the Service with authority for recommending compensatory mitigation for actions affecting fish, wildlife, plants, and their habitats (*e.g.,* Fish and Wildlife Coordination Act (FWCA; 16 U.S.C. 661–667e), National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), and Oil Pollution Act (33 U.S.C. 2701 *et seq.*)). In addition, statutes such as the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*) and Federal Power Act (16 U.S.C. 791a–828c) provide other Federal agencies with authority to recommend or require compensatory mitigation for actions that result in adverse effects to species or their habitats. These other authorities are often used in combination with, or to supplement the authorities under, the ESA to recommend or require compensatory mitigation for a variety of resources including at-risk species and their habitats. For example, the ESA and the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) together provide a greater impetus to conserve desert tortoise habitat than either statute alone.

Synchronizing environmental review processes, especially through early coordination with project proponents, allows the Service to provide comments

and recommendations for all mitigation types (*i.e.,* avoidance, minimization, and compensation) included as part of proposed actions in an effort to reduce impacts to listed, proposed, and at-risk species and designated and proposed critical habitat. For example, the Service may comment on proposed actions under NEPA and State environmental review statutes (*e.g.,* California Environmental Quality Act and Hawaii Environmental Policy Act). Coordination of environmental review processes generally results in conservation outcomes that have a greater likelihood of meeting the Service's mitigation goal.

The supplemental mandate of NEPA (42 U.S.C. 4335) adds to the existing authority and responsibility of the Service to protect the environment when carrying out our mission under the ESA. The Service's goal is to provide a coordinated review and analysis of the impacts of proposed actions on listed, proposed, and at-risk species, and designated and proposed critical habitat that are also subject to the requirements of other statutes such as NEPA, CWA, and FWCA. Consultation, conference, and biological assessment procedures under section 7 and permitting procedures under section 10(a)(1)(B) of the ESA can be integrated with interagency cooperation procedures required by other statutes such as NEPA or FWCA. This is particularly the case for cumulative effects. Cumulative effects are often difficult to analyze, are defined differently under different statutes, and are often not adequately considered when making decisions affecting the type and amount of mitigation recommended or required.

3. Scope

The ESA Compensatory Mitigation Policy covers all forms of compensatory mitigation, including, but not limited to, permittee-responsible mitigation, conservation banking, in-lieu fee programs, and other third-party mitigation projects or arrangements, for all species and habitat protected under the ESA and for which the Service has jurisdiction. Endangered and threatened species, species proposed as endangered or threatened, and designated and proposed critical habitat, are the primary focus of this policy. Candidates and other at-risk species would also benefit from adherence to the standards set forth in this policy, and all Service programs are encouraged to develop compensatory mitigation programs and tools to conserve at-risk species in cooperation with States and other partners.

This policy does not apply retroactively to approved mitigation programs; however, it does apply to amendments and modifications to existing conservation banks, in-lieu fee programs, and other third-party compensatory mitigation arrangements unless otherwise stated in the mitigation instrument. Examples of amendments or modifications to which this policy applies include authorization of additional sites under an existing instrument or agreement, expansion of an existing site, or addition of a new type of resource credit such as addition of a new species credit.

This policy does apply to other Federal or non-Federal actions permitted or otherwise authorized or approved prior to issuance of this policy under circumstances where the action may require additional compliance review under the ESA if: New information becomes available that reveals effects of the action to listed species or critical habitat not previously considered; the action is modified in a manner that causes effects to listed species and critical habitat not previously considered; authorized levels of incidental take are exceeded; a new species is listed or critical habitat is designated that may be affected by the actions; or the project proponent specifically requests the Service to apply the policy. This policy does not apply to actions that are specifically exempted under the ESA. It also does not apply where the Service has already agreed in writing to mitigation measures for pending actions, except where new activities or changes in current activities associated with those actions would result in new impacts, or where new authorities, or failure to implement agreed upon recommendations warrant new consideration regarding mitigation. Service offices may elect to apply this policy to actions that are under review as of December 27, 2016,

This policy clarifies guidance given in the Service's ''Guidance for the Establishment, Use, and Operation of Conservation Banks,'' published in the **Federal Register** on May 8, 2003 (68 FR 24753), and ''Guidance on Recovery Crediting for the Conservation of Threatened and Endangered Species,'' published in the **Federal Register** on July 31, 2008 (73 FR 44761).

4. Application of Compensatory Mitigation Under the ESA

Sections of the ESA under which the Service has authority to recommend or require compensatory mitigation for species or their habitat are identified below. In this section, we provide guidance on applications of these ESA authorities within the context of compensatory mitigation. The compensatory mitigation standards set forth in section 5. Compensatory Mitigation Standards of this policy apply to compensatory mitigation programs and projects established under the ESA, as appropriate.

4.1. Section 7—Interagency Cooperation

Section 2(c)(1) of the ESA directs all Federal departments and agencies to conserve endangered and threatened species. ''Conserve'' is defined in section 3 of the ESA as all actions necessary to bring the species to the point that measures provided pursuant to the ESA are no longer necessary (*i.e.,* recovery or the process through which recovery of listed species is accomplished). This requirement to contribute to the conservation of listed species is reaffirmed in section 7(a)(1) of the ESA. Congress recognized the important role Federal agencies have in conserving listed species.

When the ESA was enacted in 1973, section 7 was a single paragraph directing ''all Federal departments and agencies . . . [to] utilize their authorities in furtherance of the purposes of [the ESA] by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of [the ESA] *and* [emphasis added] by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined . . . to be critical.'' In 1979, section 7 was amended to create subsections 7(a)(1) and 7(a)(2). Federal agencies have separate responsibilities concerning species and their habitats under these two subsections. Section 7(a)(1) is a recovery measure that requires Federal agencies to carry out programs for the conservation of listed species. Section 7(a)(2) is a stabilization measure that requires Federal agencies to ensure actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat.

4.1.1. Section 7(a)(1)

Section 7(a)(1) of the ESA states, ''. . . Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of [the ESA] by carrying out programs for the conservation of

endangered species and threatened species.'' The Secretary's section 7(a)(1) consultation role has been delegated to the Service, and the Service therefore consults with and assists Federal agencies to accomplish these conservation programs. ''Conservation,'' as it is defined in section 3 of the ESA, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' Through this policy, the Service encourages Federal agencies to use section 7(a)(1) to achieve a goal of a ''net gain'' through their mitigation policies and approaches so that they may help bring endangered and threatened species to the point where they no longer need to be listed pursuant to the ESA.

Mitigation Goal: Development of landscape-scale conservation programs for listed and at-risk species that are designed to achieve a net gain in conservation for the species.

Guidance: One way that Federal agencies can meet their responsibility under section 7(a)(1) of the ESA is by working with the Service and other conservation partners to develop landscape-scale conservation plans that include compensatory mitigation programs designed to contribute to species recovery. Landscape-scale approaches to compensatory mitigation, such as conservation banking and in-lieu fee programs, are more likely to be successful if Federal agencies, especially those that carry out, fund, permit, or otherwise authorize actions that can use these programs, are involved in their establishment and support their use. For example, the Federal Highway Administration, as part of its long-term planning process, can use its authorities to work with the Service and other conservation partners on conservation programs for listed species that may be impacted by anticipated future actions. The conservation programs can include identifying priority conservation areas, developing crediting methodologies to value affected species, and developing guidance for offsetting those impacts that is expected to achieve ''no net loss,'' or even a ''net gain,'' in conservation for the species. These tools and information can then be used by conservation bank sponsors and other mitigation providers to develop compensatory mitigation opportunities (*e.g.,* conservation banks) for use by the Federal Highway Administration, and also by State departments of transportation and other public and private entities seeking compensation to offset the impacts of their actions for those same species. The resulting compensatory mitigation program provides conservation for the species that would otherwise not have been achieved—a contribution to listed species conservation under section 7(a)(1) of the ESA by the Federal agency.

4.1.2. Section 7(a)(2)

Section 7(a)(2) of the ESA states, ''[e]ach Federal agency shall . . . insure that any action authorized, funded, or carried out, by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat.'' The Service determines through consultation under section 7(a)(2) whether or not the proposed action is likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. The Service then issues a biological opinion stating our conclusion and, in the case of a finding of no jeopardy (or jeopardy accompanied by reasonable and prudent alternatives that can be taken by the Federal agency to avoid jeopardy), formulates an incidental take statement, if such take is reasonably certain to occur, that identifies the anticipated amount or extent of incidental take of listed species and specifies reasonable and prudent measures necessary or appropriate to minimize such impacts under section 7(b)(4) of the ESA. If the proposed action is likely to adversely affect critical habitat, the Service's biological opinion also analyzes whether adverse modification is likely to occur and specifies reasonable and prudent alternatives to avoid adverse modification, as necessary and if available. If the listed species is a marine mammal, incidental taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) prior to issuance of an incidental take statement under the ESA.

Mitigation Goal: The Service should work with Federal agencies to assist them in proposing actions that are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat, as required under section 7(a)(2) of the ESA. While not required under section 7(a)(2), the Service may also encourage Federal agencies and applicants (consistent with Federal action agency authorities) to include compensation as part of their proposed actions to offset any anticipated impacts to these resources that are not avoided to achieve a ''net gain'' or, at a minimum, ''no net loss'' in the conservation of listed species.

Guidance: The Service should coordinate with Federal agencies and encourage them to use their authorities under appropriate statutes (*e.g.,* Federal Land Policy and Management Act) to avoid, minimize, and offset adverse impacts to listed species and designated critical habitat using the full mitigation sequence. Compensation is a component of the mitigation sequence that can be applied to offset adverse effects of actions on listed species and critical habitat. Furthermore, the Service can work with Federal agencies to establish compensatory mitigation programs such as conservation banking and in-lieu fee programs that incentivize offsetting the effects of their actions through the appropriate use of compensation while expediting regulatory processes for the Federal agencies and applicants. Due to economies of scale, such mitigation programs are particularly effective at providing more effective and cost-efficient compensation opportunities for offsetting the effects of multiple actions that individually have small impacts.

4.1.2.1. Proposed Actions and Project Descriptions

To better implement section 7(a)(2) of the ESA and prevent species declines, the Service will work with Federal agencies and applicants to identify conservation measures, using the full mitigation sequence, that can be included as part of proposed actions for unavoidable impacts to listed species and critical habitat to achieve, at a minimum, ''no net loss'' in the species' conservation. The mitigation sequence should be observed (*i.e.,* avoid first, then minimize, then compensate), except where circumstances may warrant a departure from this preferred sequence. For example, it may be preferable to compensate for the loss of an occupied site that will be difficult to maintain based on projected future land use (*e.g.,* the site is likely to be isolated from the population in the future) or climate change impacts. The Service will consider conservation measures, including compensatory mitigation, as appropriate, proposed by the action agency or applicant as part of the proposed action when developing a biological opinion addressing the effects of the proposed action on listed species and critical habitat. This consideration of beneficial actions (*i.e.,* compensatory mitigation) is consistent with our implementing regulations at 50 CFR 402.14(g)(8). Federal agencies should coordinate early with the Service on the

appropriateness of such beneficial actions as compensation for anticipated future actions.

4.1.2.2. Jeopardy or Adverse Modification Determinations and RPAs

When the Service issues a biological opinion with a finding of jeopardy or adverse modification of critical habitat, we include reasonable and prudent alternatives (RPAs) when possible. RPAs may include any and all forms of mitigation, including compensatory mitigation, that can be applied to avoid proposed actions from jeopardizing the existence of listed species or destroying or adversely modifying critical habitat, provided they are consistent with the regulatory definition of RPAs at 50 CFR 402.02.

4.1.2.3. No Jeopardy and No Adverse Modification Determinations and RPMs

When the Service issues a biological opinion with a finding of no jeopardy, we provide the Federal agency and applicant (if any) with an incidental take statement, if take is reasonably certain to occur, in accordance with section 7(b)(4) of the ESA. The incidental take statement specifies the amount or extent of anticipated take, the impact of such take on the species, and any reasonable and prudent measures (RPMs) and implementing terms and conditions determined by the Service to be necessary or appropriate to minimize the impact of the take.

RPMs can include mitigation, in appropriate circumstances, if such a measure minimizes the effect of the incidental take on the species, and as long as the measure is consistent with the interagency consultation regulations at 50 CFR 402.14. RPMs should also be commensurate with and proportional to the impacts associated with the action. The Service should provide an explanation of why the measures are necessary or appropriate. If the proposed action includes conservation measures sufficient to fully compensate for incidental take, it may not be necessary to include additional minimization measures (beyond monitoring) through RPMs.

4.1.3. Section 7(a)(4)

Section 7(a)(4) of the ESA states, ''[e]ach Federal agency shall confer with [the Service] on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed . . . or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.'' The conference is designed to assist the Federal agency and any applicant to identify and resolve potential conflicts at an early stage in the planning process.

Mitigation Goal: The Service should work with Federal agencies to assist them in proposing actions that are not likely to jeopardize the continued existence of any species proposed for listing or result in the destruction or adverse modification of any proposed critical habitat, in accordance with section 7(a)(4) of the ESA. The Service should also encourage Federal agencies and applicants to include compensation as part of their proposed actions to offset any anticipated impacts to resources that are not avoided to achieve a net gain or, at a minimum, no net loss in their conservation.

Guidance: The Service should coordinate with Federal agencies and encourage them to use their authorities to avoid and minimize adverse impacts to proposed and at-risk species and proposed critical habitat using the full mitigation sequence. The Service may recommend compensatory mitigation for adverse effects to proposed or at-risk species during informal conference or in a conference report or conference opinion, or the Federal action agency or applicant may propose compensatory mitigation as part of the action. If a conference opinion or report determines that a proposed action is likely to jeopardize the continued existence of a proposed species or adversely modify or destroy proposed critical habitat, the Service will include RPAs, if any are available, that may include compensatory mitigation. If the species is subsequently listed or critical habitat is designated prior to completion of the action, the Service will give appropriate consideration to compensatory mitigation when confirming the conference opinion as a biological opinion or if formal consultation is necessary. This consideration of beneficial actions is consistent with our implementing regulations at 50 CFR 402.14(g)(8).

4.2. Section 10—Conservation Plans and Agreements

4.2.1. Safe Harbor and Candidate Conservation Agreements

Under a candidate conservation agreement with assurances (CCAA), private and other non-Federal property owners may voluntarily undertake conservation management activities on their properties to address threats to unlisted species and to enhance, restore, or maintain habitat benefiting species that are candidates or proposed for listing under the ESA or other at-risk species in exchange for assurances that no further action on their part is required should the species become listed during the term of the CCAA. Under a safe harbor agreement (SHA), private and other non-Federal property owners may voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA in exchange for assurances that there will not be any increased property use restrictions as a result of their efforts that either attract listed species to their property or that increase the numbers or distribution of listed species already on their property during the term of the agreement. Both types of agreements are designed to encourage conservation of species on non-Federal land.

Mitigation Goal: Transitioning CCAAs and SHAs into long-term/permanent conservation that can serve as compensatory mitigation when appropriate and desired by landowners. Such transitions provide greater assurance that the species conservation efforts begun under the CCAA or SHA will persist on the landscape beyond the term of the original agreement.

Guidance: CCAAs or SHAs are not intended to be mitigation programs and do not require site protection and financial assurances that meet the compensatory mitigation standards set forth in this policy, however, the conservation achieved through implementation of a CCAA or SHA may be 'rolled over' for use as compensatory mitigation if: (1) The CCAA or SHA permit has expired or is surrendered; (2) the landowner is in compliance with the terms and conditions of the CCAA or SHA at the time of transition; (3) any commitments for conservation for which financial compensation from public sources was received has been fulfilled and if not fulfilled is prorated and deducted from the mitigation credit assigned to the property; and (4) all other requirements for providing compensatory mitigation are met. If the Service determines the CCAA or SHA would provide greater conservation to the species as compensatory mitigation, then the Service should inform the landowner of this assessment and provide the landowner with the opportunity to transition their property from a CCAA or SHA site to a mitigation site.

Landowners enrolled in CCAAs while the species remains unlisted can provide compensatory mitigation under a State or other non-Service mitigation program if the actions related to the mitigation are additional to those taken to satisfy the CCAA requirement. Should the species become listed before the CCAA expires, the landowner has the option to roll over the existing

mitigation agreement to a Service-approved mitigation instrument that meets the standards established in this policy.

4.2.2. Habitat Conservation Plans

Section 10(a)(1)(B) of the ESA allows the Service to issue an incidental take permit for ''any taking otherwise prohibited by section 9(a)(1)(B) [of the ESA] if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.'' If, under section 10(a)(2)(B) of the ESA, the Service finds the issuance criteria are met by the applicant, including that the applicant will, ''to the maximum extent practicable, minimize and mitigate the impacts of such taking,'' the Service will issue a permit. Plant species and unlisted animal species may also be covered in the habitat conservation plan (HCP), provided the applicant meets requirements for their coverage described in the implementing regulations. The Service incorporates these measures as terms and conditions of the permit. Regulations governing incidental take permits for endangered and threatened wildlife species are found at 50 CFR 17.22 and 17.32. The Service is required to conduct a section 7(a)(2) consultation on issuance of an incidental take permit.

Mitigation Goal: Consistent with the purposes and polices of the ESA, the Service should work with applicants to assist them in developing HCPs that achieve a ''net gain'' or, at a minimum, ''no net loss'' in the conservation of covered species and critical habitat. Though the statute does not require this of HCP applicants, applicants often will request additional measures for greater future assurances. This is generally achievable through programmatic approaches, which provide opportunities for the use of landscape-scale compensatory mitigation programs to offset impacts of actions.

Guidance: Compensatory mitigation should be concurrent with or in advance of impacts, whenever possible. Programmatic approaches are recommended when they will produce regulatory efficiency and improved conservation outcomes for the covered species. These HCPs operate on a landscape scale and often use conservation banks, in-lieu fee programs, or other compensatory mitigation opportunities established by mitigation sponsors and approved by the Service. These landscape-scale programmatic approaches can achieve a net gain in conservation for the covered species as a result of economies of scale. See the revised HCP Handbook for the various options available to address compensatory mitigation for HCPs.

4.3. Other Sections of the ESA Where Compensatory Mitigation Can Play a Role

Section 4(d) of the ESA authorizes the Service to issue protective regulations that are necessary and advisable to provide for the conservation of threatened species. The Service used this authority to extend the prohibition of take (section 9 of the ESA) to all threatened species by regulation in 1978, through promulgation of a ''blanket 4(d) rule'' (50 CFR 17.31). This blanket 4(d) rule can be modified by a species-specific 4(d) rule (*e.g.,* Special Rule Concerning Take of the Threatened Coastal California Gnatcatcher (58 FR 65088, December 10, 1993)). Depending on the threats, the inclusion of compensatory mitigation in a species-specific 4(d) rule may help offset habitat loss, and could hasten recovery or preclude the need to reclassify the species as endangered.

Section 5 of the ESA provides authority for the Service and the U.S. Department of Agriculture, with respect to the National Forest System, to establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species through:

- Use of land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a–742j, not including 742d–1); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); and the Migratory Bird Conservation Act (16 U.S.C. 715–715d, 715e, 715f–715r), as appropriate; and
- Acquisition by purchase, donation, or otherwise, of lands, waters, or interests therein.

Establishment of compensatory mitigation programs that conserve listed or at-risk species on lands adjacent to National Forests could be used to offset losses to those species and their habitats by actions authorized by the Service and also help buffer National Forests from incompatible neighboring land uses.

5. Compensatory Mitigation Standards

The mitigation principles, as described in the Service's Mitigation Policy (81 FR 83440, November 21, 2016), are goals the Service intends to achieve, in part through recommending or requiring, as appropriate, under the ESA and other applicable authorities, the inclusion of compensatory mitigation in proposed actions with adverse impacts to listed, proposed, or at-risk species, and designated or proposed critical habitat. The compensatory mitigation standards described in this section of the policy will implement the mitigation principles, as outlined in the Mitigation Policy, including using a landscape approach to inform mitigation and aspiring to meet the goal to improve (*i.e.,* a ''net gain'') or, at minimum, to maintain (*i.e.,* ''no net loss'') the current status of affected resources, as allowed by applicable statutory authority and consistent with the responsibilities of action proponents under such authority. Compensatory mitigation programs, projects, and measures that are consistent with the mitigation principles and adhere to the compensatory mitigation standards set forth in this section of the policy are expected to achieve the best conservation outcomes. The compensatory mitigation standards apply to all compensatory mitigation mechanisms (*i.e.,* permittee-responsible mitigation, conservation banks, in-lieu fee programs, etc.) and all forms of compensatory mitigation (*i.e.,* restoration, preservation, establishment, and enhancement) approved by the Service. Specific operational details regarding the standards will be in the implementation guidance to be issued by the Service. The standards are as follows:

5.1. Siting Sustainable Compensatory Mitigation

Compensatory mitigation will be sited in locations that have been identified in landscape-scale conservation plans or mitigation strategies as areas that will meet conservation objectives and provide the greatest long-term benefit to the listed, proposed, and/or at-risk species and other resources of primary conservation concern. The Service will rely upon existing conservation plans that are based upon the best available scientific information, consider climate-change adaptation, and contain specific objectives aimed at the biological needs of the affected resources. Where existing conservation plans are not available that incorporate all of these elements or are not updated with the best available scientific information, Service personnel will otherwise incorporate the best available science into mitigation decisions and recommendations and continually seek better information in areas of greatest uncertainty.

5.2. In-Kind for Species

Compensatory mitigation must be in-kind for the listed, proposed, or at-risk species affected by the proposed action. The same requirement does not

necessarily apply to the habitat type affected, as the best conservation outcome for the species may not be an offset of the same habitat type or ecological attribute of the habitat impacted by the action. Many species use different habitat types at different life stages or for different life-history requirements such as feeding, breeding, and sheltering. For example, some species are migratory. Selecting a habitat type different from that impacted by the action or selecting more than one type of habitat for compensatory mitigation may best meet the conservation needs of the species.

Offsetting impacts to designated or proposed critical habitat through the use of compensatory mitigation should target the maintenance, restoration, or improvement of the recovery support function of the affected critical habitat as described in the relevant biological or conference opinion, conservation or mitigation plan, mitigation instrument, permit, or conference report. Recovery plans, 5-year reviews, proposed and final critical habitat rules, and the best available science on species status, threats, and needs should be relied on to inform the selection of habitat types subject to compensatory mitigation actions for unavoidable adverse impacts to species or critical habitat.

The use of compensatory mitigation to minimize the impacts of incidental take on listed species can be based on habitat or another surrogate such as a similarly affected species or ecological conditions under circumstances where it is not practicable to express or monitor the amount or extent of take in terms of the number of individuals of the species, in accordance with 50 CFR 402.14(i)(1)(i). A causal link between the surrogate and take of the species must be explained and must be scientifically defensible. For example, occupied habitat of a listed species has been used as a surrogate to express the amount or extent of take of the vernal pool fairy shrimp (*Branchinecta lynchi*) because quantification of take in terms of individuals is not practicable, but the surface area of occupied vernal pool habitat is easily measured and monitored.

5.3. Reliable and Consistent Metrics

Metrics that measure ecological functions and/or services at compensatory mitigation sites and impact sites must be science-based, quantifiable, consistent, repeatable, and related to the conservation goals for the species. These metrics may be species- or habitat-based. Metrics used to calculate credits should be the same as those used to calculate debits for the same species or habitat type. If they are not the same, the relationship (conversion) between credits and debits must be transparent and scientifically defensible. Metrics must account for duration of the impact, temporal loss to the species, management of risk associated with compensatory mitigation, and other such measures. This does not mean that metrics developed to measure losses and gains on the landscape must be precise, as this is rarely possible in biological systems, but uncertainty should be noted where it exists and metrics must be based on the best scientific data available to gauge the adequacy of the compensatory mitigation. Modifying existing metrics on which approved conservation banks or other compensatory mitigation programs are based and still in use warrants careful consideration and must be based on best available science.

Scientifically defensible metrics also are needed to measure biological and ecological performance criteria used to monitor the outcome of compensatory mitigation. It may be necessary to adjust metrics over time through monitoring and adaptive management processes in order to respond to changing conditions and ensure they remain effective at assessing the conservation objectives of the compensatory mitigation program. However, modifying metrics used to monitor performance should not be a substitute for lack of compliance or failure to implement adaptive management.

5.4. Judicious Use of Additionality

Compensatory mitigation must provide benefits beyond those that would otherwise have occurred through routine or required practices or actions, or obligations required through legal authorities or contractual agreements. A compensatory mitigation measure is ''additional'' when the benefits of the measure improve upon the baseline conditions of the impacted resources and their values, services, and functions in a manner that is demonstrably new and would not have occurred without the compensatory mitigation measure (600 DM 6.4G). The additional benefits may result from restoration or enhancement of habitat; preservation of existing habitat that lacks adequate protection; management actions that protect, maintain, or create habitat (*e.g.,* regularly scheduled prescribed burns or purchase of rights in a split estate); or other activities (*e.g.,* an action that reduces threats from disease or predation, or captive breeding and reintroduction of individuals or populations). Baseline conditions for the habitat relevant to the species must be assessed prior to implementing the compensatory mitigation project for comparison to conditions after completion of the compensatory mitigation project in order to quantify and verify the additional benefits derived from the mitigation project.

Demonstrating additionality on lands already designated for conservation purposes can be challenging, particularly when the lands under consideration are public lands. In general, credit can only be authorized for compensatory mitigation on public lands if additionality can be clearly demonstrated and is legally attainable. See section 6.2. *Eligible Lands* for guidance on using public lands for compensatory mitigation.

5.5. Timing and Duration

Compensatory mitigation projects must achieve conservation objectives within a reasonable timeframe and for at least the duration of the impacts. Ideally, compensatory mitigation should be implemented in advance of the action that adversely impacts the species or critical habitat. When this is not possible or practicable, temporal losses to the affected species must be compensated through some means (*e.g.,* increased mitigation ratio that reflects the degree of temporal loss). Temporal loss may include indirect effects of the action on the species that occur beyond the time period of any direct effects of the action (*e.g.,* removal of habitat during a season when individuals of a migratory species are absent). Temporal loss to the species as a result of both direct and indirect adverse effects must be addressed when determining appropriate compensatory mitigation. Losses of habitat that require many years to restore may best be offset by a combination of restored habitat, preservation of existing high-quality habitat, and improved management of existing habitat. The amount of temporal loss, the form of compensatory mitigation (*i.e.,* establishment, enhancement, restoration, preservation, or some combination of these forms), and the time anticipated to establish the compensatory mitigation on the landscape should be used to determine the amount of compensatory mitigation needed to meet the mitigation goal for the species, critical habitat, and/or other resources of concern.

5.6. Ensure Durability

Compensatory mitigation must be secured by adequate legal, real estate, and financial protections that ensure the success of the mitigation. Most compensatory mitigation projects are

permanent, and the viability of the assurances to achieve long-term stewardship of a mitigation site must be carefully planned and implemented to ensure durability. A compensatory mitigation measure is ''durable'' when the effectiveness of the measure is sustained for the duration of the associated impacts (including direct and indirect impacts) of the authorized action (600 DM 6.4H).

5.7. Effective Conservation Outcomes and Accountability

The Service has authority to conduct direct oversight of all compensatory mitigation programs and projects for which we have exempted or permitted incidental take under the ESA. A standard condition of HCP incidental take permits provides for such oversight. Incidental take exemptions provided by statute to Federal agencies and applicants through the ESA section 7 process require that mandatory terms and conditions included with the take statement must be implemented by the Federal agency or its applicant to activate the exemption in 7(o)(2) of the Act. Should a mitigation project fail to meet its performance criteria and therefore fail to provide the expected conservation for the species, the responsible party must provide equivalent compensation through other means.

5.8. Encourage Collaboration

Successful landscape-scale compensatory mitigation depends on the engagement of affected communities and stakeholders. Governments, communities, organizations, and individuals support what they help to develop. The Service will provide opportunities for and encourage appropriate stakeholder participation in development of landscape-scale compensatory mitigation strategies that affect listed, proposed, and at-risk species, and proposed and designated critical habitat through appropriate public processes such as those used for programmatic habitat conservation plans (HCPs). Programmatic approaches to compensatory mitigation programs for at-risk species are also encouraged, particularly when led by State agencies, and the Service will make every effort to participate in the planning, establishment, and operation of such programs as described in our draft Policy Regarding Voluntary Prelisting Conservation Actions (79 FR 42525, July 22, 2014). The Service's regional and field offices will determine or assist in determining, as appropriate, the level and methods of public participation using transparent processes.

5.9. Maintain Transparency and Predictability

Consistent implementation of ESA programs that permit or authorize incidental take of listed species will provide regulatory predictability for everyone. The Service will share appropriate information on the availability of compensatory mitigation programs and projects with the public through online media or other appropriate means. Information regarding conservation banks is available on the Regulatory In-lieu fee and Bank Information Tracking System (RIBITS) (*https://ribits.usace.army.mil*). The Service anticipates working with the USACE to update RIBITS so that it may be used for our in-lieu fee programs. Similar information for habitat credit exchanges and other third-party sponsored mitigation projects, or when it is not otherwise possible to use RIBITS, must be made publicly accessible.

6. General Considerations

Specific operational details, in addition to the information provided below in this section, will be in implementation guidance issued by the Service.

6.1. Preferences

The appropriate form of compensatory mitigation (*i.e.,* preservation, restoration, enhancement, establishment, or a combination of some or all of these forms) must be based on the species' needs and the nature of the impacts adversely affecting the species. The Service has the following general preferences related to compensatory mitigation.

6.1.1. Preference for Strategically Sited Compensatory Mitigation

Preference shall be given to compensatory mitigation projects sited within the boundaries of priority conservation areas identified in existing landscape-scale conservation plans as described in the Service's Mitigation Policy (81 FR 83440, November 21, 2016). Priority conservation areas for listed species may be identified in documents such as species status assessments, recovery plans, and/or 5-year reviews.

6.1.2. Preference for Compensatory Mitigation in Advance of Impacts

After following the principles and standards outlined in this policy and all other considerations being equal, preference will be given to compensatory mitigation projects implemented in advance of impacts to the species. Mitigation implemented in advance of impacts reduces risk and uncertainty. Demonstrating that mitigation is successfully implemented in advance of impacts provides ecological and regulatory certainty that is rarely matched by a proposal of mitigation to be accomplished concurrent with, or subsequent to, the impacts of the actions even when that proposal is supplemented with higher mitigation ratios. While conservation banking is by definition mitigation in advance of impacts, other third-party mitigation arrangements and permittee-responsible mitigation may also satisfy this preference by implementing compensatory mitigation in advance of impacts. In-lieu fee programs can also satisfy this preference through a ''jump start'' that achieves and maintains a supply of credits that offer mitigation in advance of impacts.

6.1.3. Preference for Consolidated Compensatory Mitigation

Mitigation mechanisms that consolidate compensatory mitigation on the landscape, such as conservation banks and in-lieu fee programs, are generally preferred to small, disjunct compensatory mitigation sites spread across the landscape. Consolidated mitigation sites generally have several advantages over multiple, small, isolated mitigation sites. These advantages include:

- Avoidance of a piecemeal approach to conservation efforts that often results in small, non-sustainable parcels of habitat scattered throughout the landscape;
- Sites that are usually a component of a landscape-level strategy for conservation of high-value resources;
- Cost effective compensatory mitigation options for small projects, allowing for effective offsetting of the cumulative adverse effects that result from numerous, similar, small actions;
- An increase in public-private partnerships that plan in advance and a landscape-scale approach to mitigation to provide communities with opportunities to conserve highly valued natural resources while still allowing for community development and growth;
- Greater capacity for bringing together financial resources and scientific expertise not practicable for small conservation actions;
- Economies of scale that provide greater resources for design and implementation of compensatory mitigation sites and a decreased unit cost for mitigation;
- Improved administrative and ecological compliance through the use of third-party oversight;

• Greater regulatory and financial predictability for project proponents, greatly reducing the uncertainty that often causes project proponents to view compensatory mitigation as a burden; and

• Expedited regulatory compliance processes, particularly for small projects, saving all parties time and money.

6.2. Eligible Lands

6.2.1. Lands Eligible for Use as Compensatory Mitigation

Compensatory mitigation sites may be established by willing parties on private, public, or tribal lands that provide the maximum conservation benefit for the listed, proposed, and at-risk species and other affected resources. Maintaining the same classification of land ownership between the impact area and mitigation site may be important in preventing a long-term net loss in conservation, in particular a reduction in the range of the species. Because most private lands are not permanently protected for conservation and are generally the most vulnerable to development actions, the use of private lands for mitigating impacts to species occurring on any type of land ownership is usually acceptable as long as durability can be ensured. Locating compensatory mitigation on public lands for impacts to species on private lands is also possible, and in some circumstances may best achieve the conservation objectives for species, but should be carefully considered—see section 6.2.2. Use of Public Land to Mitigate Impacts on Private Land for additional guidance.

Good candidates for compensatory mitigation sites are unprotected lands that are high value for conservation and that are acceptable to the Service. Designations of high conservation value may include lands with existing high-value habitat or habitat that when restored, enhanced, established, or properly managed will provide high value to the species. In addition to these general considerations, lands that may be good candidates for compensatory mitigation sites include:

• Lands previously secured through easements or other means but that lack the full complement of protections necessary to conserve the species (*e.g.,* buffer lands for a military installation that do not include management, or private lands with existing conservation easements for which landowners have not received financial compensation from public sources or regulatory assurances from the Service.);

• Lands adjacent to undeveloped, protected public lands such as National Wildlife Refuges or State Wildlife Management Areas;

• Private lands enrolled in programs that provide financial compensation from public sources to landowners in exchange for agreements that protect, restore, or create habitat for federally listed or at-risk species for a limited period of time, such as the Service's Partners for Wildlife Program or some Farm Bill programs (*e.g.,* Environmental Quality Incentives Program) if additional conservation benefits are provided above and beyond the terms and conditions of the agreement or if the agreement/easement has expired; and

• Private lands enrolled in programs that provide regulatory assurances to the landowner such as SHAs or CCAAs that can be transitioned into compensatory mitigation, after all terms and conditions of the agreement have been met and the agreement has expired or the permit is surrendered in exchange for a mitigation instrument (see section 4.2.1. Safe Harbor and Candidate Conservation Agreements for additional guidance).

See section 5.1. *Siting Sustainable Compensatory Mitigation* for other considerations when selecting a site suitable for compensatory mitigation.

Lands that generally do not qualify as compensatory mitigation sites include:

• Lands without clear title unless the existing encumbrances (*e.g.,* liens, rights-of-way) are compatible with the objectives of the mitigation site or can be legally removed or subordinated;

• Split estates (*i.e.,* lands that have separate owners of various surface and subsurface rights, usually mineral rights), unless a remedy can be found (see below for guidance on split estates);

• Private or public lands already designated for conservation purposes, unless the proposed compensatory mitigation project would add additional conservation benefit for the species above and beyond that attainable under the existing land designation;

• Private lands enrolled in government programs that compensate landowners who permanently protect, restore, or create habitat for federally listed or at-risk species (*e.g.,* Wetland Reserve Program easements administered by the United States Department of Agriculture's Natural Resources Conservation Service);

• Inventory and debt restructure properties under the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*); and

• Lands protected or restored for conservation purposes under fee title transfers.

Additional guidance on limitations involving Federal funding and mitigation, including grants, is provided in the Service's Mitigation Policy (81 FR 83440, November 21, 2016).

Lands with split estate ownership and laws and policies governing existing rights (*e.g.,* mining laws) may prevent land protection instruments (*e.g.,* permanent conservation easements) from providing sufficient protection from future development of mineral rights, including oil and gas exploration or development. Many potential high-value conservation properties throughout the United States are split estates. The risk of using split estate properties as compensatory mitigation should be carefully considered. When legal remedies to restore single ownership are not possible or practicable, other approaches to managing the risks may be available to bolster durability on split estates. A mineral deed acquisition, mineral assessment report, or subsurface use agreement are a few of the options for managing mineral rights on compensatory mitigation sites that provide varying levels of protection (Raffini 2012). Service personnel tasked with assessing the viability of split estates as mitigation sites should work with the Service's Realty Specialists and the Department of the Interior Solicitor to assess risks and possible remedies or other approaches.

6.2.2. Use of Public Land To Mitigate Impacts on Private Land

In general, the Service supports compensatory mitigation on public lands that are already designated for the conservation of natural resources to offset impacts to the species on private lands only if additionality is clearly demonstrated and is legally attainable. Additionality is a reasonable expectation that the conservation benefits associated with the compensatory mitigation actions would not occur in the foreseeable future without those actions. Offsetting impacts to private lands by locating compensatory mitigation on public lands already designated for conservation purposes generally risks a long-term net loss in landscape capacity to sustain species (*e.g.,* future reduction in the range of the species) by relying increasingly on public lands to serve conservation purposes. However, we recognize under certain circumstances this offset arrangement may provide the best possible conservation outcome for the species based on best available science. When this is the case, the Service will consider mitigation on

public lands to offset impacts to the species on private lands appropriate if:

- Compensatory mitigation is an appropriate means of achieving the mitigation planning goal for the species;
- Additionality can be clearly demonstrated and quantified, and is supplemental to conservation the public agency is foreseeably expected to implement absent the mitigation (only conservation benefits that provide additionality are counted towards achieving the mitigation planning goal);
- Durability of the compensatory mitigation is ensured (see section 6.2.3. Ensuring Durability on Public Lands);
- It is consistent with and not otherwise prohibited by all relevant statutes, regulations, and policies; and
- Private lands suitable for compensatory mitigation are unavailable or are available but cannot provide an equivalent or greater contribution towards offsetting the impacts to meet the mitigation planning goal for the species.

When the public lands under consideration for use as compensatory mitigation for impacts on private lands are National Wildlife Refuge (NWR) System lands, the Service's Final Policy on the NWR System and Compensatory Mitigation Under the Section 10/404 Program (USFWS 1999) states that the Regional Director must recommend the mitigation to the Service Director for approval. Additional considerations may apply to NWR System lands for habitat losses authorized through the section 10/404 program (*i.e.,* Rivers and Harbors Act/Clean Water Act).

6.2.3. Ensuring Durability on Public Lands

Ensuring the durability of compensatory mitigation on public lands presents particular challenges, especially regarding site protection assurances, long-term management, and funding assurances for long-term stewardship. Mechanisms available for ensuring durability of land protection for compensatory mitigation on public lands vary from agency to agency, are subject to site-specific limitations, and are likely to be politically and administratively challenging to secure. Some mechanisms may require a legislative act while other mechanisms can be achieved administratively at various levels of an agency's organization.

To ensure the durability of long-term management on public lands, there should be a high degree of confidence that incompatible uses are removed or precluded to ensure that uses of the public lands do not conflict with or compromise the conservation of the species for which the compensatory mitigation project was established.

6.2.4. Transfer of Private Mitigation Lands to Public Agencies

Private mitigation lands may be transferred to public agencies with a conservation mission if allowed by applicable laws, regulations, and policies.

6.2.5. Compensatory Mitigation on Tribal Lands

Tribal lands are generally eligible as compensatory mitigation sites if they meet the standards and other requirements set forth in this policy. Ensuring durability, particularly site protection, is usually a sensitive issue for a tribal nation because a conservation easement entrusts the land to another entity (Terzi 2012), but acceptable entities may be available to hold easements. Additional guidance regarding mitigation and tribes is included in the Service's Mitigation Policy (81 FR 83440, November 21, 2016).

6.3. Service Areas

A service area is the geographic area assigned to a compensatory mitigation site within which credits for a specific resource (*e.g.,* a species) can be utilized. The impacts for which mitigation is sought must be located within the designated service area for the species, unless otherwise approved by the Service. If a proposed action is located within the identified service area of a specific conservation bank, in-lieu fee program, or other third-party mitigation program or site, then the proponent of that action may offset unavoidable impacts, with the Service's approval, through transfer of the appropriate type and number of credits from that mitigation program or site. Use of the credits outside of service areas is subject to approval by the Service. Service areas that apply to all mitigation mechanisms may be designated by the Service's regional or field offices, usually through issuance of species-specific mitigation guidance.

The service area is an important component for a potential mitigation sponsor who will need to evaluate the market for credits prior to committing to a mitigation project. The mitigation sponsor has the responsibility to determine if a proposed mitigation project or program will be financially feasible and if they will move forward with the action.

6.4. Crediting and Debiting

A credit is a defined unit representing the accrual or attainment of ecological functions and/or services at a mitigation site. Credits are often expressed as a measure of surface area (*e.g.,* an acre or hectare), linear distance of constant width (*e.g.,* stream miles), number of individuals or mating pairs of a particular species, habitat function (*e.g.,* habitat suitability index), or other appropriate metric that can be consistently quantified.

Metrics developed to support credits by measuring an increase in ecological functions and services at compensatory mitigation sites and those developed to measure an expected loss or debit in ecological functions and services at impact sites must be science-based, quantifiable, consistent, repeatable, and related to the conservation goals for the species. In general, the method of calculating credits at a mitigation site should be the same as calculating debits at project impact sites. If use of a common ''currency'' between credits and debits is not practicable, the conversion between crediting and debiting metrics must be transparent.

Credits are available for use as mitigation once they are verified and released by the Service. Credits are released in proportion to administrative and ecological milestones. Credits are considered retired if they are no longer available for use as mitigation, including credits that have been transferred to fulfill mitigation obligations. Credits may also be voluntarily retired, without being used for mitigation, which may help achieve no net loss or net conservation benefit goals. Credits are not to be traded among developers or anyone else and cannot be re-sold. Once a credit has been transferred as mitigation for a particular action, it may not be used again.

A mitigation site may contain habitat that is suitable for multiple listed species or other resources in the same spatial area. When this occurs, it is important to establish how the credits will be stacked or bundled and if they can be unstacked and transferred separately. See section 8.3. *Credit Stacking and Bundling* for guidance.

Compensatory mitigation programs that use credits are voluntary, and permittees are never required to purchase credits from these compensatory mitigation sources. Pricing of credits is solely at the discretion of the mitigation provider.

6.5. Timelines

The Service does not have mandated timelines for review of conservation banks, in-lieu fee programs, or other compensatory mitigation projects that are not part of a consultation or permit decision. However, this does not mean

that compensatory mitigation programs and projects are not a priority for the Service. Establishment of programmatic compensatory mitigation options for project proponents will provide efficiencies, particularly when developed in coordination with programmatic consultations and HCPs for large landscapes. These efficiencies include reducing the Service's workloads associated with ESA sections 7 and 10, expediting incidental take authorization for project proponents, and achieving better conservation outcomes for listed and other at-risk species.

6.6. Managing Risk and Uncertainty

Compensatory mitigation can be a valuable conservation tool for offsetting unavoidable adverse impacts to listed and at-risk species if the risk can be sufficiently managed. Predictions about the effectiveness of compensatory mitigation measures have varying degrees of uncertainty. Compensatory mitigation accounting systems (*e.g.,* debiting and crediting methodologies) should consider risk and adjust metrics and mitigation ratios to account for uncertainty. An exact accounting of the functions and services lost at the impact sites and gained at the mitigation sites is rarely possible due to the variability and uncertainty inherent in biological systems and ecological processes. To buffer risk and reduce uncertainty, it is often helpful to design compensatory mitigation programs and projects to achieve measures beyond no net loss to attain sufficient conservation benefits for the species. Designing conservation plans with mitigation that is expected to achieve more than no net loss in species conservation generally increases regulatory predictability and can result in shorter project reviews and facilitated permitting.

7. Compensatory Mitigation Mechanisms

Compensatory mitigation mechanisms can be divided broadly into habitat-based mechanisms and other non-habitat-based mitigation programs or projects. Whatever mechanism(s) are selected, compensatory mitigation is expected to provide either equivalent or additional conservation for the species to that lost as a result of the action. Specific operational details regarding compensatory mitigation mechanisms will be in the implementation guidance to be issued by the Service.

7.1. Habitat-Based Compensatory Mitigation Mechanisms

Compensatory mitigation mechanisms based on habitat acquisition and protection may consist of restoration of damaged or degraded habitat, enhancement of existing habitat, establishment of new habitat, preservation of existing habitat not already protected, or some combination of these that offsets the impacts of the action and results in or contributes to sustainable, functioning ecosystems for the species. Preservation of existing habitat often includes a change in land management that renders the site suitable for the species or provides additional ecological function or services for the species. Preservation includes site protection and is a valid mechanism for achieving compensatory mitigation that, at a minimum, reduces threats to the species. Existing habitat that is not protected and managed for the long term is vulnerable to loss and cannot count toward recovery of listed species.

The five habitat-based mitigation mechanisms described below and compared in Table 1 differ by: (1) The party responsible for the success of the mitigation site (the permittee or a third party); (2) whether the mitigation site is within or adjacent to the action area (on-site) or elsewhere (off-site); and (3) whether credits are generated at the mitigation site for use by more than one action. Habitat-based compensatory mitigation will be held to equivalent standards (the standards set forth in this policy) regardless of the mitigation mechanism(s) proposed. Habitat-based compensatory mitigation programs developed to credit conservation actions that benefit unlisted species should meet all compensatory mitigation standards set forth in this policy if they are intended to be used as compensatory mitigation for adverse impacts of actions undertaken after listing.

7.1.1. Permittee-Responsible Compensatory Mitigation

Permittee-responsible compensatory mitigation is a conserved and managed mitigation site that provides ecological functions and services as part of the conservation measures associated with a permittee's proposed action. Permittee-responsible mitigation sites are usually permanent, as most proposed actions with a need for compensatory mitigation are anticipated to result in permanent impacts to the species. The permittee retains responsibility for ensuring the required compensatory mitigation is completed and successful. This includes long-term management and maintenance when the mitigation is intended to be permanent. Permittee-responsible compensatory mitigation may be on-site or off-site, and each permittee-responsible mitigation site is linked to the specific action that required the mitigation. Permittee-responsible mitigation approved for a specific action is not transferable to other actions and cannot be used for other mitigation needs.

7.1.2. Conservation Bank Program

A conservation bank is a site or suite of sites that is conserved and managed in perpetuity and provides ecological functions and services expressed as credits for specified species that are later used to compensate for adverse impacts occurring elsewhere to the same species. Bank sponsors may be public or private entities. Ensuring the required compensatory mitigation measures for a permitted action are completed and successful is the responsibility of the bank sponsor. The responsibility for success of the mitigation is transferred to the bank sponsor through the transfer (usually a purchase by the permittee) of credits. Conservation banks provide mitigation in advance of impacts.

7.1.3. In-Lieu Fee Program

An in-lieu fee site is a conserved and managed compensatory mitigation site established as part of an in-lieu fee program that provides ecological functions and services expressed as credits for specified species and used to compensate for adverse impacts occurring elsewhere to the same species. In-lieu fee sites are usually permanent as most proposed actions with a need for compensatory mitigation are anticipated to result in permanent impacts to the species. In-lieu fee programs may be sponsored by a government agency or an environmental, conservation-based, not-for-profit organization with a mission that is consistent with species or habitat conservation. The in-lieu fee sponsor collects fees from permittees that have been approved by the Service to use the in-lieu fee program, instead of providing permittee-responsible compensatory mitigation. An in-lieu fee site that meets the mitigation requirements for the impacts of permittees' actions will be established when the in-lieu fee program has collected sufficient funds. All responsibility for ensuring the required compensatory mitigation measures are completed and successful, including long-term management and maintenance, is transferred from the permittee to the in-lieu fee program sponsor through the transfer (usually purchase) of credits. In-lieu fee programs generally do not provide mitigation in advance of impacts.

In-lieu fee programs can also be established to fund non-habitat-based compensatory mitigation measures. See

section 7.3 *Other Compensatory Mitigation Programs or Projects* for guidance on these types of programs.

7.1.4. Habitat Credit Exchange

Habitat credit exchanges are relatively new and warrant additional care and consideration when being considered as a mitigation mechanism. A habitat credit exchange is an environmental market that operates as a clearinghouse in which an exchange administrator, operating as a mitigation sponsor, manages credit transactions between compensatory mitigation providers and project permittees. This is in contrast to the direct transactions between compensatory mitigation providers and permittees that generally occur through conservation banking and in-lieu fee programs. Exchanges provide ecological functions and services expressed as credits that are conserved and managed for specified species and are used to compensate for adverse impacts occurring elsewhere to the same species. Exchanges may be designed to provide credits for permanent compensatory mitigation sites, short-term compensatory mitigation sites, or both types of sites. Habitat credit exchanges may operate at a local or larger landscape scale, may consist of one or more mitigation sites, and may obtain credits from conservation banks or in-lieu fee programs. Exchange administrators may be public or private entities. Exchanges developed for federally listed species will require Service approval as with all other mitigation mechanisms described in this policy.

TABLE 1—COMPARISON OF HABITAT-BASED COMPENSATORY MITIGATION SITES ESTABLISHED UNDER DIFFERENT MECHANISMS

Mitigation mechanism	Responsible party	Credits generated	Responsibility transferable
Permittee-responsible Mitigation Site	Permittee	No	No.
Conservation Bank	Bank Sponsor	Yes	Yes.
In-lieu Fee Program Site	In-lieu Fee Sponsor	Yes	Yes.
Habitat Credit Exchange Site	Exchange Administrator, Mitigation Sponsor, or other identified responsible entity.	Yes	Yes.

7.2. Short-Term Compensatory Mitigation

The concept of short-term compensatory mitigation has merit if it serves the conservation goals of the species. Short-term compensatory mitigation may be appropriate in some situations to offset impacts that can be completely rectified by repairing, rehabilitating, or restoring the affected environment within a short and predictable timeframe. Under this policy, short-term compensatory mitigation includes rectifying the damage at the impact site and providing short-term compensation to offset the temporal loss caused by the action to achieve a conservation outcome that results in, at a minimum, no net loss to the species.

A short-term impact is defined in this policy as an action that meets the following criteria: (1) The impact is limited to harassment or other forms of nonlethal take; (2) the impact can be completely rectified through natural or active processes, and the site will function long term within the landscape at the same or greater level than before the impact; (3) restoration of the impact site can occur within a short and predictable timeframe based on current science and the knowledge of the species; and (4) all temporal loss to the species by the impact can be estimated and compensated. Opportunities for short-term compensation are likely to be very limited and may not apply to most species.

Inherent in applying short-term compensatory mitigation is the recovery of the affected species' populations to pre-disturbance levels and any additional increase in population levels that was anticipated to occur if the action had not taken place (*i.e.,* adjusted for temporal loss). Determining the amount and duration of compensatory mitigation needed requires substantial knowledge of the biology of the species (*e.g.,* abundance, distribution, fecundity). Actions that meet the criteria for short-term impacts are not limited to short-term compensatory mitigation as a mitigation option. The Service prefers mitigation mechanisms that protect conservation values in perpetuity. Permanent compensatory mitigation either at the same or a reduced mitigation ratio (determined by the Service) is usually an alternative. Conservation banks or in-lieu fee programs with available credits that meet the compensatory mitigation needs for actions with short-term impacts are usually a good alternative to short-term compensatory mitigation.

7.3. Other Compensatory Mitigation Programs or Projects

Compensatory mitigation is based on the concept of replacing or providing substitute resources or environments for the impacted resource (40 CFR 1508.20). However, mechanisms or conservation measures that do not exactly meet this definition, but that meet the conservation objectives for the specified species and are expected to compensate for adverse effects to species or their habitats, may be suitable as compensatory mitigation. These types of compensatory mitigation measures are acceptable if they are closely tied to recovery actions identified in species status assessments, recovery plans, 5-year reviews, or best available science on the threats and needs of the species. Compensatory mitigation of this type is often funded through an in-lieu fee program. Examples of potentially suitable compensatory measures include, but are not limited to:

a. Transfer and retirement of timber, water, mineral, or other severed rights to an already existing conservation site, thereby significantly reducing or eliminating the risk of future development on the site that would be incompatible with conservation of the species;

b. Restricting human use of waterways or other public spaces through legal means to allow for increased or exclusive use by the species;

c. Controlled propagation, population augmentation, and reintroduction of individuals of the species to offset losses from an action;

d. Captive rearing and release of individuals of the species to offset losses from an action;

e. Administering vaccination programs vital to species survival and recovery;

f. Gating of caves that serve as habitat for the species;

g. Construction of wildlife overpasses or underpasses to protect migratory passages for the species; and/or

h. Programs that reduce the exposure of the species to contaminants in the

environment that are known to cause injury or mortality.

In rare circumstances, research or education that can be linked directly to the relative threats to the species and provide a quantifiable benefit to the species may be included as part of a mitigation package. Although research can assist in identifying substitute resources, it does not replace impacted resources or adequately compensate for adverse effects to species or habitat. See the Service's Mitigation Policy (81 FR 83440, November 21, 2016) for additional guidance on appropriate uses of research or education as mitigation.

8. Criteria for Use of Third-Party Mitigation

Specific operational details regarding the use of third-party mitigation will be in the implementation guidance to be issued by the Service.

8.1. Project Applicability

Activities regulated under sections 7 or 10 of the ESA may be eligible to use third-party sponsored mitigation, if the adverse impacts to the species from the particular project can be offset by transfer of the appropriate type and number of credits provided by the third-party sponsored mitigation program. The impacts for which third-party sponsored mitigation is sought must be located within the service area for the species provided by the third-party sponsored mitigation program unless otherwise approved by the Service. In no case may the same credit(s) be used to compensate for more than one action. However, the same credit(s) may be used to compensate for a single action that requires authorization under more than one regulatory authority (*e.g.,* a vernal pool restoration credit that provides mitigation for a listed species under the ESA and wetlands under section 404 of the CWA).

Only credits that have been verified by the Service and released are considered available. Only available credits can be used to mitigate actions.

8.2. Transfer of Responsibility

The mitigation sponsor assumes responsibility for success of the mitigation through the transfer (usually a purchase by the permittee) of credits or other quantified amount of compensatory mitigation.

The Service's role is regulatory. Credit transfers are subject to approval by the Service, as to their conservation value and appropriate application for use related to any authorization or permit issued under the ESA. Market and legal risks arising from the purchase and use of mitigation credits are borne solely by the parties to the sale of such credits.

8.3. Credit Stacking and Bundling

The Service recognizes the inherent efficiencies in leveraging multiple conservation efforts on the landscape and encourages these coordinated efforts. However, compensatory mitigation and other conservation actions that occur on the same mitigation site must be accounted for separately, and all aspects of the different actions must be managed and tracked in a transparent manner. Stacking mitigation credits within a mitigation site (*i.e.,* more than one credit type on spatially overlapping areas) is allowed, but the stacked credits cannot be used to provide mitigation for more than one permitted impact action even if all the resources included in the stacked credit are not needed for that action. To do so would result in a net loss of resources in most cases because using a species credit separately from the functions and services that accompany its habitat, such as carbon sequestration or pollination services, would result in double counting (*i.e.,* ''double dipping''). Double counting is selling or using a unit of the same ecosystem function or service on the ground more than once. This can occur through an accounting error in which the credit is sold twice, and it also can occur when stacked credits are unstacked and one or more functions or services are sold separately. For example, a credit representing an acre of habitat is sold once as a species habitat credit for a permitted action and again as a carbon credit for a different action in a different location. The loss of species habitat at the first impact site included all functions and services associated with that habitat including carbon sequestration, so selling that same unit of compensatory mitigation again for carbon sequestration results in no carbon offset for the loss of carbon sequestration at the second impact location. Using a stacked credit separately to reflect its various values is an ecologically challenging accounting exercise.

Compensatory mitigation projects may be designed to holistically address requirements under multiple programs and authorities for the same action and may use bundled credits to accomplish this goal. For example, a stream credit may satisfy requirements for an U.S. Army Corps of Engineers section 404 CWA permit and issuance of incidental take authority under the ESA for a listed mussel species occurring in that stream, or a county-wide HCP may establish an in-lieu fee program for which a single fee is collected from project applicants for a permit which covers multiple mitigation obligations under Federal, State, and local authorities. In both these examples, the bundled credit is used as a single commodity (*i.e.,* it is not unbundled or unstacked) and is only used once.

8.4. Use of Credits for Mitigation Under Authorities Other Than the ESA

Compensatory mitigation projects established for use under one Service program (*e.g.,* Ecological Services) may also be used to satisfy the environmental requirements of other Service programs (*e.g.,* Migratory Birds or Refuges) or other Federal, State, or local agency programs consistent with the laws and requirements of each respective program. However, the same credits may not be used for more than one authorized or permitted action (*i.e.,* no double counting of mitigation credits).

9. Compliance and Tracking

A tracking system is essential in ensuring compliance with the mitigation instruments used to implement compensatory mitigation programs described in this policy. Tracking systems also facilitate consistency in the implementation of compensatory mitigation programs and projects. It is vital that the Service track compliance directly for permittee-responsible mitigation and, at a minimum, through third parties responsible for operating compensatory mitigation programs or projects such as in-lieu fee programs and habitat exchanges. Transactions (credit withdrawals) at a Service authorized mitigation program or project that are not related to ESA compliance and are not approved by the Service must be tracked in the same tracking system. The Service is not liable for any event or transaction that eludes detection through the Service's tracking function. Specific operational details regarding compliance and tracking will be in the implementation guidance to be issued by the Service.

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Appendix A: List of Acronyms and Abbreviations Used in This Policy

CCAA—Candidate conservation agreement with assurances
CEQ—Council on Environmental Quality
CFR—Code of Federal Regulations
CWA—Clean Water Act
EPA—Environmental Protection Agency
ESA—Endangered Species Act
FWCA—Fish and Wildlife Coordination Act
HCP—Habitat conservation plan
MMPA—Marine Mammal Protection Act
NEPA—National Environmental Policy Act
NWR—National Wildlife Refuge
RPA—Reasonable and prudent alternative
RPM—Reasonable and prudent measure
RIBITS—Regulatory In-lieu fee and Bank Information Tracking System
SHA—Safe harbor agreement
USACE—United States Army Corps of Engineers
USFWS—United States Fish and Wildlife Service

Appendix B: Glossary of Terms Related to Compensatory Mitigation

Definitions in this section apply to the implementation of the U.S. Fish and Wildlife Service (Service) Endangered Species Act Compensatory Mitigation Policy and were developed to provide clarity and consistency. Some definitions are defined in Service authorities such as the Endangered Species Act or the National Environmental Policy Act, or in regulations or policies existing at the time this policy was issued. Other definitions have been developed based on compensatory mitigation practices. Definitions in the glossary do not substitute for statutory or regulatory definitions in the exercise of those authorities.

Action—an activity or program implemented, authorized, or funded, in whole or in part, by Federal agencies; or a non-Federal activity or program for which one or more of the Service's authorities apply to make mitigation recommendations, specify mitigation requirements, or provide technical assistance for mitigation planning (81 FR 83440; November 21, 2016).

Action area—all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02).

Adaptive management—a systematic approach for improving resource management by learning from management outcomes. An adaptive approach involves exploring alternative ways to meet management objectives, predicting the outcomes of alternatives based on the current state of knowledge, implementing one or more of these alternatives, monitoring to learn about the impacts of management actions, and then using the results to update knowledge and adjust management actions. Adaptive management focuses on learning and adapting, through partnerships of managers, scientists, and other stakeholders who learn together how to create and maintain sustainable resource systems (Williams et al. 2009). As applied to compensatory mitigation, it is a management strategy that anticipates likely challenges associated with compensatory mitigation projects and provides for the implementation of activities to address those challenges, as well as unforeseen changes to those projects. It requires consideration of the risk, uncertainty, and dynamic nature of compensatory mitigation projects and guides modification of those projects to achieve stated biological goals. It includes the selection of appropriate measures that will ensure that the resource functions and services are provided and involves analysis of monitoring results to identify potential problems of a compensatory mitigation project and the identification and implementation of measures to rectify those problems (modified from 33 CFR 332.2).

Additionality—conservation benefits of a compensatory mitigation measure that improve upon the baseline conditions of the impacted resources and their values, services, and functions in a manner that is demonstrably new and would not have occurred without the compensatory mitigation measure (600 DM 6.4G).

Additive impacts, additive effects—the combined effects of past actions on a species, other resource, or community; impacts of an action may be relatively insignificant on their own, but when considered with the impacts from other actions as they accumulate over time collectively lead to significant overall loss or degradation of resources. See also ''*cumulative effects.*''

Applicant—any person who requires formal approval or authorization from a Federal agency as a prerequisite to conducting an action (50 CFR 402.02); ''person'' means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States (16 U.S.C. 1532(13)).

At-risk species—candidate species and other unlisted species that are declining and are at risk of becoming a candidate for listing under the Endangered Species Act. This may include, but is not limited to, State listed species, species identified by States as species of greatest conservation need, or species with State heritage ranks of G1 or G2.

Avoidance—avoiding the impact altogether by not taking a certain action or parts of an action (40 CFR 1508.20).

Bank Sponsor—any public or private entity responsible for establishing and, in most circumstances, operating a conservation bank. Bank sponsors are most often private individuals, companies, or Limited Liability Corporations, but they may also be nongovernmental organizations, Tribes, or government agencies. See also ''*mitigation sponsor.*''

Baseline—the pre-existing condition of a defined area of habitat or a species population that can be quantified by an appropriate metric to determine level of functions and/or services and re-measured at a later time to determine if the same area of habitat or species population has increased, decreased, or maintained the same level of functions and/or services.

Candidate conservation agreement with assurances (CCAA)—a formal agreement between the Service or the National Marine Fisheries Service and one or more non-Federal parties who voluntarily agree to manage their lands or waters to remove threats to candidate or proposed species and in exchange receive assurances that their conservation efforts will not result in future regulatory obligations in excess of those they agreed to at the time they entered into the agreement. The management activities included in the agreement must significantly contribute to elimination of the need to list the target species when considered in conjunction with other landowners conducting similar management activities within the range of the species (USFWS CCAA Policy).

Candidate species (candidate)—any species being considered by the Secretary for listing as an endangered or threatened species, but not yet the subject of a proposed rule (50 CFR 424.02); a species for which the Service or the National Marine Fisheries Service has on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or

threatened under the Endangered Species Act.

Compensatory mitigation (compensation)—compensation for remaining unavoidable impacts after all appropriate and practicable avoidance and minimization measures have been applied, by replacing or providing substitute resources or environments (see 40 CFR 1508.20) through the restoration, establishment, enhancement, or preservation of resources and their values, services, and functions (600 DM 6.4C).

Compensatory mitigation project—compensatory mitigation implemented by the action agency, a permittee, or a mitigation sponsor. Compensatory mitigation projects include permittee-responsible mitigation, conservation banks, in lieu fee programs and sites, habitat credit exchanges, and other third-party compensatory mitigation projects.

Conservation, conserve, conserving—to use and the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Endangered Species Act are no longer necessary (16 U.S.C. 1532(3)).

Conservation bank—a site, or suite of sites, that is conserved and managed in perpetuity and provides ecological functions and services expressed as credits for specified species that are later used to compensate for impacts occurring elsewhere to the same species.

Conservation easement—a recorded legal document established to conserve biological resources for a specified duration, usually in perpetuity, on a identified conservation property and which restricts certain activities and requires certain habitat management obligations for the conservation property.

Conservation measures (conservation actions)—measures pledged in the project description that the Federal agency or applicant will implement to minimize, rectify, reduce, and/or compensate for the adverse impacts of the development project on the species. Conservation measures designed to compensate for unavoidable impacts may include the restoration, enhancement, establishment, and/or preservation of species habitat or other measures conducted for the purpose of offsetting adverse impacts to the species. Upon issuance of a permit, license or other such authorization associated with the proposed project, implementation of that project requires implementation of the conservation measures as well as any other terms and conditions of the permit.

Conservation objective—a measurable expression of a desired outcome for a species or its habitat resources. Population objectives are expressed in terms of abundance, trend, vital rates, or other measurable indices of population status. Habitat objectives are expressed in terms of the quantity, quality, and spatial distribution of habitats required to attain population objectives, as informed by knowledge and assumptions about factors influencing the ability of the landscape to sustain the species (81 FR 83440; November 21, 2016).

Conservation plan (species conservation plan)—a plan developed by Federal, State, and/or local government agencies, Tribes, or appropriate nongovernmental organizations, in consultation with relevant stakeholders, for the specific goal of conserving one or more listed or at-risk species. A conservation plan is developed using a landscape-scale approach and addresses the status of, needs of, and threats to the species, and usually includes recommended conservation measures for the conservation/recovery of the species. Examples of species conservation plans include species conservation frameworks, rangewide conservation plans, and conservation plans developed as part of a large landscape habitat conservation plan.

Covered species—species specifically included in a conservation bank, habitat conservation plan, safe harbor agreement, candidate conservation agreement with assurances, rangewide conservation plan, or other such conservation plan for which a commitment is made to achieve specific conservation measures for the species.

Credit (species credit, habitat credit)—a defined unit representing the accrual or attainment of ecological functions and/or services for a species at a mitigation site or within a mitigation program.

Credit bundling—allowing a single unit of a mitigation site to provide compensation for two or more spatially overlapping ecosystem functions or services that are grouped together into a single credit type and used as a single commodity to compensate for a single permitted action. A bundled credit may be used to compensate for all or a subset of the functions or services included in the credit type but may only be used once, even if all functions and services represented in the credit type were not required for the permitted action. See also ''*credit stacking.*''

Credit reserve account—credits set aside in reserve to offset force majeure or other unforeseen events as agreed to by the Service, allowing a mitigation program to continue uninterrupted.

Credit stacking—allowing a single unit of a mitigation site to provide two or more credit types representing spatially overlapping ecosystem functions or services which can be unstacked and used as separate commodities to compensate for different permitted actions. Credit stacking can result in double counting (*i.e.,* a net loss of resources on the landscape) if the same functions or services are not also accounted for separately at all impact sites. See also ''*credit bundling*'' and ''*double-counting.*''

Credit transfer—the use, sale, or conveyance of credits by a bank sponsor or mitigation provider to a permittee or other entity for the purposes of offsetting impacts of an action.

Critical habitat—specific areas within the geographical area occupied by the species at the time it is listed as endangered or threatened under the Endangered Species Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed, which are determined by the Secretary of the Department of the Interior to be areas essential for the conservation of the species (16 U.S.C. 1532(5)(A)).

Cumulative effects—those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation under the Endangered Species Act (50 CFR 402.14(g)(3)). Under the National Environmental Policy Act, cumulative effects are defined as the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions (40 CFR 1508.7).

Debit—a defined unit representing the loss of ecological functions and/or services for a species at an impact site. Debits should be expressed using the same metrics used to value credits at mitigation sites.

Direct effects—those effects to the species or other resource that are caused by the action and occur at the same time and place (81 FR 83440; November 21, 2016).

Double-counting (double-dipping)—using a credit, however defined, representing the same unit of ecosystem function or service on a mitigation site more than once. This is not allowed.

Durability—the condition or state in which the measurable environment benefits of the compensatory mitigation project or measure are sustained, at a minimum, for the duration of the associated impacts (including direct and indirect impacts) of the authorized action. To be durable, mitigation measures effectively compensate for remaining unavoidable impacts that warrant compensatory mitigation; use long-term administrative and legal provisions to prevent actions that are incompatible with the measure; and employ financial instruments to ensure the availability of sufficient funding for the measure's long-term monitoring, site protection, and management (600 DM 6.4G).

Effects (effects of the action)—changes in the environmental conditions caused by an action that are relevant to the species or other resources (81 FR 83440; November 21, 2016), including the direct, indirect, and cumulative effects of the action on the species and other activities that are interrelated to, or interdependent with, that action as defined at 50 CFR 402.02. See also ''*cumulative effects.*''

Endangered species—any species which is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)).

Endowment—as used in this policy, funds that are conveyed solely for the long-term stewardship of a mitigation property and are permanently restricted to paying the costs of management and stewardship of that property. The management of endowment funds is generally governed by State and Federal laws, as applicable. Endowments do not include funds conveyed for meeting short-term performance objectives of a mitigation project.

Enhancement—activities conducted in existing habitat of the species that improve one or more ecological functions or services for that species, or otherwise provide added

benefit to the species and do not negatively affect other resources of concern. Compare with ''*restoration*.''

Establishment—construction of habitat of a type that did not previously exist on a mitigation site but which will provide a benefit to the species and does not negatively affect other resources of concern. Compare with ''*restoration*.''

Fee title (fee)—an interest in land that is the most complete and absolute ownership in land; it is of indefinite duration, freely transferable, and inheritable.

Functions—the physical, chemical, and biological processes that occur in ecosystems (33 CFR 332.2); functions are the ecological processes necessary for meeting species' habitat and lifecycle needs.

Habitat—an area with spatially identifiable physical, chemical, and biological attributes that supports one or more life-history processes for the species (81 FR 83440; November 21, 2016).

Habitat conservation plan (HCP)—a planning document that describes the anticipated effects of a proposed activity on the taking of federally listed species, how those impacts will be minimized and mitigated, and how the plan will be funded (16 U.S.C. 1539). The HCP is required as part of an incidental take permit application to the Service or the National Marine Fisheries Service (see ''*incidental take*'').

Habitat credit exchange (habitat credit exchange program)—a market-based system that operates as a clearinghouse in which an exchange administrator, acting as a mitigation sponsor, manages credit transactions between compensatory mitigation providers and permittees or others authorized to implement actions that adversely affect protected species.

Impact(s) (of an action)—adverse effects relative to the affected resources (81 FR 83440; November 21, 2016). More specifically under this policy, adverse effects on the species or its habitat anticipated in a proposed action or resulting from an authorized or permitted action.

Incidental take—take of any endangered or threatened species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a Federal agency or an applicant (50 CFR 402.02). Incidental take may be authorized for endangered or threatened species through section 7 or 10, or for threatened species, through a rule codified under section 4(d) of the Endangered Species Act. (See also, ''*take*.'')

Indirect effects—those effects to the species that are caused by the action at a later time or another place, but are reasonably certain to occur (50 CFR 402.02).

In-kind—a resource of a similar structural and functional type to the impacted resource (33 CFR 332.2); when used in reference to a species, in-kind means the same species.

In-lieu fee program—a program involving the restoration, establishment, enhancement, and/or preservation of habitat through funds paid to a governmental or nonprofit natural resources management entity to satisfy compensatory mitigation requirements for impacts to specified species or habitat (modified from 33 CFR 332.2).

In-lieu fee program sponsor—any government agency or nonprofit natural resources management organization responsible for establishing, and in most circumstances, operating an in-lieu fee program. See also, ''*sponsor*.''

In-lieu fee site—a compensatory mitigation site established under an approved in-lieu fee program.

Landscape—an area encompassing an interacting mosaic of ecosystems and human systems that is characterized by a set of common management concerns. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context (600 DM 6D).

Landscape-scale approach—an approach to conservation planning that applies the mitigation hierarchy for impacts to resources and their values, services, and functions at the relevant scale, however narrow or broad, necessary to sustain, or otherwise achieve established goals for those resources and their values, services, and functions. A landscape-scale approach should be used when developing and approving strategies or plans, reviewing projects, or issuing permits. The approach identifies the needs and baseline conditions of targeted resources and their values, services and functions, reasonably foreseeable impacts, cumulative impacts of past and likely projected disturbance to those resources, and future disturbance trends. The approach then uses such information to identify priorities for avoidance, minimization, and compensatory mitigation measures across that relevant area to provide the maximum benefit to the impacted resources and their values, services, and functions, with full consideration of the conditions of additionality and durability (600 DM 6E).

Listed species—any species or subspecies of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Endangered Species Act (50 CFR 402.02). Listed species are found at 50 CFR 17.11 and 17.12.

Management plan—the stewardship plan prepared to instruct the land manager in the operations and biological management for the compensatory mitigation site to, at a minimum, maintain the functions and services for specified species and other resources on the mitigation site. These are generally long-term plans that include a detailed estimate of the itemized costs for all management actions required by the plan. These annual costs are used to estimate the size of the endowment that will be needed to maintain and monitor the mitigation site for the intended duration.

Mitigation (mitigation hierarchy, mitigation sequence)—as defined and codified in the Council on Environmental Quality (CEQ) National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) regulations (40 CFR 1508.20), mitigation includes:

- Avoid the impact altogether by not taking the action or parts of the action;
- Minimize the impact by limiting the degree or magnitude of the action and its implementation;
- Rectify the impact by repairing, rehabilitating, or restoring the affected environment;
- Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action; and
- Compensate for the impact by replacing or providing substitute resources or environments.

This sequence is often condensed to: Avoidance, minimization, and compensation.

Mitigation ratio—the relationship between the amount of the compensatory offset for, and the impacts to, the species, habitat for the species, or other resource of concern.

Mitigation sponsor (mitigation project sponsor, sponsor, mitigation provider)—any public or private entity responsible for establishing, and in most circumstances, operating a compensatory mitigation program or project such as a conservation bank, in-lieu fee program, or habitat credit exchange (modified from 33 CFR 332.2).

Off-site—a mitigation area that is located neither on nor adjacent to the same parcel of land as the impact site (33 CFR 332.2).

On-site—a mitigation site located on or adjacent to the same parcel of land as the impact site (33 CFR 332.2).

Performance criteria—observable or measurable administrative and ecological (physical, chemical, or biological) attributes that are used to determine if a compensatory mitigation project meets the agreed upon conservation objectives identified in a mitigation instrument or the conservation measures proposed as part of a permitted or otherwise authorized action.

Permittee—any person who receives formal approval or authorization, generally in the form of a permit or license, from a Federal agency to conduct an action. See also, ''*applicant*.''

Permittee-responsible mitigation—activities or projects undertaken by a permittee or an authorized agent or contractor to provide compensatory mitigation for which the permittee retains full responsibility. As used in this policy, permittee-responsible mitigation also includes compensatory mitigation undertaken by Federal agencies to offset impacts resulting from actions carried out directly by the Federal agency.

Perpetuity—endless or infinitely long duration or existence; permanent.

Practicable—available and capable of being done after taking into consideration existing technology, logistics, and cost in light of a mitigation measure's beneficial value and a land use activity's overall purpose, scope, and scale (81 FR 83440; November 21, 2016).

Preservation—the protection and management of existing resources for the species that would not otherwise be protected through removal of a threat to, or preventing the decline of, the resources to compensate for the loss of the same species or resources elsewhere.

Proponent (project proponent)—the agency proposing an action, and if applicable, any applicant(s) for agency funding or authorization to implement a proposed action (81 FR 83440; November 21, 2016). For purposes of this policy, any person, organization, or agency advocating a development proposal that is anticipated to result in adverse impacts to one or more listed or at-risk species. See also, ''*applicant*'' and ''*permittee*.''

Resources (resources of concern)—fish, wildlife, plants, and their habitats for which the Service has authority to recommend or require the mitigation of impacts resulting from proposed actions (81 FR 83440; November 21, 2016) .

Restoration—repairing or rehabilitating habitat for the benefit of the species on a mitigation site with the goal of returning it to its natural/historic habitat type with the same or similar functions where they have ceased to exist, or exist in a substantially degraded state.

Retired credit—a credit that is no longer available for use as mitigation. Credits that have been sold or otherwise used to fulfill a mitigation obligation are considered retired. Credits may also be voluntarily retired or forfeited, without being used for mitigation.

Safe harbor agreement (SHA)—formal agreement between the Service or National Marine Fisheries Service and one or more non-Federal property owners in which property owners voluntarily manage for listed species for an agreed amount of time providing a net conservation benefit to the species and, in return, receive assurances from the Service or National Marine Fisheries Service that no additional future regulatory restrictions will be imposed (USFWS Safe Harbor Policy). Under the Safe Harbor Policy, ''net conservation benefit'' is defined as contributing to the recovery of the listed species covered by the SHA.

Service area—the geographic area within which impacts to the species or other resources of concern can be mitigated at a specific compensatory mitigation site.

Species—the term ''species'' includes any species, subspecies of fish, or wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)).

Take—means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect a federally listed species, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). ''Take'' applies only to fish and wildlife, not plants.

Temporal loss—the cumulative loss of functions and/or services relevant to the species attributed to the time between the loss of habitat functions and/or services or individuals of the population(s) caused by the action and the replacement of habitat functions and/or services or repopulation of the species at the compensatory mitigation site to the same level had the action not occurred.

Threatened species—any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)).

Unavoidable impact—an impact for which an appropriate and practicable alternative to the proposed action that would not cause the impact is not available (81 FR 83440; November 21, 2016).

Determinations Under Other Authorities

As mentioned above, we intend to apply this policy when considering the adequacy of compensatory mitigation programs, projects, and measures proposed by Federal agencies and applicants as part of a proposed action and mitigation sponsors. Below we discuss compliance with several Executive Orders and statutes as they pertain to this policy.

National Environmental Policy Act (NEPA)

We have analyzed this policy in accordance with the criteria of the National Environmental Policy Act, as amended (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and the Department of the Interior's NEPA procedures (516 DM 2 and 8; 43 CFR part 46). Issuance of policies, directives, regulations, and guidelines are actions that may generally be categorically excluded under NEPA (43 CFR 46.210(i)). Based on comments received, we determined that a categorical exclusion can apply to this policy; nevertheless, the Service chose to prepare an environmental assessment (EA) to inform decision makers and the public regarding the possible effects of the policy revisions.

We announced our intent to prepare an EA pursuant to NEPA when we published the draft policy. We requested comments on the scope of the NEPA review, information regarding important environmental issues that should be addressed, the alternatives to be analyzed, and issues that should be addressed at the programmatic stage in order to inform the site-specific stage during the comment period on the draft policy. Comments from the public were considered in the drafting of the final EA. The final EA is available on the Internet at *http://www.regulations.gov* under Docket Number FWS–HQ–ES–2015–0165.

Paperwork Reduction Act of 1995

This final policy does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the information collection requirements for applications for incidental take permits, annual reports, and notifications of incidental take for native endangered and threatened species for safe harbor agreements, candidate conservation agreements with assurances, and habitat conservation plans under OMB Control Number 1018–0094, which expires on January 31, 2017. We are currently in the process of seeking renewal for OMB Control Number 1018–0094. 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.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior Manual at 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have determined that there are no potential adverse effects of issuing this policy. Our intent with the policy is to provide a consistent approach to the consideration of compensatory mitigation programs, projects, and measures, including those taken on Tribal lands. We will work with Tribes as applicants proposing compensatory mitigation as part of proposed actions and with Tribes as mitigation sponsors.

Authority: The authorities for this action include the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Dated: December 15, 2016.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–30929 Filed 12–23–16; 8:45 am]

BILLING CODE 4333–15–P

FEDERAL REGISTER

Vol. 81 Tuesday,

No. 248 December 27, 2016

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2016–0490; FRL–9956–87–OAR]

RIN 2060–AS85

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Publicly Owned Treatment Works (POTW) to address the results of the residual risk and technology review (RTR) conducted under the Clean Air Act (CAA). As a result of our review, we are proposing to include pretreatment requirements to limit emissions from collection systems and the POTW treatment plant; requirements for existing, new, or reconstructed industrial (Group 1) POTW to comply with both the requirements in this rule and those in the applicable NESHAP for which they act as control; and hazardous air pollutants (HAP) emission limits for existing, non-industrial (Group 2) POTW. In addition, the EPA is proposing to revise the applicability criteria, revise the names and definitions of the industrial (Group 1) and non-industrial (Group 2) subcategories, revise regulatory provisions pertaining to emissions during periods of startup, shutdown, and malfunction, add requirements for electronic reporting, and make other miscellaneous edits and technical corrections.

DATES: *Comments.* Comments must be received on or before February 27, 2017. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before January 26, 2017.

Public Hearing. A public hearing will be held on January 11, 2017, if requested by January 3, 2017.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0490, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *http://www.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: For questions about this proposed action, contact Karen Marsh, Sector Policies and Programs Division (E143–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1065; fax number: (919) 541–3470; and email address: *marsh.karen@epa.gov*. For specific information regarding the risk modeling methodology, contact Michael Stewart, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–7524; fax number: (919) 541–0237; and email address: *stewart.michael@epa.gov*. For information about the applicability of the NESHAP to a particular entity, contact Patrick Yellin, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building, Mail Code 2227A, 1200 Pennsylvania Avenue NW., Washington DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; and email address: *yellin.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2016–0490. All documents in the docket are listed in the *Regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC. 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 EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2016–0490. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

Public Hearing. A public hearing will be held, if requested by January 3, 2017, to accept oral comments on this proposed action. If a hearing is requested, it will be held at the EPA's Washington, DC campus located at 1201 Constitution Avenue NW., Washington, DC. The hearing, if requested, will begin at 9:00 a.m. (local time) and will conclude at 4:00 p.m. (local time) on January 11, 2017. To request a hearing,

to register to speak at a hearing, or to inquire if a hearing will be held, please contact Aimee St. Clair at (919) 541–1063 or by email at *stclair.aimee@epa.gov.* The last day to pre-register to speak at a hearing, if one is held, will be January 9, 2017. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. Please note that registration requests received before the hearing will be confirmed by the EPA via email.

The EPA will make every effort to accommodate all speakers who arrive and register. Because the hearing will be held at a U.S. governmental facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma or the state of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons.

Please note that any updates made to any aspect of the hearing, including whether or not a hearing will be held, will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/publicly-owned-treatment-works-potw-national-emission-standards.* We ask that you contact Aimee St. Clair at (919) 541–1063 or by email at *stclair.aimee@epa.gov* or monitor our Web site to determine if a hearing will be held. The EPA does not intend to publish a notice in the **Federal Register** announcing any such updates. Please go to *https://www.epa.gov/stationary-sources-air-pollution/publicly-owned-treatment-works-potw-national-emission-standards* for more information on the public hearing.

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AEGL Acute exposure guideline levels
AERMOD Air dispersion model used by the HEM–3 model
ATSDR Agency for Toxic Substances and Disease Registry
BACT Best available control technology
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CWA Clean Water Act
ECHO Enforcement and Compliance History Online
EJ Environmental justice
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guidelines
ERT Electronic Reporting Tool
FR Federal Register
HAP Hazardous air pollutants
HCl Hydrochloric acid
HEM–3 Human Exposure Model, Version 1.1.0
HF Hydrogen fluoride
HI Hazard index
HQ Hazard quotient
ICR Information collection request
IRIS Integrated Risk Information System
km Kilometer
LAER Lowest achievable emission rate
LOAEL Lowest-observed-adverse-effect level
MACT Maximum achievable control technology
MGD Million gallons per day
mg/kg-day Milligrams per kilogram per day
mg/m^3 Milligrams per cubic meter
MIR Maximum individual risk
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NAS National Academy of Sciences
NATA National Air Toxics Assessment
NEI National Emissions Inventory
NESHAP National emissions standards for hazardous air pollutants
NOAA National Oceanic and Atmospheric Administration
NOAEL No-observed-adverse-effect levels
NRC National Research Council
NSR New source review
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PAH polycyclic aromatic hydrocarbons
PB–HAP Hazardous air pollutants known to be persistent and bio-accumulative in the environment
PEL Probable effect level
POM Polycyclic organic matter
POTW Publicly owned treatment works
ppm Parts per million
PRA Paperwork Reduction Act
RACT Reasonably available control technology
REL Reference exposure level
RFA Regulatory Flexibility Act
RfC Reference concentration
RfD Reference dose
RTR Residual risk and technology review
SAB Science Advisory Board
SOP Standard operating procedure
SSM Startup, shutdown, and malfunction
TOSHI Target organ-specific hazard index
tpy Tons per year
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
UF Uncertainty factor
$\mu g/m^3$ microgram per cubic meter
UMRA Unfunded Mandates Reform Act
URE Unit risk estimate
VCS Voluntary consensus standards

Organization of this Document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal governments would be affected as discussed below. By definition, a POTW is owned by a municipality, state, intermunicipal or interstate agency, or any department, agency, or instrumentality of the federal government (See 40 CFR 63.1595 of subpart VVV). If a POTW has a design capacity to treat at least 5 million gallons per day (MGD) of wastewater, receives wastewater from industrial users, and is either a major source of HAP emissions or treats wastewater to comply with requirements of another NESHAP, then the POTW is affected by these standards. (Note, these applicability criteria represent proposed revisions to the current criteria and are discussed further in section IV.D.1 of this document.) As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992), the POTW source category includes emissions from wastewaters that are treated at a POTW. These wastewaters are generated by industrial, commercial, and domestic sources, although only industrial and commercial dischargers might consistently discharge HAP in quantities high enough to potentially result in an exceedance of the major source emission threshold at the POTW. Emissions from these wastewaters can

occur within the collection system (sewers) as well as during treatment at the POTW. Control options include, but are not limited to, reduction of HAP at the industrial discharger before wastewater enters the collection systems, add-on emission controls on the collection system and at the POTW, and/or treatment process modifications/substitutions.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]
Sewage Treatment Facilities	Subpart VVV	221320

[1] North American Industry Classification System.

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

In addition to being available in the docket, an electronic copy of this action is available on the Internet. A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2016–0490). Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/publicly-owned-treatment-works-potw-national-emission-standards*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same Web site. Information on the overall residual risk and technology review (RTR) program is available at *http://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

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

Submitting CBI. Do not submit information containing 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 comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2016–0490.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), CAA section 112(d) requires us to promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. For major sources, the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

MACT standards must reflect the maximum degree of emissions reduction achievable through the application of measures, processes, methods, systems, or techniques, including, but not limited to, measures that (1) Reduce the volume of or eliminate pollutants through process changes, substitution of materials or other modifications; (2) enclose systems or processes to eliminate emissions; (3) capture or treat pollutants when released from a process, stack, storage, or fugitive emissions point; (4) are design, equipment, work practice, or operational standards (including requirements for operator training or certification); or (5) are a combination of the above. CAA section 112(d)(2)(A)–(E). The MACT standards may take the form of design, equipment, work practice, or operational standards where the EPA first determines either that (1) a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with law; or (2) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. CAA section 112(h)(1)–(2).

The MACT ''floor'' is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3) and may not be based on cost considerations. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The MACT floor for existing sources can be less stringent than floors for new sources, but not less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, the EPA must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on considerations of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

The EPA is then required to review these technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years. CAA section 112(d)(6). In conducting this review, the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council* (*NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013).

The second stage in standard-setting focuses on reducing any remaining (*i.e.,*

''residual'') risk according to CAA section 112(f). CAA section 112(f)(1) requires that the EPA prepare a report to Congress discussing (among other things) methods of calculating the risks posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, and the EPA's recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted the *Residual Risk Report to Congress,* EPA–453/R–99–001 (*Risk Report*) in March 1999. CAA section 112(f)(2) then provides that if Congress does not act on any recommendation in the *Risk Report,* the EPA must analyze and address residual risk for each category or subcategory of sources 8 years after promulgation of such standards pursuant to CAA section 112(d).

Section 112(f)(2) of the CAA requires the EPA to determine for source categories subject to MACT standards whether the emission standards provide an ample margin of safety to protect public health. Section 112(f)(2)(B) of the CAA expressly preserves the EPA's use of the two-step process for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the *Risk Report* that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and in a challenge to the risk review for the Synthetic Organic Chemical Manufacturing source category, the United States Court of Appeals for the District of Columbia Circuit upheld as reasonable the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''[S]ubsection 112(f)(2)(B) expressly incorporates the EPA's interpretation of the Clean Air Act from the Benzene standard, complete with a citation to the **Federal Register**.''); see also, *A Legislative History of the Clean Air Act Amendments of 1990,* vol. 1, p. 877 (Senate debate on Conference Report).

The first step in the process of evaluating residual risk is the determination of acceptable risk. If risks are unacceptable, the EPA cannot consider cost in identifying the emissions standards necessary to bring risks to an acceptable level. The second step is the determination of whether standards must be further revised in order to provide an ample margin of safety to protect public health. The ample margin of safety is the level at which the standards must be set, unless an even more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

1. Step 1—Determination of Acceptability

The Agency in the Benzene NESHAP concluded that ''the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information'' and that the ''judgment on acceptability cannot be reduced to any single factor.'' Benzene NESHAP at 54 FR 38046, September 14, 1989. The determination of what represents an ''acceptable'' risk is based on a judgment of ''what risks are acceptable in the world in which we live'' (*Risk Report* at 178, quoting *NRDC* v. *EPA,* 824 F. 2d 1146, 1165 (D.C. Cir. 1987) (en banc) (''Vinyl Chloride''), recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that ''EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately one in 10 thousand, that risk level is considered acceptable.'' 54 FR at 38045, September 14, 1989. We discussed the maximum individual lifetime cancer risk (or maximum individual risk (MIR)) as being ''the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' *Id.* We explained that this measure of risk ''is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.'' *Id.* We acknowledged that maximum individual lifetime cancer risk ''does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded.'' *Id.*

Understanding that there are both benefits and limitations to using the MIR as a metric for determining acceptability, we acknowledged in the Benzene NESHAP that ''consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk.'' *Id.* Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination. Further, in the Benzene NESHAP, we noted that:

> [p]articular attention will also be accorded to the weight of evidence presented in the risk assessment of potential carcinogenicity or other health effects of a pollutant. While the same numerical risk may be estimated for an exposure to a pollutant judged to be a known human carcinogen, and to a pollutant considered a possible human carcinogen based on limited animal test data, the same weight cannot be accorded to both estimates. In considering the potential public health effects of the two pollutants, the Agency's judgment on acceptability, including the MIR, will be influenced by the greater weight of evidence for the known human carcinogen.

Id. at 38046. The Agency also explained in the Benzene NESHAP that:

> [i]n establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 km exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emission of pollutants.

Id. at 38045. In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone.

As noted earlier, in *NRDC* v. *EPA,* the court held that CAA section 112(f)(2) ''incorporates the EPA's interpretation of the Clean Air Act from the Benzene Standard.'' The court further held that Congress' incorporation of the Benzene standard applies equally to carcinogens and non-carcinogens. 529 F.3d at 1081–82. Accordingly, we also consider non-cancer risk metrics in our determination of risk acceptability and ample margin of safety.

2. Step 2—Determination of Ample Margin of Safety

CAA section 112(f)(2) requires the EPA to determine, for source categories subject to MACT standards, whether those standards provide an ample margin of safety to protect public health.

As explained in the Benzene NESHAP, ''the second step of the inquiry, determining an 'ample margin of safety,' again includes consideration of all of the health factors, and whether to reduce the risks even further. . . . Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by section 112.'' 54 FR 38046, September 14, 1989.

According to CAA section 112(f)(2)(A), if the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million,'' the EPA must promulgate residual risk standards for the source category (or subcategory), as necessary to provide an ample margin of safety to protect public health. In doing so, the EPA may adopt standards equal to existing MACT standards if the EPA determines that the existing standards (*i.e.,* the MACT standards) are sufficiently protective. *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'') The EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect,[1] but must consider cost, energy, safety, and other relevant factors in doing so.

The CAA does not specifically define the terms ''individual most exposed,'' ''acceptable level,'' and ''ample margin of safety.'' In the Benzene NESHAP, 54 FR at 38044–38045, September 14, 1989, we stated as an overall objective:

> In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.,* 100-in-1 million] the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The Agency further stated that ''[t]he EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risks to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population.'' *Id.* at 38045.

In the ample margin of safety decision process, the Agency again considers all of the health risks and other health information considered in the first step, including the incremental risk reduction associated with standards more stringent than the MACT standard or a more stringent standard that the EPA has determined is necessary to ensure risk is acceptable. In the ample margin of safety analysis, the Agency considers additional factors, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by CAA section 112(f). 54 FR 38046, September 14, 1989.

B. What is this source category and how does the 2002 NESHAP regulate its HAP emissions?

1. Definition of the POTW Source Category and the Affected Source

The NESHAP for the POTW source category (henceforth referred to as the ''POTW NESHAP'') was promulgated on October 26, 1999 (64 FR 57572) and codified at 40 CFR part 63, subpart VVV. The POTW NESHAP was amended on October 21, 2002 (67 FR 64742). As amended in 2002, the POTW NESHAP applies to new and existing POTW treatment plants that are located at a POTW that is a major source of HAP emissions and that is required to develop and implement a pretreatment program as defined by 40 CFR 403.8 under the Clean Water Act. Emissions from a POTW originate from wastewaters that are treated at a POTW. These wastewaters are generated by industrial, commercial, and domestic sources, although only industrial and commercial dischargers might consistently discharge HAP in quantities high enough to potentially result in an exceedance of the major source emission threshold at the POTW. Emissions from these wastewaters can occur within the collection system (sewers) as well as during treatment at the POTW treatment plant. Control options include, but are not limited to, reduction of HAP at the source before they enter the collection system, add-on emission controls on the collection system and at the POTW, and/or treatment process modifications/substitutions.

The POTW NESHAP (40 CFR 63.1595) defines ''POTW'' as ''a treatment works, as that term is defined by section 112(e)(5) of the Clean Air Act, which is owned by a municipality (as defined by section 502(4) of the Clean Water Act),[2] a state, an intermunicipal or interstate agency, or any department, agency, or instrumentality of the federal government. This definition includes any intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The wastewater treated by these facilities is generated by industrial, commercial, and domestic sources. As used in this regulation, the term POTW refers to both any publicly owned treatment works which is owned by a state, municipality, or intermunicipal or interstate agency and therefore eligible to receive grant assistance under the Subchapter II of the Clean Water Act, and any federally owned treatment works as that term is described in section 3023 of the Solid Waste Disposal Act.'' The ''affected source'' regulated by the 2002 POTW NESHAP is defined in 40 CFR 63.1595 of the POTW NESHAP as the ''group of all equipment that comprise the POTW treatment plant.'' The ''POTW treatment plant'' is defined as the ''portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.'' The 2002 POTW NESHAP excludes collection systems, including sewers, pump stations, and other conveyance equipment located outside the POTW treatment plant from the definition of affected source.

2. Applicability of the 2002 NESHAP: Industrial (Group 1) and Non-Industrial (Group 2) Subcategories

The 2002 POTW NESHAP set air pollution control requirements or emission limits on existing, new, and reconstructed POTW. Briefly, a POTW

[1] ''Adverse environmental effect'' is defined as any significant and widespread adverse effect, which may be reasonably anticipated to wildlife, aquatic life, or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental qualities over broad areas. CAA section 112(a)(7).

[2] CAA section 112(e)(5) adopts the definition of ''treatment works'' from Clean Water Act (CWA) section 212(2), 33 U.S.C. 1292(2).

is subject to the POTW NESHAP if: (1) The POTW is required to establish and implement a pretreatment program per the requirements in 40 CFR 403.8 under the CWA. Pretreatment programs are required for POTW with a design capacity of greater than 5 MGD and that receive wastewater from an ''industrial user'' that contains pollutants which pass through or interfere with the operation of the POTW. Pollutants that pass through are those that remain in the wastewater and are not removed during treatment operations at the POTW; and (2) either of the following:

- The POTW accepts waste streams regulated by another NESHAP and provides treatment and controls as an agent for the industrial facility. The industrial facility complies with its NESHAP requirements specific to that wastewater stream by using the treatment and controls located at the POTW; or
- The POTW is a major source of HAP emissions.

Accordingly, POTW that are area sources are not subject to the requirements in the 2002 rule unless they receive wastewater that is subject to control under another NESHAP.

Today we estimate that six facilities are subject to the POTW NESHAP. A complete list of facilities subject to the POTW NESHAP is available in the POTW RTR database, which is available for review in the docket for this proposed rulemaking. The EPA recognizes that there are approximately 16,000 POTW in the U.S.; however, most of these are small municipalities that do not treat wastewater from industrial users, and therefore, would not be subject to this regulation. Additionally, POTW that do treat wastewater from industrial users are generally required to develop and implement a pretreatment program that limits the concentration of pollutants in wastewaters received at the POTW, thus reducing the potential emissions of HAP so that they are below major source thresholds. The EPA requests comment specifically identifying other POTW that are subject to the POTW NESHAP.

In the 2002 NESHAP, the source category is subcategorized based on the way in which the POTW is providing treatment for wastewaters received from an industrial source. The 2002 POTW NESHAP defines (40 CFR 63.1595) an ''industrial POTW'' as ''a POTW that accepts a waste stream regulated by another NESHAP and provides treatment and controls as an agent for the industrial discharger. The industrial discharger complies with its NESHAP by using the treatment and controls located at the POTW. For example, an industry discharges its benzene-containing waste stream to the POTW for treatment to comply with 40 CFR part 61, subpart FF—National Emission Standard for Benzene Waste Operations. This definition does not include POTW treating waste streams not specifically regulated under another NESHAP.'' In other words, if a POTW is used as the control method by which an industrial source meets the wastewater requirements in their source category NESHAP, then the POTW is considered an ''industrial POTW treatment plant.'' An ''industrial POTW treatment plant'' is affected by the 2002 POTW NESHAP regardless of the HAP emissions (*i.e.,* does not have to be a major source).

In contrast, under the 2002 NESHAP, a ''non-industrial POTW'' is defined (40 CFR 63.1595) as ''a POTW that does not meet the definition of an industrial POTW as defined above.'' If a POTW treats wastewater from industrial users, but does not treat industrial wastewaters subject to control requirements in another NESHAP, then the POTW is a ''non-industrial POTW treatment plant.'' See section IV.D.2 of this preamble for a discussion on proposed changes to these subcategories, including proposed changes to the names for these subcategories (*i.e.,* Group 1 and Group 2).

3. HAP Emission Points

The amount and type of HAP emitted from a POTW is dependent on the composition of the wastewater streams discharged to a POTW by industrial users. Because HAP are not typically used in large quantities by domestic dischargers, we do not expect domestic dischargers to consistently or frequently contribute HAP constituents to the wastewater and any domestic discharges of HAP are trivial in comparison to industrial dischargers. An industrial user is defined in the 2002 regulation to include both industrial and commercial facilities that discharge wastewaters to the POTW. The primary HAP emitted from the POTW that were identified as subject to the 2002 NESHAP include acetaldehyde, acetonitrile, chloroform, ethylene glycol, formaldehyde, methanol, methylene chloride, tetrachloroethylene, toluene, and xylenes. HAP present in wastewater entering POTW can biodegrade, adhere to sewage sludge, volatilize to the air, or pass through (remain in the wastewater discharge) to receiving waters. Within the POTW source category, wastewater treatment units are the most likely source for HAP emissions, but wastewater collection systems, including sewers and other transport systems, may also have significant emissions in cases where the systems transport industrial wastewater. In addition to the wastewater treatment processes at a POTW, other sources of HAP emissions, such as sewage sludge incinerators, may be collocated at the same site. Sewage sludge incineration is regulated under section 129 of the CAA and is not a part of the POTW source category regulated under the POTW NESHAP as discussed in this preamble. However, HAP emissions from any collocated sources must be included when determining whether a source is a major source of HAP.

4. Regulation of HAP Emissions in the 2002 POTW NESHAP

The POTW NESHAP specifies requirements for both subcategories. Under the POTW NESHAP, an existing, industrial (Group 1) POTW must meet the requirements of the industrial source's NESHAP. For example, a POTW that accepts and treats wastewater for a pulp and paper facility in order to meet the wastewater requirements in 40 CFR part 63, subpart S is subject to the specific requirements found in subpart S, instead of requirements found in 40 CFR part 63, subpart VVV. A new or reconstructed, industrial (Group 1) POTW must meet the requirements of the industrial source's NESHAP or the requirements for new or reconstructed, non-industrial (Group 2) POTW, whichever is more stringent.

There are no control requirements in the 2002 NESHAP for existing, non-industrial (Group 2) POTW. However, new or reconstructed, non-industrial (Group 2) POTW must equip each treatment unit up to, but not including, the secondary influent pumping station, with a cover. The affected emission points at new or reconstructed non-industrial (Group 2) POTW include, but are not limited to, influent waste stream conveyance channels, bar screens, grit chambers, grinders, pump stations, aerated feeder channels, primary clarifiers, primary effluent channels, and primary screening stations. In addition, all covered units, except the primary clarifiers, must have the air in the headspace ducted to a control device in accordance with 40 CFR 63.693, the standards for closed-vent systems and control devices found in subpart DD of this part. As an alternative to these requirements, a new or reconstructed, non-industrial (Group 2) POTW can demonstrate, for all units up to the secondary influent pumping station or the secondary treatment units, that the HAP fraction emitted does not exceed 0.014. This is demonstrated by dividing the sum of all HAP emissions

from the primary treatment units by the sum of all HAP mass loadings (*i.e.,* the concentration of all HAP in the influent wastewater) on an annual rolling average. The POTW is allowed to use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard.

C. What data collection activities were conducted to support this action?

In October 2015, the EPA issued an information collection request (ICR), pursuant to CAA section 114, to nine POTW (covering a total of 18 facilities) that were known to, or thought to potentially, own and operate a POTW subject to the POTW NESHAP. EPA requested information on the treatment units that are subject to requirements in the POTW NESHAP (primary treatment units), as well as information on pretreatment programs, collection sewers, and secondary treatment units. EPA also requested information on control devices and location coordinates (latitude and longitude) of the individual treatment units (if fugitive sources) and emission points (if point sources). The ICR requested information on any HAP-containing chemicals used as part of the wastewater treatment process, point and fugitive HAP emissions, practices used to control HAP emissions, and other aspects of facility operations. The respondents to the ICR provided information on a total of five facilities subject to the POTW NESHAP and 12 synthetic area [3] or area source facilities not subject to the POTW NESHAP. Only the POTW subject to the NESHAP were included in the risk modeling analysis. One facility did not provide a response and it is unknown if this POTW is subject to the POTW NESHAP. We received emissions data directly from each POTW subject to the POTW NESHAP that responded to the survey in the form of ToxChem+ or WATER9 modeling results. Following the initial response, one POTW that was previously thought to be subject to the POTW NESHAP submitted correspondence from their state, which defines the POTW as an area source of HAP emissions, therefore, not subject to the POTW NESHAP.[4] Thus, we identified a total of four POTW subject to the POTW NESHAP through the 2015 ICR.

D. What other relevant background information and data are available?

The 2011 National Emissions Inventory (NEI version 2) provided supplemental information for this RTR. The NEI is a database that contains information about sources that emit criteria air pollutants, their precursors, and HAP. The database includes estimates of annual air pollutant emissions from point, nonpoint, and mobile sources in the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The EPA collects this information and releases an updated version of the NEI database every 3 years. The NEI includes information necessary for conducting risk modeling, including annual HAP emissions estimates from individual emission points at facilities and the related emissions release parameters.

For each emission record needed for the model input file for the risk assessment (hereafter referred to as the ''RTR emissions dataset'') that was not available from the 2015 ICR responses, the EPA used available data in the 2011 NEI as the first alternative.[5] The 2011 NEI was used to identify an additional two POTW that are subject to the POTW NESHAP that had not received the ICR. For the six sources found subject to the POTW NESHAP (the four POTW identified in the ICR responses and the two POTW identified from the NEI), the 2011 NEI provided emissions estimates for co-located emission points that are not part of the POTW source category. These data include emissions from boilers, engines, and sewage sludge incinerators that are located at the POTW, but are not in the POTW source category. These data were incorporated into the RTR emissions dataset to determine the whole facility risk.

The EPA's Enforcement Compliance History Online (ECHO) database was also used as a tool to identify which POTW were potentially subject to the POTW NESHAP and provided a list of sources to consider for the 2015 ICR. ECHO provides integrated compliance and enforcement information for approximately 800,000 regulated facilities nationwide. Using the search feature in ECHO, the EPA identified twenty POTW that could potentially be subject to the POTW NESHAP. The EPA then searched state Web sites for operating permits for these 20 POTW to determine whether the permits stated the POTW was subject to the rule. The four POTW identified as subject to the POTW NESHAP through the ICR were identified in the list of potential sources found in the ECHO database and subsequent permit search.

The EPA searched for Reasonably Available Control Technology (RACT), Best Available Control Technology (BACT), and Lowest Achievable Emission Rate (LAER) determinations in the RACT/BACT/LAER Clearinghouse. This is a database that contains case-specific information of air pollution technologies that have been required to reduce the emissions of air pollutants from stationary sources. Under the EPA's New Source Review (NSR) program, if a facility is planning new construction or a modification that will increase the air emissions by a large amount, an NSR permit must be obtained. This central database promotes the sharing of information among permitting agencies and aids in case-by-case determinations for NSR permits. We examined information contained in the RACT/BACT/LAER Clearinghouse to determine what technologies are currently used at POTW to reduce air emissions.

III. Analytical Procedures

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

A. How did we estimate post-MACT risks posed by the source category?

The EPA conducted a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause non-cancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause non-cancer health effects. The assessment also provides estimates of the distribution of cancer risks within the exposed populations, cancer incidence, and an evaluation of the potential for adverse environmental effects. The seven sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following document which provides more information on the risk assessment inputs and models: *Residual Risk Assessment for the Publicly Owned Treatment Works Source Category in Support of the December 2016 Risk and Technology Review Proposed Rule (hereafter ''Residual Risk Report'').* The

[3] A synthetic area facility installs controls in order to reduce HAP emissions below major source thresholds prior to the initial compliance date of the NESHAP.

[4] See *Letter from State of Missouri regarding Bissell Point,* 2016. While the agency no longer considers this POTW to be a major source or subject to the POTW NESHAP, the POTW is still included in discussions in supporting materials and risk modeling.

[5] *See Inputs to the Publicly Owned Treatment Works March 2016 Residual Risk Modeling,* June 2016, located in docket number EPA–HQ–OAR–2016–0490.

methods used to assess risks (as described in the seven primary steps below) are consistent with the methods that were peer-reviewed by a panel of the EPA's Science Advisory Board (SAB) in 2009 and described in their peer review report issued in 2010.[6] The methods used here are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

Data for seven POTW were used to create the RTR emissions dataset, as described in section II.C of this preamble. As stated in section II.C of this preamble, we evaluated the risk associated with emissions from seven POTW, even though one POTW was later determined to be an area source of HAP emissions. The emissions sources included in the RTR emissions dataset include the following types of emission sources currently regulated by the POTW NESHAP: Primary treatment units including, lift stations, bar screens, grit chambers, grinders, Parshall flumes, denitrification, primary clarifiers, primary settling basins, and primary effluent channels. The RTR emissions dataset also includes the following types of emission sources not currently regulated by the POTW NESHAP: Secondary treatment units, including secondary clarifiers, aeration tanks, trickling filters, UNOX systems, and open lagoons; tertiary treatment units, including chlorine sumps, splitter boxes, and chlorine contact tanks; and gravity thickeners for sludge handling. For both emissions sources that are and those that are not currently regulated by the POTW NESHAP, the dataset includes both fugitive emissions and stack emissions. This RTR emissions dataset is based primarily on data gathered through the 2015 ICR and supplemented with data from 2011 NEI, 2011 NATA, and ECHO, as described in sections II.C and II.D of this preamble. These data sources provided all of the emissions data in the RTR emissions dataset and nearly all of the facility-specific data needed to conduct the risk modeling analysis. However, there were limited instances where default values were used to fill gaps in the facility-specific data used in the risk modeling analysis. For example, default values were used for stack and fugitive release parameters. Use of defaults are discussed in detail in the memorandum, *Inputs to the Publicly Owned Treatment Works March 2016 Residual Risk Modeling,* June 2016 (Modeling Inputs Memo), available in the docket for this action.

The RTR emissions dataset was refined following an extensive quality assurance check of source locations, emission release characteristics, and annual emission estimates. We checked the coordinates of each emission source in the dataset using ArcGIS to ensure the emission point locations were correct. For further information on the EPA's quality assurance review, see the Modeling Inputs Memo available in the docket for this action.

A list of the six POTW and additional information used to develop the RTR emissions dataset are available in the POTW RTR database itself, and additional documentation on the development of this database is provided in the Modeling Inputs Memo, both of which are available in the docket for this action.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during the specified annual time period. In some cases, these ''actual'' emission levels are lower than the emission levels required to comply with the current MACT standards. The emissions level allowed to be emitted by the MACT standards is referred to as the ''MACT-allowable'' emissions level. We discussed the use of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTRs (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

We used the RTR emissions dataset to estimate MACT-allowable emissions levels. POTW were asked to provide their design capacity and their average treatment capacity as part of the 2015 ICR. In discussions with the POTW that responded, EPA noted that most POTW operate below their design capacity. To be conservative, the EPA estimated that the reported emissions were for operations at half capacity. Therefore, the EPA chose to use a single multiplier of 2.0 to scale the actual annual emissions to allowable annual emissions. The docket for this rulemaking contains information on the development of estimated MACT-allowable emissions in the Modeling Inputs Memo.

3. How did we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risks?

Both long-term and short-term inhalation exposure concentrations and health risks from the source category addressed in this proposal were estimated using the Human Exposure Model (Community and Sector HEM–3 version 1.1.0). The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources,[7] and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The air dispersion model used by the HEM–3 model (AERMOD) is one of the EPA's preferred models for assessing pollutant concentrations from industrial facilities.[8] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2011) of hourly surface and upper air observations for more than 800 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[9] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and

[6] U.S. EPA SAB. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* May 2010.

[7] This metric comes from the Benzene NESHAP. *See* 54 FR 38046.

[8] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[9] A census block is the smallest geographic area for which census statistics are tabulated.

health benchmarks are the latest values recommended by the EPA for HAP and other toxic air pollutants. These values are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants* and are discussed in more detail later in this section.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentrations of each HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, and 52 weeks per year for a 70-year period) exposure to the maximum concentration at the centroid of inhabited census blocks. Individual cancer risks were calculated by multiplying the estimated lifetime exposure to the ambient concentration of each of the HAP (in micrograms per cubic meter ($\mu g/m^3$)) by its unit risk estimate (URE). The URE is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use URE values from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) URE values, where available. In cases where new, scientifically credible dose response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate.

The EPA estimated incremental individual lifetime cancer risks associated with emissions from the facilities in the source category as the sum of the risks for each of the carcinogenic HAP (including those classified as carcinogenic to humans, likely to be carcinogenic to humans, and suggestive evidence of carcinogenic potential) [10] emitted by the modeled sources. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of the sources were also estimated for the source category as part of this assessment by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

To assess the risk of non-cancer health effects from chronic exposures, we summed the HQ for each of the HAP that affects a common target organ system to obtain the HI for that target organ system (or target organ-specific HI, TOSHI). The HQ is the estimated exposure divided by the chronic reference value, which is a value selected from one of several sources. First, the chronic reference level can be the EPA reference concentration (RfC) (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary*), defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.'' Alternatively, in cases where an RfC from the EPA's IRIS database is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic reference level can be a value from the following prioritized sources: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*http://www.atsdr.cdc.gov/mrls/index.asp*), which is defined as ''an estimate of daily human exposure to a hazardous substance that is likely to be without an appreciable risk of adverse non-cancer health effects (other than cancer) over a specified duration of exposure''; (2) the CalEPA Chronic Reference Exposure Level (REL) (*http://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*), which is defined as ''the concentration level (that is expressed in units of micrograms per cubic meter ($\mu g/m^3$) for inhalation exposure and in a dose expressed in units of milligram per kilogram-day (mg/kg-day) for oral exposures), at or below which no adverse health effects are anticipated for a specified exposure duration''; or (3), as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA, in place of or in concert with other values.

As mentioned above, in order to characterize non-cancer chronic effects, and in response to key recommendations from the SAB, the EPA selects dose-response values that reflect the best available science for all HAP included in RTR risk assessments.[11] More specifically, for a given HAP, the EPA examines the availability of inhalation reference values from the sources included in our tiered approach (*e.g.,* IRIS first, ATSDR second, CalEPA third) and determines which inhalation reference value represents the best available science. Thus, as new inhalation reference values become available, the EPA will typically evaluate them and determine whether they should be given preference over those currently being used in RTR risk assessments.

The EPA also evaluated screening estimates of acute exposures and risks for each of the HAP (for which appropriate acute dose-response values are available) at the point of highest potential off-site exposure for each facility. To do this, the EPA estimated the risks when both the peak hourly emissions rate and worst-case dispersion conditions occur. We also assume that a person is located at the point of highest impact during that same time. In accordance with our mandate in section 112 of the CAA, we use the point of highest off-site exposure to assess the potential risk to the maximally exposed individual. The acute HQ is the estimated acute exposure divided by the acute dose-response value. In each case, the EPA calculated acute HQ values using best available, short-term dose-response values. These acute dose-response values, which are described below, include the acute REL, acute exposure guideline levels (AEGL) and emergency response planning guidelines (ERPG) for 1-hour exposure durations. As discussed below, we used conservative

[10] These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's previous *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

[11] The SAB peer review of RTR Risk Assessment Methodologies is available at *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

assumptions for emissions rates, meteorology, and exposure location.

As described in the CalEPA's *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* an acute REL value (*http://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary*) is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' *Id.* at page 2. Acute REL values are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. Acute REL values are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact.

AEGL values were derived in response to recommendations from the National Research Council (NRC). The National Advisory Committee (NAC) for the Development of Acute Exposure Guideline Levels for Hazardous Substances, usually referred to as the AEGL Committee or the NAC/AEGL committee, developed AEGL values for at least 273 of the 329 chemicals on the AEGL priority chemical list. The last meeting of the NAC/AEGL Committee was in April 2010, and its charter expired in October 2011. The NAC/AEGL Committee ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs, (*https://www.epa.gov/aegl*).

As described in *Standing Operating Procedures (SOP) of the National Advisory Committee on Acute Exposure Guideline Levels for Hazardous Chemicals* (*https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf*),[12] ''the NRC's previous name for acute exposure levels—community emergency exposure levels was replaced by the term AEGL to reflect the broad application of these values to planning, response, and prevention in the community, the workplace, transportation, the military, and the remediation of Superfund sites.'' *Id.* at 2. This document also states that AEGL values ''represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to eight hours.'' *Id.* at 2.

The document lays out the purpose and objectives of AEGL by stating that ''the primary purpose of the AEGL program and the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances is to develop guideline levels for once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. In detailing the intended application of AEGL values, the document states that ''[i]t is anticipated that the AEGL values will be used for regulatory and nonregulatory purposes by U.S. Federal and state agencies and possibly the international community in conjunction with chemical emergency response, planning, and prevention programs. More specifically, the AEGL values will be used for conducting various risk assessments to aid in the development of emergency preparedness and prevention plans, as well as real-time emergency response actions, for accidental chemical releases at fixed facilities and from transport carriers.'' *Id.* at 31.

The AEGL–1 value is then specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' *Id.* at 3. The document also notes that, ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* Similarly, the document defines AEGL–2 values as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPG values are derived for use in emergency response, as described in the American Industrial Hygiene Association's Emergency Response Planning (ERP) Committee document titled, *ERPGS Procedures and Responsibilities* (*https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf*), which states that, ''Emergency Response Planning Guidelines were developed for emergency planning and are intended as health based guideline concentrations for single exposures to chemicals.''[13] *Id.* at 1. The ERPG–1 value is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 value is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' *Id.* at 1.

As can be seen from the definitions above, the AEGL and ERPG values include the similarly-defined severity levels 1 and 2. For many chemicals, a severity level 1 value AEGL or ERPG has not been developed because the types of effects for these chemicals are not consistent with the AEGL–1/ERPG–1 definitions; in these instances, we compare higher severity level AEGL–2 or ERPG–2 values to our modeled exposure levels to screen for potential acute concerns. When AEGL–1/ERPG–1 values are available, they are used in our acute risk assessments.

Acute REL values for 1-hour exposure durations are typically lower than their corresponding AEGL–1 and ERPG–1 values. Even though their definitions are slightly different, AEGL–1 values are often the same as the corresponding ERPG–1 values, and AEGL–2 values are often equal to ERPG–2 values. Maximum HQ values from our acute screening risk assessments typically result when basing them on the acute REL value for a particular pollutant. In cases where our maximum acute HQ value exceeds 1, we also report the HQ value based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1 value).

To develop screening estimates of acute exposures in the absence of hourly

[12] National Academy of Sciences (NAS), 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2.

[13] *ERP Committee Procedures and Responsibilities.* November 1, 2006. American Industrial Hygiene Association.

emissions data, generally we first develop estimates of maximum hourly emissions rates by multiplying the average actual annual hourly emissions rates by a default factor to cover routinely variable emissions. We choose the factor to use partially based on process knowledge and engineering judgment. The factor chosen also reflects a Texas study of short-term emissions variability, which showed that most peak emission events in a heavily-industrialized four-county area (Harris, Galveston, Chambers, and Brazoria Counties, Texas) were less than twice the annual average hourly emissions rate. The highest peak emissions event was 74 times the annual average hourly emissions rate, and the 99th percentile ratio of peak hourly emissions rate to the annual average hourly emissions rate was 9.[14] Considering this analysis, to account for more than 99 percent of the peak hourly emissions, we apply a conservative screening multiplication factor of 10 to the average annual hourly emissions rate in our acute exposure screening assessments as our default approach. However, we use a factor other than 10 if we have information that indicates that a different factor is appropriate for a particular source category. For this source category, the default factor of 10 was used.

As part of our acute risk assessment process, for cases where acute HQ values from the screening step were less than or equal to 1 (even under the conservative assumptions of the screening analysis), acute impacts were deemed negligible and no further analysis was performed for these HAP. In cases where an acute HQ from the screening step was greater than 1, additional site-specific data were considered to develop a more refined estimate of the potential for acute impacts of concern. Ideally, we would prefer to have continuous measurements over time to see how the emissions vary by each hour over an entire year. Having a frequency distribution of hourly emissions rates over a year would allow us to perform a probabilistic analysis to estimate potential threshold exceedances and their frequency of occurrence. Such an evaluation could include a more complete statistical treatment of the key parameters and elements adopted in this screening analysis. Recognizing that this level of data is rarely available, we instead rely on the multiplier approach. To better characterize the potential health risks associated with estimated acute exposures to HAP, and in response to a key recommendation from the SAB's peer review of the EPA's RTR risk assessment methodologies,[15] we generally examine a wider range of available acute health metrics (*e.g.,* RELs, AEGLs) than we do for our chronic risk assessments. This is in response to the SAB's acknowledgement that there are generally more data gaps and inconsistencies in acute reference values than there are in chronic reference values. In some cases, when Reference Value Arrays [16] for HAP have been developed, we consider additional acute values (*i.e.,* occupational and international values) to provide a more complete risk characterization.

4. How did we conduct the multipathway exposure and risk screening?

The EPA conducted a screening analysis examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determined whether any sources in the source category emitted any HAP known to be persistent and bioaccumulative in the environment (PB–HAP). The PB–HAP compounds or compound classes are identified for the screening from the EPA's Air Toxics Risk Assessment Library (available at *http://www2.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the POTW source category, we identified emissions of a single polycyclic organic matter (POM) species, specifically 2-methylnaphthalene. Because one or more of these PB–HAP are emitted by at least one facility in the POTW source category, we proceeded to the next step of the evaluation. In this step, we determined whether the facility-specific emissions rates of the emitted PB–HAP were large enough to create the potential for significant non-inhalation human health risks under reasonable worst-case conditions. To facilitate this step, we developed emissions rate screening levels for several PB–HAP using a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with emissions rate screening levels are: Lead, cadmium, chlorinated dibenzodioxins and furans, mercury compounds, and POM. We conducted a sensitivity analysis on the screening scenario to ensure that its key design parameters would represent the upper end of the range of possible values, such that it would represent a conservative, but not impossible scenario. The facility-specific emissions rates of these PB–HAP were compared to the emission rate screening levels for these PB–HAP to assess the potential for significant human health risks via non-inhalation pathways. We call this application of the TRIM.FaTE model the Tier 1 TRIM-screen or Tier 1 screen.

For the purpose of developing emissions rates for our Tier 1 TRIM-screen, we derived emission levels for these PB–HAP (other than lead compounds) at which the maximum excess lifetime cancer risk would be 1-in-1 million (*i.e.,* for polychlorinated dibenzodioxins and furans and POM) or, for HAP that cause non-cancer health effects (*i.e.,* cadmium compounds and mercury compounds), the maximum HQ would be 1. If the emissions rate of any PB–HAP included in the Tier 1 screen exceeds the Tier 1 screening emissions rate for any facility, we conduct a second screen, which we call the Tier 2 TRIM-screen or Tier 2 screen.

In the Tier 2 screen, the location of each facility that exceeded the Tier 1 emission rate is used to refine the assumptions associated with the environmental scenario while maintaining the exposure scenario assumptions. A key assumption that is part of the Tier 1 screen is that a lake is located near the facility; we confirm the existence of lakes near the facility as part of the Tier 2 screen. We then adjust the risk-based Tier 1 screening level for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with meteorology and environmental assumptions. PB–HAP emissions that do not exceed these new Tier 2 screening levels are considered to pose no unacceptable risks. If the PB–HAP emissions for a facility exceed the Tier 2 screening emissions rate and data are available, we may decide to conduct a more refined Tier 3 multipathway

[14] Allen, et al., 2004. Variable Industrial VOC Emissions and their impact on ozone formation in the Houston Galveston Area. Texas Environmental Research Consortium. *https://www.researchgate.net/publication/237593060_Variable_Industrial_VOC_Emissions* and_their_Impact_on_Ozone_Formation_in_the_Houston_Galveston_Area.

[15] The SAB peer review of RTR Risk Assessment Methodologies is available at *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

[16] U.S. EPA. Chapter 2.9, *Chemical Specific Reference Values for Formaldehyde in Graphical Arrays of Chemical-Specific Health Effect Reference Values for Inhalation Exposures* (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/061, 2009, and available online at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=211003.*

assessment. There are several analyses that can be included in a Tier 3 screen depending upon the extent of refinement warranted, including validating that the lake is fishable and considering plume-rise to estimate emissions lost above the mixing layer. If the Tier 3 screen is exceeded, the EPA may further refine the assessment. Notably, for the POTW source category, emissions of POM did not exceed the Tier 1 screening level. Therefore, the Tier 2 and 3 screening scenarios were not necessary.

For further information on the multipathway analysis approach, see the *Residual Risk Report,* which is available in the docket for this action.

5. How did we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect

The EPA conducts a screening assessment to examine the potential for adverse environmental effects as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

b. Environmental HAP

The EPA focuses on seven HAP, which we refer to as ''environmental HAP,'' in its screening analysis: Five PB–HAP and two acid gases. The five PB–HAP are cadmium, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The two acid gases are hydrogen chloride (HCl) and hydrogen fluoride (HF). The rationale for including these seven HAP in the environmental risk screening analysis is presented below.

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The PB–HAP are taken up, through sediment, soil, water, and/or ingestion of other organisms, by plants or animals (*e.g.,* small fish) at the bottom of the food chain. As larger and larger predators consume these organisms, concentrations of the PB–HAP in the animal tissues increases as does the potential for adverse effects. The five PB–HAP we evaluate as part of our screening analysis account for 99.8 percent of all PB–HAP emissions nationally from stationary sources (on a mass basis from the 2005 EPA NEI).

In addition to accounting for almost all of the mass of PB–HAP emitted, we note that the TRIM.FaTE model that we use to evaluate multipathway risk allows us to estimate concentrations of cadmium compounds, dioxins/furans, POM, and mercury in soil, sediment, and water. For lead compounds, we currently do not have the ability to calculate these concentrations using the TRIM.FaTE model. Therefore, to evaluate the potential for adverse environmental effects from lead compounds, we compare the estimated HEM-modeled exposures from the source category emissions of lead with the level of the secondary NAAQS for lead.[17] We consider values below the level of the secondary lead NAAQS to be unlikely to cause adverse environmental effects.

Due to their well-documented potential to cause direct damage to terrestrial plants, we include two acid gases, HCl, and HF in the environmental screening analysis. According to the 2005 NEI, HCl and HF account for about 99 percent (on a mass basis) of the total acid gas HAP emitted by stationary sources in the U.S. In addition to the potential to cause direct damage to plants, high concentrations of HF in the air have been linked to fluorosis in livestock. Air concentrations of these HAP are already calculated as part of the human multipathway exposure and risk screening analysis using the HEM3–AERMOD air dispersion model, and we are able to use the air dispersion modeling results to estimate the potential for an adverse environmental effect.

The EPA acknowledges that other HAP beyond the seven HAP discussed above may have the potential to cause adverse environmental effects. Therefore, the EPA may include other relevant HAP in its environmental risk screening in the future, as modeling science and resources allow. The EPA invites comment on the extent to which other HAP emitted by the source category may cause adverse environmental effects. Such information should include references to peer-reviewed ecological effects benchmarks that are of sufficient quality for making regulatory decisions, as well as information on the presence of organisms located near facilities within the source category that such benchmarks indicate could be adversely affected.

c. Ecological Assessment Endpoints and Benchmarks for PB–HAP

An important consideration in the development of the EPA's screening methodology is the selection of ecological assessment endpoints and benchmarks. Ecological assessment endpoints are defined by the ecological entity (*e.g.,* aquatic communities, including fish and plankton) and its attributes (*e.g.,* frequency of mortality). Ecological assessment endpoints can be established for organisms, populations, communities or assemblages, and ecosystems.

For PB–HAP (other than lead compounds), we evaluated the following community-level ecological assessment endpoints to screen for organisms directly exposed to HAP in soils, sediment, and water:

- Local terrestrial communities (*i.e.,* soil invertebrates, plants) and populations of small birds and mammals that consume soil invertebrates exposed to PB–HAP in the surface soil;
- Local benthic (*i.e.,* bottom sediment dwelling insects, amphipods, isopods, and crayfish) communities exposed to PB–HAP in sediment in nearby water bodies; and
- Local aquatic (water-column) communities (including fish and plankton) exposed to PB–HAP in nearby surface waters.

For PB–HAP (other than lead compounds), we also evaluated the following population-level ecological assessment endpoint to screen for indirect HAP exposures of top consumers via the bioaccumulation of HAP in food chains:

- Piscivorous (*i.e.,* fish-eating) wildlife consuming PB–HAP-contaminated fish from nearby water bodies.

For cadmium compounds, dioxins/furans, POM, and mercury, we identified the available ecological benchmarks for each assessment endpoint. An ecological benchmark represents a concentration of HAP (*e.g.,* 0.77 ug of HAP per liter of water) that has been linked to a particular environmental effect level through scientific study. For PB–HAP we identified, where possible, ecological benchmarks at the following effect levels:

- *Probable effect levels (PEL):* Level above which adverse effects are expected to occur frequently;

[17] The Secondary Lead NAAQS is a reasonable measure of determining whether there is an adverse environmental effect since it was established considering ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

• *Lowest-observed-adverse-effect level (LOAEL):* The lowest exposure level tested at which there are biologically significant increases in frequency or severity of adverse effects; and

• *No-observed-adverse-effect levels (NOAEL):* The highest exposure level tested at which there are no biologically significant increases in the frequency or severity of adverse effect.

We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. In general, the EPA sources that are used at a programmatic level (*e.g.,* Office of Water, Superfund Program) were used in the analysis, if available. If not, the EPA benchmarks used in regional programs (*e.g.,* Superfund) were used. If benchmarks were not available at a programmatic or regional level, we used benchmarks developed by other federal agencies (*e.g.,* National Oceanic and Atmospheric Administration (NOAA)) or state agencies.

Benchmarks for all effect levels are not available for all PB–HAP and assessment endpoints. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

d. Ecological Assessment Endpoints and Benchmarks for Acid Gases

The environmental screening analysis also evaluated potential damage and reduced productivity of plants due to direct exposure to acid gases in the air. For acid gases, we evaluated the following ecological assessment endpoint:

• Local terrestrial plant communities with foliage exposed to acidic gaseous HAP in the air.

The selection of ecological benchmarks for the effects of acid gases on plants followed the same approach as for PB–HAP (*i.e.,* we examine all of the available chronic benchmarks). For HCl, the EPA identified chronic benchmark concentrations. We note that the benchmark for chronic HCl exposure to plants is greater than the reference concentration for chronic inhalation exposure for human health. This means that where the EPA includes regulatory requirements to prevent an exceedance of the reference concentration for human health, additional analyses for adverse environmental effects of HCl would not be necessary.

For HF, the EPA identified chronic benchmark concentrations for plants and evaluated chronic exposures to plants in the screening analysis. High concentrations of HF in the air have also been linked to fluorosis in livestock. However, the HF concentrations at which fluorosis in livestock occur are higher than those at which plant damage begins. Therefore, the benchmarks for plants are protective of both plants and livestock.

e. Screening Methodology

For the environmental risk screening analysis, the EPA first determined whether any facilities in the POTW source category emitted any of the seven environmental HAP. For the POTW source category, we identified emissions of a single POM species, specifically 2-methylnaphthalene.

Because one or more of the seven environmental HAP evaluated are emitted by at least one facility in the source category, we proceeded to the second step of the evaluation.

f. PB–HAP Methodology

For cadmium, mercury, POM, and dioxins/furans, the environmental screening analysis consists of two tiers, while lead compounds are analyzed differently as discussed earlier. In the first tier, we determined whether the maximum facility-specific emission rates of each of the emitted environmental HAP were large enough to create the potential for adverse environmental effects under reasonable worst-case environmental conditions. These are the same environmental conditions used in the human multipathway exposure and risk screening analysis.

To facilitate this step, TRIM.FaTE was run for each PB–HAP under hypothetical environmental conditions designed to provide conservatively high HAP concentrations. The model was set to maximize runoff from terrestrial parcels into the modeled lake, which in turn, maximized the chemical concentrations in the water, the sediments, and the fish. The resulting media concentrations were then used to back-calculate a screening level emission rate that corresponded to the relevant exposure benchmark concentration value for each assessment endpoint. To assess emissions from a facility, the reported emission rate for each PB–HAP was compared to the screening level emission rate for that PB–HAP for each assessment endpoint. If emissions from a facility do not exceed the Tier 1 screening level, the facility ''passes'' the screen, and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening level, we evaluate the facility further in Tier 2.

In Tier 2 of the environmental screening analysis, the emission rate screening levels are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screen. The modeling domain for each facility in the Tier 2 analysis consists of 8 octants. Each octant contains 5 modeled soil concentrations at various distances from the facility (5 soil concentrations × 8 octants = total of 40 soil concentrations per facility) and one lake with modeled concentrations for water, sediment, and fish tissue. In the Tier 2 environmental risk screening analysis, the 40 soil concentration points are averaged to obtain an average soil concentration for each facility for each PB–HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening level, the facility passes the screen, and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening level, the facility does not pass the screen and, therefore, may have the potential to cause adverse environmental effects. Such facilities are evaluated further to investigate factors such as the magnitude and characteristics of the area of exceedance. Notably, for the POTW source category, emissions of POM did not exceed the Tier 1 ecological screening level. Therefore, the Tier 2 screen was not necessary.

For further information on the environmental screening analysis approach, see the *Residual Risk Report,* which is available in the docket for this action.

6. How did we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also from all other emission sources at the facility for which we have data. Using the most current available NEI data at the time of the analysis, the EPA developed ''facility-wide'' emissions estimates. For this category, the latest available version of the NEI was the 2011 NEI Version 2. It is important to note that the NEI

facility-wide inventory may not always reflect the level of detail or be representative of the same temporal period that is found in the source category specific inventory. Further information on the NEI, which is developed from state/local/tribal submitted data, can be found on the EPA's Web site at: *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory*.

We analyzed risks due to the inhalation of HAP that are emitted facility-wide for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of facility-wide risks that could be attributed to the source category addressed in this proposal. We specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Residual Risk Report,* available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. How did we consider uncertainties in risk assessment?

In the Benzene NESHAP, we concluded that risk estimation uncertainty should be considered in our decision-making under the ample margin of safety framework. Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health protective and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. A more thorough discussion of these uncertainties is included in the *Residual Risk Report,* which is available in the docket for this action.

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations.

c. Uncertainties in Inhalation Exposure

The EPA did not include the effects of human mobility on exposures in the assessment. Specifically, short-term mobility and long-term mobility between census blocks in the modeling domain were not considered.[18] The approach of not considering short or long-term population mobility does not bias the estimate of the theoretical MIR (by definition), nor does it affect the estimate of cancer incidence because the total population number remains the same. It does, however, affect the shape of the distribution of individual risks across the affected population, shifting it toward higher estimated individual risks at the upper end and reducing the number of people estimated to be at lower risks, thereby increasing the estimated number of people at specific high risk levels (*e.g.,* 1-in-10 thousand or 1-in-1 million).

In addition, the assessment predicted the chronic exposures at the centroid of each populated census block as surrogates for the exposure concentrations for all people living in that block. Using the census block centroid to predict chronic exposures tends to over-predict exposures for people in the census block who live farther from the facility and under-predict exposures for people in the census block who live closer to the facility. Thus, using the census block centroid to predict chronic exposures may lead to a potential understatement or overstatement of the true maximum impact, but is an unbiased estimate of average risk and incidence. We reduce this uncertainty by analyzing large census blocks near facilities using aerial imagery and adjusting the location of the block centroid to better represent the population in the block, as well as adding additional receptor locations where the block population is not well represented by a single location.

The assessment evaluates the cancer inhalation risks associated with pollutant exposures over a 70-year period, which is the assumed lifetime of an individual. In reality, both the length of time that modeled emission sources at facilities actually operate (*i.e.,* more or less than 70 years) and the domestic growth or decline of the modeled industry (*i.e.,* the increase or decrease in the number or size of domestic facilities) will influence the future risks posed by a given source or source category. Depending on the characteristics of the industry, these factors will, in most cases, result in an overestimate both in individual risk levels and in the total estimated number of cancer cases. However, in the unlikely scenario where a facility maintains, or even increases, its emissions levels over a period of more than 70 years, residents live beyond 70 years at the same location, and the residents spend most of their days at that location, then the cancer inhalation risks could potentially be underestimated. However, annual cancer incidence estimates from exposures to emissions from these sources would not be affected by the length of time an emissions source operates.

The exposure estimates used in these analyses assume chronic exposures to ambient (outdoor) levels of pollutants. Because most people spend the majority

[18] Short-term mobility is movement from one micro-environment to another over the course of hours or days. Long-term mobility is movement from one residence to another over the course of a lifetime.

of their time indoors, actual exposures may not be as high, depending on the characteristics of the pollutants modeled. For many of the HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, indoor levels are typically lower. This factor has the potential to result in an overestimate of 25 to 30 percent of exposures.[19]

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA that should be highlighted. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of humans at the location of the maximum concentration. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and worst-case meteorological conditions co-occur, thus, resulting in maximum ambient concentrations. These two events are unlikely to occur at the same time, making these assumptions conservative. We then include the additional assumption that a person is located at this point during this same time period. For this source category, these assumptions would tend to be worst-case actual exposures as it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and worst-case meteorological conditions occur simultaneously.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and non-cancer effects from both chronic and acute exposures. Some uncertainties may be considered quantitatively, and others generally are expressed in qualitative terms. We note as a preface to this discussion a point on dose-response uncertainty that is brought out in the EPA's *2005 Cancer Guidelines;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (EPA's *2005 Cancer Guidelines,* pages 1–7). This is the approach followed here as summarized in the next several paragraphs. A complete detailed discussion of uncertainties and variability in dose-response relationships is given in the *Residual Risk Report,* which is available in the docket for this action.

Cancer URE values used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit).[20] In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[21] When developing an upper bound estimate of risk and to provide risk values that do not underestimate risk, health-protective default approaches are generally used. To err on the side of ensuring adequate health protection, the EPA typically uses the upper bound estimates rather than lower bound or central tendency estimates in our risk assessments, an approach that may have limitations for other uses (*e.g.,* priority-setting or expected benefits analysis).

Chronic non-cancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. Specifically, these values provide an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure (RfC) or a daily oral exposure (RfD) to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. To derive values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993 and 1994) which considers uncertainty, variability, and gaps in the available data. The UF are applied to derive reference values that are intended to protect against appreciable risk of deleterious effects. The UF are commonly default values,[22] *e.g.,* factors of 10 or 3, used in the absence of compound-specific data; where data are available, UF may also be developed using compound-specific information. When data are limited, more assumptions are needed and more UF are used. Thus, there may be a greater tendency to overestimate risk in the sense that further study might support development of reference values that are higher (*i.e.,* less potent) because fewer default assumptions are needed. However, for some pollutants, it is possible that risks may be underestimated.

While collectively termed ''UF,'' these factors account for a number of different quantitative considerations when using observed animal (usually rodent) or human toxicity data in the development of the RfC. The UF are intended to account for: (1) Variation in susceptibility among the members of the human population (*i.e.,* inter-individual variability); (2) uncertainty in extrapolating from experimental animal data to humans (*i.e.,* interspecies differences); (3) uncertainty in extrapolating from data obtained in a study with less-than-lifetime exposure (*i.e.,* extrapolating from sub-chronic to chronic exposure); (4) uncertainty in extrapolating the observed data to obtain an estimate of the exposure associated with no adverse effects; and (5) uncertainty when the database is incomplete or there are problems with the applicability of available studies.

Many of the UF used to account for variability and uncertainty in the development of acute reference values are quite similar to those developed for chronic durations, but they more often use individual UF values that may be less than 10. The UF are applied based on chemical-specific or health effect-specific information (*e.g.,* simple irritation effects do not vary appreciably between human individuals, hence a value of 3 is typically used), or based on

[19] U.S. EPA. *National-Scale Air Toxics Assessment for 1996.* (EPA 453/R–01–003; January 2001; page 85.)

[20] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[21] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[22] According to the NRC report, *Science and Judgment in Risk Assessment* (NRC, 1994) ''[Default] options are generic approaches, based on general scientific knowledge and policy judgment, that are applied to various elements of the risk assessment process when the correct scientific model is unknown or uncertain.'' The 1983 NRC report, *Risk Assessment in the Federal Government: Managing the Process,* defined default option as ''the option chosen on the basis of risk assessment policy that appears to be the best choice in the absence of data to the contrary'' (NRC, 1983a, p. 63). Therefore, default options are not rules that bind the Agency; rather, the Agency may depart from them in evaluating the risks posed by a specific substance when it believes this to be appropriate. In keeping with the EPA's goal of protecting public health and the environment, default assumptions are used to ensure that risk to chemicals is not underestimated (although defaults are not intended to overtly overestimate risk). *See* EPA, *An Examination of EPA Risk Assessment Principles and Practices,* EPA/100/B–04/001, 2004, available at *https://nctc.fws.gov/resources/course-resources/pesticides/Risk%20Assessment/Risk%20Assessment%20Principles%20and%20Practices.pdf.*

the purpose for the reference value (see the following paragraph). The UF applied in acute reference value derivation include: (1) Heterogeneity among humans; (2) uncertainty in extrapolating from animals to humans; (3) uncertainty in lowest observed adverse effect (exposure) level to no observed adverse effect (exposure) level adjustments; and (4) uncertainty in accounting for an incomplete database on toxic effects of potential concern. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute reference value at another exposure duration (*e.g.,* 1 hour).

Not all acute reference values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the reference value or values being exceeded. Where relevant to the estimated exposures, the lack of short-term dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Although every effort is made to identify appropriate human health effect dose-response assessment values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response assessment value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for new IRIS assessment of that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including with regard to consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective reference value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified reference value, we also apply the most protective reference value from the other compounds in the group to estimate risk.

e. Uncertainties in the Multipathway Assessment

For each source category, we generally rely on site-specific levels of PB–HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary. This determination is based on the results of a three-tiered screening analysis that relies on the outputs from models that estimate environmental pollutant concentrations and human exposures for four PB–HAP. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[23]

Model uncertainty concerns whether the selected models are appropriate for the assessment being conducted and whether they adequately represent the actual processes that might occur for that situation. An example of model uncertainty is the question of whether the model adequately describes the movement of a pollutant through the soil. This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screen are appropriate and state-of-the-art for the multipathway risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway screen, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally-representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water and soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway assessment, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screen. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for Tier 1 and Tier 2.

For both Tiers 1 and 2 of the multipathway assessment, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do screen out, we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do not screen out, it does not mean that multipathway impacts are significant, only that we cannot rule out that possibility and that a refined multipathway analysis for the site might be necessary to obtain a more accurate risk characterization for the source category.

For further information on uncertainties and the Tier 1 and 2 screening methods, refer to the risk document, Appendix 2, *Technical Support Document for TRIM-Based Multipathway Tiered Screening Methodology for RTR: Summary and Evaluation.*

f. Uncertainties in the Environmental Risk Screening Assessment

For each source category, we generally rely on site-specific levels of environmental HAP emissions to perform an environmental screening assessment. The environmental screening assessment is based on the outputs from models that estimate environmental HAP concentrations. The same models, specifically the

[23] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

TRIM.FaTE multipathway model and the AERMOD air dispersion model, are used to estimate environmental HAP concentrations for both the human multipathway screening analysis and for the environmental screening analysis. Therefore, both screening assessments have similar modeling uncertainties.

Two important types of uncertainty associated with the use of these models in RTR environmental screening assessments (and inherent to any assessment that relies on environmental modeling) are model uncertainty and input uncertainty.[24]

Model uncertainty concerns whether the selected models are appropriate for the assessment being conducted and whether they adequately represent the movement and accumulation of environmental HAP emissions in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screen are appropriate and state-of-the-art for the environmental risk assessments conducted in support of our RTR analyses.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the environmental screen for PB–HAP, we configured the models to avoid underestimating exposure and risk to reduce the likelihood that the results indicate the risks are lower than they actually are. This was accomplished by selecting upper-end values from nationally-representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, the location and size of any bodies of water, meteorology, surface water and soil characteristics, and structure of the aquatic food web. In Tier 1, we used the maximum facility-specific emissions for the PB–HAP (other than lead compounds, which were evaluated by comparison to the secondary lead NAAQS) that were included in the environmental screening assessment and each of the media when comparing to ecological benchmarks. This is consistent with the conservative design of Tier 1 of the screen. In Tier 2 of the environmental screening analysis for PB–HAP, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the locations of water bodies near the facility location. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screen. To better represent widespread impacts, the modeled soil concentrations are averaged in Tier 2 to obtain one average soil concentration value for each facility and for each PB–HAP. For PB–HAP concentrations in water, sediment, and fish tissue, the highest value for each facility for each pollutant is used.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For both Tiers 1 and 2 of the environmental screening assessment, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying potential risks for adverse environmental impacts.

Uncertainty also exists in the ecological benchmarks for the environmental risk screening analysis. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. In general, EPA benchmarks used at a programmatic level (*e.g.,* Office of Water, Superfund Program) were used if available. If not, we used EPA benchmarks used in regional programs (*e.g.,* Superfund Program). If benchmarks were not available at a programmatic or regional level, we used benchmarks developed by other agencies (*e.g.,* NOAA) or by state agencies.

In all cases (except for lead compounds, which were evaluated through a comparison to the NAAQS), we searched for benchmarks at the following three effect levels, as described in section III.A.5 of this preamble:

1. A no-effect level (*i.e.,* NOAEL).
2. Threshold-effect level (*i.e.,* LOAEL).
3. Probable effect level (*i.e.,* PEL).

For some ecological assessment endpoint/environmental HAP combinations, we could identify benchmarks for all three effect levels, but for most, we could not. In one case, where different agencies derived significantly different numbers to represent a threshold for effect, we included both. In several cases, only a single benchmark was available. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we used all of the available effect levels to help us to determine whether risk exists and if the risks could be considered significant and widespread.

The EPA evaluates the following seven HAP in the environmental risk screening assessment: Cadmium, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), lead compounds, HCl, and HF, where applicable. These seven HAP represent pollutants that can cause adverse impacts for plants and animals either through direct exposure to HAP in the air or through exposure to HAP that is deposited from the air onto soils and surface waters. These seven HAP also represent those HAP for which we can conduct a meaningful environmental risk screening assessment. For other HAP not included in our screening assessment, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond the seven HAP that we are evaluating may have the potential to cause adverse environmental effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

Further information on uncertainties and the Tier 1 and 2 environmental screening methods is provided in Appendix 5 of the document, *Technical Support Document for TRIM-Based Multipathway Tiered Screening Methodology for RTR: Summary of Approach and Evaluation.* Also, *see* the *Residual Risk Report,* available in the docket for this action.

B. How did we consider the risk results in making decisions for this proposal?

As discussed in section II.A of this preamble, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step process to address residual risk. In the first step, the EPA

[24] In the context of this discussion, the term ''uncertainty,'' as it pertains to exposure and risk assessment, encompasses both variability in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as uncertainty in being able to accurately estimate the true result.

determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [25] of approximately [1-in-10 thousand] [*i.e.,* 100-in-1 million].'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to bring risks to an acceptable level without considering costs. In the second step of the process, the EPA considers whether the emissions standards provide an ample margin of safety ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration, costs, energy, safety, and other relevant factors, an adverse environmental effect.

In past residual risk actions, the EPA considered a number of human health risk metrics associated with emissions from the categories under review, including the MIR, the number of persons in various risk ranges, cancer incidence, the maximum non-cancer HI and the maximum acute non-cancer hazard. See, *e.g.,* 72 FR 25138, May 3, 2007; and 71 FR 42724, July 27, 2006. The EPA considered this health information for both actual and allowable emissions. *See, e.g.,* 75 FR 65068, October 21, 2010; 75 FR 80220, December 21, 2010; 76 FR 29032, May 19, 2011. The EPA also discussed risk estimation uncertainties and considered the uncertainties in the determination of acceptable risk and ample margin of safety in these past actions. The EPA considered this same type of information in support of this action.

The Agency is considering these various measures of health information to inform our determinations of risk acceptability and ample margin of safety under CAA section 112(f). As explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under [previous] section 112 is best judged on the basis of a broad set of health risk measures and information.'' 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. In responding to comment on our policy under the Benzene NESHAP, the EPA explained that:

> ''[t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health'.''

See 54 FR at 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explained that ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: ''EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.'' *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify those HAP risks that may be associated with emissions from other facilities that do not include the source categories in question, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in these categories.

The Agency understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing non-cancer risks, where pollutant-specific exposure health reference levels (*e.g.,* RfCs) are based on the assumption that thresholds exist for adverse health effects. For example, the Agency recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse non-cancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in increased risk of adverse non-cancer health effects. In May 2010, the SAB advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [26]

[25] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

[26] The EPA's responses to this and all other key recommendations of the SAB's advisory on RTR risk assessment methodologies (which is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf*) are outlined in a memorandum to this rulemaking docket from David Guinnup titled, *EPA's Actions in Response to the*

Continued

In response to the SAB recommendations, the EPA is incorporating cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency is: (1) Conducting facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) considering sources in the same category whose emissions result in exposures to the same individuals; and (3) for some persistent and bioaccumlative pollutants, analyzing the ingestion route of exposure. In addition, the RTR risk assessments have always considered aggregate cancer risk from all carcinogens and aggregate non-cancer HI from all non-carcinogens affecting the same target organ system.

Although we are interested in placing source category and facility-wide HAP risks in the context of *total* HAP risks from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Because of the contribution to total HAP risk from emission sources other than those that we have studied in depth during this RTR review, such estimates of total HAP risks would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

C. How did we perform the technology review?

Our technology review focused on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identified such developments, in order to inform our decision of whether it is ''necessary'' to revise the emissions standards, we analyzed the technical feasibility of applying these developments and the estimated costs, energy implications, non-air environmental impacts, as well as considering the emission reductions. We also considered the appropriateness of applying controls to new sources versus retrofitting existing sources.

Based on our analyses of the available data and information, we identified potential developments in practices, processes, and control technologies. For this exercise, we considered any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed (or last updated) the NESHAP, we reviewed a variety of data sources in our investigation of potential practices, processes, or controls to consider. Among the sources we reviewed were the NESHAP for various industries that were promulgated since the MACT standards being reviewed in this action. We reviewed the regulatory requirements and/or technical analyses associated with these regulatory actions to identify any practices, processes, and control technologies considered in these efforts that could be applied to emission sources in the POTW source category, as well as the costs, non-air impacts, and energy implications associated with the use of these technologies. Additionally, we requested information from facilities regarding developments in practices, processes, or control technology. Finally, we reviewed information from other sources, such as state and/or local permitting agency databases and industry-supported databases.

IV. Analytical Results and Proposed Decisions

A. What are the results of the risk assessment and analyses?

1. Inhalation Risk Assessment Results

Table 2 of this preamble provides an overall summary of the results of the inhalation risk assessment.

TABLE 2—POTW INHALATION RISK ASSESSMENT RESULTS

Maximum individual cancer risk (1-in-1 million) [1]	Estimated population at increased risk levels of cancer	Estimated annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [2]	Maximum screening acute non-cancer HQ [3]
Actual Emissions				
0.8	≥ 1-in-1 million: 0 ≥ 10-in-1 million: 0 ≥ 100-in-1 million: 0	0.0006	0.007	HQ_{REL} = 2 (formaldehyde).
Allowable Emissions [4]				
2	≥ 1-in-1 million: 240 ≥ 10-in-1 million: 0 ≥ 100-in-1 million: 0	0.001	0.01	

[1] Estimated maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[2] Maximum TOSHI. The target organ with the highest TOSHI for POTW source category for both actual and allowable emissions is the respiratory system.
[3] *See* section III.A.3 of this preamble for explanation of acute dose-response values. Acute assessments are not performed on allowable emissions.
[4] The development of allowable emission estimates can be found in the memorandum titled *Inputs to the Publicly Owned Treatment Works March 2016 Residual Risk Modeling,* June 2016 (Modeling Inputs Memo), which is available in the docket.

Key Recommendations of the SAB Review of RTR Risk Assessment Methodologies.

The results of the chronic baseline inhalation cancer risk assessment indicate that, based on estimates of current actual emissions, the MIR posed for the POTW source category is 0.8-in-1 million, with emissions of formaldehyde from the primary clarifier accounting for the majority of the risk. The total estimated cancer incidence from POTW based on actual emission levels is 0.0006 excess cancer cases per year or one case every 1,667 years, with emissions of formaldehyde and acrylonitrile contributing 50 percent and 21 percent, respectively, to the cancer incidence.

When considering MACT-allowable emissions, the MIR is estimated to be up to 2-in-1 million, driven by emissions of formaldehyde from the primary clarifier. The cancer incidence is estimated to be 0.001 excess cancer cases per year, or one excess case in every 1,000 years. Approximately 240 people are estimated to have cancer risks greater than or equal to 1-in-1 million considering allowable emissions from the POTW source category.

The maximum modeled chronic non-cancer HI (TOSHI) for the source category based on actual emissions is estimated to be 0.007, driven by formaldehyde emissions from the primary clarifier. When considering MACT-allowable emissions, the maximum chronic non-cancer TOSHI is estimated to be 0.01, driven by formaldehyde emissions.

2. Acute Risk Results

Our screening analysis for worst-case acute impacts based on actual emissions indicates the potential for one pollutant, formaldehyde, from one facility, to have an HQ above 1, based on the formaldehyde REL. Six out of seven POTW treatment plants had an estimated worst-case HQ less than or equal to 1 for all HAP.

To better characterize the potential health risks associated with the estimated worst-case acute exposure to HAP from the POTW source category, and in response to a key recommendation from the SAB's peer review of the EPA's CAA section 112(f) RTR risk assessment methodologies, we examine a wider range of available acute health metrics than we do for our chronic risk assessments. This is because there generally are greater uncertainties associated with the use of acute reference values.

By definition, the acute CalEPA REL represents a health-protective level of exposure, with no risk anticipated below those levels, even for repeated exposures; however, the health risk from higher-level exposures is unknown. Therefore, when a CalEPA REL is exceeded and an AEGL–1 or ERPG–1 level (*i.e.,* levels at which mild effects are anticipated in the general public for a single exposure) is available, we have used them as a second comparative measure. For the purpose of characterizing public health risks in RTR assessments, we typically have not compared estimated maximum off-site 1-hour exposure levels to occupational levels. This is because occupational ceiling values are not generally considered protective for the general public since they are designed to protect the worker population (presumed healthy adults) against short-duration (less than 15-minutes) exposures. As a result, for most chemicals, the 15-minute occupational ceiling values are higher than a 1-hour AEGL–1 and/or ERPG–1, making comparisons to them irrelevant unless the AEGL–1 or ERPG–1 levels are also exceeded.

The worst-case maximum estimated 1-hour exposure to formaldehyde outside the POTW treatment plant fenceline exceeds the 1-hour REL by about a factor of 2 (HQ_{REL}=2) but is substantially less than the AEGL–1 and ERPG–1 values for formaldehyde (HQ_{AEGL-1} = 0.2 and HQ_{ERPG-1} = 0.2). All other HAP in this analysis have worst-case acute HQs of 1 or less, indicating little to no potential for acute health risk.

In characterizing the potential for acute non-cancer impacts of concern, it is important to remember the upward bias of these exposure estimates. First, peak 1-hour emissions were conservatively assumed to be 10 times the annual emission rate. It was then assumed that emissions from all emission points at a given POTW peaked concurrently, and at the same time worst-case hourly meteorology was occurring. Finally, it was assumed that a person would be located at the point of maximum concentration for at least an hour. When these factors are taken together, there is likely little potential for acute health risk from POTW emissions.

3. Multipathway Risk Screening Results

PB–HAP emissions of 2-methylnaphthalene (*i.e.,* the only PB–HAP emitted from the POTW source category) did not exceed the worst-case Tier I screening emission rate. No other PB–HAP are emitted by any source in the source category.

4. Environmental Risk Screening Results

As described in section III.A of this preamble, we conducted a screening-level evaluation of the potential for adverse environmental effects associated with emissions of 2-methylnaphthalene.

In the Tier 1 screening analysis for 2-methylnaphthalene, the modeled Tier 1 concentrations of this PB–HAP did not exceed any ecological benchmarks for any POTW in the source category.

5. Facility-Wide Risk Results

The facility-wide chronic MIR and TOSHI were estimated based on emissions from all sources at the identified facilities (both MACT and non-MACT sources). The results of the facility-wide assessment of cancer risks indicate that three facilities with POTW operations have a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer MIR is 10-in-1 million, primarily driven by formaldehyde. The maximum facility-wide TOSHI for the source category is estimated to be 0.09, primarily driven by emissions of formaldehyde.

6. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice (EJ) concerns that might be associated with the source category, we performed a demographic analysis of the population close to the facilities. In this analysis, we evaluated the distribution of HAP-related cancer and non-cancer risks from the POTW source category across different social, demographic, and economic groups within the populations living near facilities identified as having the highest risks. The methodology and the results of the demographic analyses are included in a technical report, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near POTW Facilities,* available in the docket for this action.

The results of the demographic analysis are summarized in Table 3 of this preamble. These results, for various demographic groups, are based on the estimated risks from actual emissions levels for the population living within 50 km of the facilities.

TABLE 3—POTW DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to POTW	Population with chronic hazard index above 1 due to POTW
Total Population	312,861,265	0	0
Race by Percent			
White	72	0	0
All Other Races	28	0	0
Race by Percent			
White	72	0	0
African American	13	0	0
Native American	1.1	0	0
Other and Multiracial	14	0	0
Ethnicity by Percent			
Hispanic	17	0	0
Non-Hispanic	83	0	0
Income by Percent			
Below Poverty Level	14	0	0
Above Poverty Level	+86	0	0
Education by Percent			
Over 25 and without High School Diploma	15	0	0
Over 25 and with a High School Diploma	85	0	0

The results of the POTW source category demographic analysis indicate that emissions from the source category expose no person to a cancer risk at or above 1-in-1 million or to a chronic non-cancer TOSHI greater than 1. The demographics of the population living within 50 km of POTW can be found in Table 2 of the document: *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Publicly Owned Treatment Works.*

B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

1. Risk Acceptability

As noted in section II.A.1 of this preamble, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1 in 10 thousand.'' 54 FR 38045, September 14, 1989.

In determining whether risks are acceptable for the POTW source category, the EPA considered all available health information including any uncertainty in risk estimates. Also, as noted in section IV.A of this preamble, the Agency estimated risk from both actual and allowable emissions. While there are uncertainties associated with both the actual and allowable emissions, we consider the allowable emissions to be an upper bound, based on the conservative methods we used to calculate allowable emissions.

The estimated inhalation cancer risk based on actual emissions is less than 1-in-1 million. Additionally, the estimated inhalation cancer risk based on allowable emissions is 10-in-1 million. Both of these results are considerably less than the presumptive limit of acceptability (*i.e.,* 100-in-1 million). The maximum chronic inhalation non-cancer hazard indices for both the actual and allowable emissions are less than 1, indicating that chronic exposures are without appreciable risk of non-cancer health effects.

The multipathway screening analysis indicates that PB–HAP emissions did not exceed the screening emission rates for any PB–HAP evaluated.

The screening assessment of worst-case acute inhalation exposures resulting from actual emissions indicates that the worst-case maximum estimated 1-hour exposure to formaldehyde outside the facility fence line exceeds the 1-hour REL by a factor of 2 ($HQ_{REL} = 2$). It is important to note that this highest offsite HQ value assumes an hourly emissions multiplier of 10 times the annual emissions rate, while also assuming that a person will be present at the location of highest exposure for at least 1 hour when emissions from all emission points are at their peak. We further assume these peak emissions are occurring at same time worst-case meteorology is occurring. Finally, it is important to note that this conservatively estimated 1-hour formaldehyde concentration is well below the AEGL–1 and ERPG–1 for formaldehyde. Taken together, we believe there is little potential for acute health risk from formaldehyde. All other HAP in this analysis have worst-case acute HQ values outside facility fencelines of 1 or less indicating little potential risk of acute health effects.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III.A.7 of this preamble, the EPA proposes that additional standards are not necessary to bring risk to an acceptable level because cancer risks are well below the presumptive limit of acceptability, and

other health risk information indicates there is minimal likelihood of adverse non-cancer (including chronic, acute, and multipathway) health effects due to HAP emissions from this source category.

2. Ample Margin of Safety Analysis

In the ample margin of safety analysis, we evaluate available control technologies and other measures (including those evaluated under the technology review, as well as the risk reductions achieved by such potential additional measures, to determine whether additional standards are required to reduce risks further. In conducting the ample margin of safety analysis we consider the costs and economic impacts and technological feasibility of additional standards.

We are proposing that the 2002 POTW NESHAP requirements provide an ample margin of safety to protect public health. As explained in section IV.A of this preamble, we estimate that the MIR in the exposed population is less than 1-in-1 million at the actual emission levels. Additionally, the chronic non-cancer TOSHI is less than 1 and there is negligible potential for acute risk. Thus, EPA proposes that standards in the 2002 POTW NESHAP achieve the goal of providing the maximum feasible protection against risks to health from HAP.

Moreover, as noted in our discussion of the technology review in section IV.C of this preamble, no additional measures were identified for reducing HAP emissions from the POTW source category. Therefore, we propose that the 2002 standards provide an ample margin of safety to protect public health.

Although we are proposing to find that the 2002 standards provide an ample margin of safety to protect public health, we are proposing additional standards under CAA section 112(d)(6) that address HAP emissions from collection systems and all treatment units located at the POTW treatment plant. This is described more fully in Section IV.C.1 below. We are proposing that POTW develop and implement pretreatment programs to reduce organic HAP emissions from collection systems as wastewater is conveyed from an industrial user to the POTW treatment plant. All of the POTW identified as subject to the POTW NESHAP already have pretreatment programs in place; therefore, no additional emission reductions are expected. However, requiring control of emissions from collection systems by implementing pretreatment programs will allow POTW to limit potential future increases in emissions since the POTW will set limits on pollutants discharged to collection systems from industrial users. As noted above, we are proposing that the MACT standards, prior to the implementation of these proposed standards for collection systems, provide an ample margin of safety to protect public health. Therefore, we are proposing that, after the implementation of these standards for collection systems, the rule will continue to provide an ample margin of safety to protect public health. Consequently, it will not be necessary to conduct another residual risk review under CAA section 112(f) for this source category 8 years following promulgation of the new standards for collection systems, merely due to the addition of these MACT requirements. While our decisions on risk acceptability and ample margin of safety are supported even in the absence of these standards for collection systems, if we finalize the proposed requirements for these emission sources they will further strengthen our conclusions that risk is acceptable and the standards provide an ample margin of safety to protect public health.

Although we did not identify any new technologies to reduce risk for this source category, we are specifically requesting comment on whether there are additional control measures that may be able to reduce risks from the source category. We request any information on potential emission reductions of such measures, as well as the cost and health impacts of such reductions to the extent they are known.

3. Adverse Environmental Effects

Based on the results of our environmental risk screening assessment, we conclude that there is not an adverse environmental effect as a result of HAP emissions from the POTW source category. We are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect.

C. What are the results and proposed decisions based on our technology review?

As described in section III.C of this preamble, our technology review focused on identifying developments in the practices, processes, and control technologies for the POTW source category. The EPA reviewed various information sources regarding POTW emission sources that are currently regulated by the POTW NESHAP, which include, but are not limited to, influent waste stream conveyance channels, bar screens, grit chambers, grinders, pump stations, aerated feeder channels, primary clarifiers, primary effluent channels, and primary screening stations.

As discussed further in sections II.C and D of this preamble, we conducted a search of the RBLC Clearinghouse, other regulatory actions (MACT standards, area source standards, and residual risk standards) subsequent to promulgation of the 2002 POTW NESHAP, literature related to research conducted for emission reductions from POTW emission sources, and state permits. Further, we reviewed the responses to the 2015 ICR to determine the technologies and practices reported by POTW.

We reviewed these data sources for information on add-on control technologies, other treatment units, work practices, procedures, and process changes or pollution prevention alternatives that were not considered during the development of the POTW NESHAP. We also looked for information on improvements in add-on control technology, other treatment units, work practices, procedures, and process changes or pollution prevention alternatives that have occurred since development of the POTW NEHSAP. Regarding work practices or pollution prevention alternatives, we examined data provided by the POTW in the 2015 ICR for the POTW NESHAP related to the pretreatment programs they implement.

As found during the development of the POTW NESHAP, there are generally two different control options that may be used at POTW: pretreatment programs and add-on controls (*i.e.,* covers or covers vented to a control device). The following sections summarize our technology review with respect to these work practices and controls as they can be used at industrial (Group 1) POTW and non-industrial (Group 2) POTW. (See section IV.D.2 of this preamble for a discussion of the proposed terminology change from ''industrial'' and ''non-industrial'' POTW to ''Group 1'' and ''Group 2'' POTW.)

1. Pretreatment Requirements

The applicability of the 2002 POTW NESHAP to a particular POTW depends in part on whether the POTW has or is required to develop a pretreatment program. However, we are proposing to remove having a pretreatment program as a condition for the applicability of the NESHAP and make it a requirement of the NESHAP. *See* section IV.D.1 of this preamble for a discussion of these changes. This section describes the

inclusion of pretreatment requirements as a requirement of the rule.

In the 2015 ICR for the POTW NESHAP, the EPA requested data related to any pretreatment programs the POTW had developed and implemented. All 17 of the POTW that responded to the ICR included information about their specific pretreatment programs, and all six of the sources subject to the POTW NESHAP have pretreatment requirements established for all industrial wastewaters they receive. The pretreatment requirements established by the POTW are based on the National Pretreatment Program, which was developed under the CWA to prevent pollutants from being introduced into a POTW that could interfere with the operation of the POTW, or could be passed through the treatment process and impact the use or disposal of sludge or be discharged to surface waters (40 CFR 403.5).

Under the Pretreatment Program, POTW subject to the requirement to develop a pretreatment program must identify their industrial users and control, through permits, orders, or other means, the contribution of pollutants to the POTW in order to ensure compliance with all national pretreatment standards and requirements. The industrial discharger must comply with the general requirements and specific prohibitions of EPA's regulations at 40 CFR part 403.5, categorical pretreatment standards spelled out for industrial categories at 40 CFR Subchapter N—Effluent Guidelines and Standards, and specific local limits that must be developed in defined circumstances. The specific prohibitions address characteristics of the wastewater streams and include specifications such as flashpoint, pH, solids size (to avoid obstructions), flowrates, and temperature of the wastewater. The specific prohibitions also prohibit ''Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.'' (40 CFR 403.5(b)(7).) The categorical pretreatment standards are specific standards established by the EPA for certain industries. These standards vary in format and can be concentration-based limits, mass limits, production-based limits, best management practices, discharge prohibitions, or a combination of these formats. There are 35 different industries with established categorical pretreatment standards. The third component in the pretreatment requirements consists of the local limits that must be established by the POTW in the circumstances spelled out in the regulations. Local limits may need to be developed to address specific concerns of the POTW, related to the general and specific prohibitions. In addition to ensuring that industrial users' discharges to the POTW do not pass through the POTW and result in the violation of the POTW's discharge permit, such limits may be necessary in the following circumstances: to protect the POTW operations, maintain the POTW's discharge levels, avoid sludge contamination, and ensure worker health and safety. The local limits may be expressed as case-by-case discharge limits, management practices, or specific prohibitions.

In this action, we are proposing that POTW develop and implement a pretreatment program as specified in 40 CFR part 403 (General Pretreatment Regulations for Existing and New Sources of Pollution). CAA section 112(n)(3) provides that the EPA may include pretreatment requirements as a control requirement when establishing standards for POTW under CAA section 112, stating: ''When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions.'' We are proposing to add pretreatment requirements in this rulemaking because pretreatment will reduce HAP emissions from both the collection systems and the POTW treatment plant operations (including both primary and secondary treatment) by limiting the quantity of HAP in the wastewater before it is even discharged to the collection system or arrives at the POTW treatment plant. This requirement is consistent with CAA section 112(n)(3) and will serve to reduce pollutant loading into the POTW which will reduce emissions throughout all stages of treatment.

Adding this pretreatment requirement to the POTW NESHAP will not add any additional required actions or increase costs or burden for the POTW because all of the POTW that are currently subject to this rule have established pretreatment programs under the CWA; however, it will ensure that pretreatment is appropriately associated to HAP reduction requirements and remains in effect even if changes occur in CWA regulations. The pretreatment requirements are being applied to both industrial (Group 1) and non-industrial (Group 2) POTW for existing and new or reconstructed POTW.

We are requesting comment on the option of having an additional requirement that applicable POTW specifically evaluate the volatile organic HAP specific to each applicable industrial user because organic HAP that volatilize readily are most likely to result in air emissions from the water as it moves through a collection system and the POTW treatment plant. Because the CWA's National Pretreatment Program does not traditionally address air emissions, we understand that the existing pretreatment requirements for each industrial user do not necessarily reduce HAP emissions. Therefore, we are requesting comment on requiring POTW to develop pretreatment requirements that are specifically designed to reduce HAP emissions from POTW by requiring the POTW to evaluate and set local limits for volatile organic HAP. We are also requesting comment on any specific controls or operational practices that can be required to address VOC and HAP emissions from collection systems. Additionally, we are requesting comment on ways to harmonize the pretreatment programs as a means to meet both CAA and CWA requirements.

2. Industrial (Group 1) POTW

Industrial (Group 1) POTW are those POTW that receive a wastewater stream that is subject to control under another NESHAP and the treatment and controls at the POTW are used to comply with the other NESHAP requirements. We are changing the name of the subcategory in this action, which is discussed in more detail in section IV.D of this preamble. As discussed in section II.B.1 of this preamble, the 2002 requirements for industrial (Group 1) POTW are different for existing and new or reconstructed sources.

Existing industrial (Group 1) sources. At the time the 2002 NESHAP was prepared, there were no known industrial (Group 1) POTW in existence because the compliance dates for most of the NESHAP had not occurred yet. As a result of this technology review, two industrial (Group 1) POTW have been identified that are existing sources under the rule. As required, these POTW comply with the wastewater treatment requirements as specified in the other applicable NESHAP for which they act as control.

In reviewing the requirements for existing industrial (Group 1) POTW and the situations at these sources, we have identified an issue with the 2002 NESHAP requirements that could affect existing industrial (Group 1) POTW,

especially considering the new requirements being proposed for existing industrial (Group 1) and non-industrial (Group 2) POTW (*see* section IV.C.3 of this preamble). The two identified existing industrial (Group 1) POTW receive wastewater from several other industrial users at their primary treatment units, in addition to the wastewater received that is regulated by another NESHAP. Because an existing industrial (Group 1) POTW is currently only required to comply with the other applicable NESHAP, the requirements under the POTW NESHAP for primary treatment units at the POTW treatment plant do not currently apply. One of the identified existing industrial (Group 1) POTW receives wastewater from a pulp and paper plant, subject to 40 CFR part 63, subpart S (National Emission Standards of Hazardous Air Pollutants from the Pulp and Paper Industry). The subpart S wastewater is hard piped to the industrial (Group 1) POTW and is introduced into the biological treatment unit at the industrial (Group 1) POTW, as specified in 40 CFR 63.446(e)(2). Because the biological treatment unit is considered secondary treatment, there are no NESHAP requirements on the primary treatment units at this POTW. The wastewater streams entering the primary treatment units are not specifically regulated by another NESHAP. In this situation, the primary treatment units are an uncontrolled HAP emissions source even though the POTW is an industrial (Group 1) POTW and subject to another NESHAP.

Therefore, we are proposing to revise the requirements for an existing industrial (Group 1) POTW so that the POTW must comply with both the requirements for existing non-industrial (Group 2) POTW (*see* section IV.C.3 of this preamble) and the other applicable NESHAP. This proposed revision to the standards ensures that the primary treatment units are still subject to requirements, regardless of where the other NESHAP wastewater stream initially enters the POTW treatment plant for treatment. We believe all of the existing industrial (Group 1) POTW can meet the proposed requirements for existing non-industrial (Group 2) sources, and would, therefore, incur minimal cost burden associated with recordkeeping and reporting as described in section IV.D.5 of this preamble.

New or reconstructed industrial (Group 1) sources. At the time the 2002 NESHAP was prepared, we anticipated one new industrial (Group 1) POTW would become subject to the regulation. However, during this review we did not identify any new or reconstructed industrial (Group 1) POTW. During our review of the requirements for the existing industrial (Group 1) POTW, we identified an issue that could affect new industrial (Group 1) POTW. The issue is with the requirement in the 2002 rule that specifies that the source should meet the most stringent requirements of either the other applicable NESHAP, or the requirements for new or reconstructed non-industrial (Group 2) POTW in the POTW NESHAP (*i.e.,* cover primary treatment units and route emissions to a control device; or meet 0.014 HAP fraction emitted limit). Similar to the issue identified for existing industrial (Group 1) POTW, we found that an industrial (Group 1) POTW could send wastewater regulated by another NESHAP directly to a secondary treatment unit, resulting in no overlapping requirements between the other NESHAP requirements and the new or reconstructed source non-industrial (Group 2) POTW NESHAP requirements, which only apply to primary treatment units. Therefore, requiring the source to comply with the provision that is the most stringent could be confusing, and is potentially difficult to determine because non-POTW NESHAP requirements could apply to secondary treatment units only and not affect primary treatment units. We considered various other possible applicable NESHAP and the requirements in those NESHAP and decided that similar inconsistencies could occur with other applicable NESHAP. In some cases, it is possible that the requirement to comply with the most stringent NESHAP could be read to allow a source to inappropriately avoid compliance with one of the applicable NESHAP, since the demonstration of most stringent is not clear, not obvious, or not well defined.

Therefore, we are proposing to remove the requirement to comply with the most stringent NESHAP and are revising the requirement for new or reconstructed industrial (Group 1) POTW to require the POTW to meet the requirements of both the other applicable NESHAP, and the requirements of the POTW NESHAP. Meeting the requirements of both the other applicable NESHAP and the POTW NESHAP makes the rule clearer and more consistent with the standards in other applicable NESHAP and the POTW NESHAP.

3. Non-Industrial (Group 2) POTW

In the 2002 regulation, non-industrial (Group 2) POTW are those POTW that receive wastewater from industrial users but do not receive any wastewater streams that must be controlled pursuant to another NESHAP. In this action, we are changing this terminology as discussed in more detail in section IV.D of this preamble. As discussed in section II.B.4 of this preamble, requirements for non-industrial (Group 2) POTW are different for existing and new or reconstructed sources.

Existing non-industrial (Group 2) sources. During our review, four existing non-industrial (Group 2) POTW were identified. Treatment units at POTW can be covered, which suppresses the volatilization of HAP, keeping the HAP in the water and preventing emissions to the air. Also, covered units can be vented and, if vented, emissions are either routed to the atmosphere or a control device. The use of covers and controls has increased since the initial development of the POTW NESHAP. For example, in the original review for development of the 2002 rule, there was only one POTW that had covers on all primary treatment units. Other than grate covers (which do not control emissions and which we do not consider to be ''covers'' as we are using that term), no other covers were identified during the initial development of the 2002 rule. During this review, we found two POTW subject to the POTW NESHAP that cover all treatment units to address odor concerns. Also, more POTW now have at least some treatment units covered. There are two POTW subject to this rule that do not have covers on any treatment units.

When vented to an add-on control device, the exhaust stream from under a cover may be routed to a caustic scrubber, a carbon adsorber, or to a secondary wastewater treatment unit such as an aeration basin where the exhaust stream is used as feed air for biological treatment. Add-on control devices such as caustic scrubbers and carbon adsorbers are typically used at POTW treatment plants to control odors. While caustic scrubbers are not expected to be effective in controlling volatile HAP, properly designed and operated carbon adsorbers are commonly used in other industries to control volatile organic compounds (VOC) and HAP emissions. However, as installed at POTW to assist in odor control, carbon adsorbers are not typically designed or operated to provide HAP emission reduction.

Some POTW route collected gases to biological treatment processes to control odors, and this technique has been found to reduce emissions of HAP. To use biological treatment as a control for HAP emissions, treatment units must be covered, and the gases collected under the cover must be routed to the

biological treatment unit. Based on the literature search conducted as part of the technology review, biological treatment processes employing activated sludge basins can achieve a VOC control efficiency greater than 85-percent under certain conditions, and in one case, a pilot-study biological treatment system employing biofilters was able to achieve greater than 99-percent control of certain HAP. Outside of this one study, the literature on biological treatment using biofilters indicated VOC and HAP control efficiencies of between 40-percent and 83-percent. The memorandum titled *Technology Review Memorandum for the Publicly Owned Treatment Works Source Category (Technology Review Memo),* November 2016 in the docket for this action presents the literature review and information found on biological treatment systems.

Detailed ICR responses regarding the use of control measures to control HAP were received for four POTW subject to the POTW NESHAP and eight synthetic area or area sources. For these 12 sources, all except two sources route some portion of emissions to caustic scrubbers, caustic scrubbers followed by carbon adsorbers (2-stage control), or route gases to biological treatment. However, covers are not used consistently throughout the POTW; only the two POTW subject to the POTW NESHAP mentioned previously cover all their processes and collect all gases and route those gases to controls. These two POTW use covers and controls to address concerns related to odor. They do not specifically operate the controls to reduce HAP emissions and do not have any data specific to HAP reductions that could be achieved by the controls they currently use. Several other POTW were found to use partial covers and send some emissions to controls. Two other POTW subject to the POTW NESHAP and six out of eight area sources indicated the use of add-on control devices and several reported routing gases to biological treatment, but not all of the HAP emissions would be captured and controlled for these sources, because not all the treatment units are covered at these POTW. Also, of the 12 facilities that responded to the ICR, only three sources (all area sources operated by the City of San Diego) claimed any HAP reduction from their odor control devices. No indication of the VOC or HAP control efficiency for these three facilities was available. Responses to the 2015 ICR are located in the docket. *See Information Collection and Additional Data Received for the Publicly Owned Treatment Works Source Category Risk and Technology Review, October 2016 located in the docket for this rulemaking.*

In this action, the EPA is soliciting comments on the effectiveness of caustic scrubbers and carbon adsorbers to co-control HAP while primarily functioning as odor control devices. In addition, the EPA is requesting quantitative feedback on the effectiveness of using covers to suppress emissions, and identification of any other key operating parameters that may affect HAP emissions levels such as ventilation rates or control device maintenance practices.

In addition to an evaluation of the use of covers and controls to reduce HAP emissions, the EPA evaluated the HAP fraction emitted up to, but not including, secondary treatment. Data were available for two of the non-industrial (Group 2) POTW, and their HAP fractions were 0.04 and 0.03. Additionally, since we are proposing that existing industrial (Group 1) POTW must comply with both the other applicable NESHAP and the HAP fraction emitted standard in the POTW NESHAP, we evaluated available primary treatment emissions data for one of the existing industrial (Group 1) POTW. The primary treatment units at that POTW are not currently subject to regulation under another NESHAP; therefore, the emissions from primary treatment units at that industrial (Group 1) POTW are comparable to emissions from primary treatment units at the non-industrial (Group 2) POTW. That industrial (Group 1) POTW has a HAP fraction of 0.005. *See HAP Emissions from the Publicly Owned Treatment Works Source Category,* November 2016 located in the docket for this rulemaking.

These HAP fractions are lower than the HAP fraction found for the sources investigated during the development of the 2002 POTW NESHAP. At that time, the average HAP fraction of the six POTW thought to be major sources was 0.166. The available data for this proposal provides an average HAP fraction of 0.0225. However, because of the limited data and the fact that these HAP fractions are based on calculations using data from a moment in time and do not reflect the variability in operation, we are proposing a standard at twice the highest HAP fraction for which we have data. Therefore, with this action, we are proposing that existing non-industrial (Group 2) POTW must operate with an annual rolling average HAP fraction emitted from primary treatment units of 0.08 or less. By proposing to require that POTW achieve a HAP fraction that is twice the maximum HAP fraction reported by ICR respondents, we intend to address variability in wastewater influent concentrations and in treatment operations. Moreover, as proposed the rule is expected to allow POTW the flexibility to use various control schemes, including the use of add-on controls such as scrubbers or biological treatment to comply with the standard. At the same time, because the risk analysis for allowable emissions also was assessed at twice the level of actual emissions (see section III.A of this preamble) the proposed standards should ensure that emissions will not exceed the level of acceptable risk found during the risk assessment. Also, note that this proposed standard achieves at least the same level of protection as a standard based on a MACT floor calculation. *See Memorandum Providing Calculations for Total HAP Emissions from Publicly Owned Treatment Works Wastewater,* October 2016, located in the docket for this rulemaking.

We believe that the existing industrial (Group 1) and existing non-industrial (Group 2) sources identified as subject to this proposed rule can meet this HAP fraction emission limit. However, we request comment and data on whether this is true for the POTW that would be subject to this proposed standard. We are also taking comment on whether we should provide an alternative to the 0.08 HAP fraction emitted for existing non-industrial (Group 2) sources. One alternative under consideration is to allow POTW to choose to cover the primary clarifier instead of meeting the 0.08 HAP fraction emitted standard. Data collected in the 2015 ICR indicate that primary clarifiers are the largest emission source at the POTW, and several existing sources already have covers on their primary clarifiers.

We also are taking comment on a second alternative that would require existing sources to meet the same cover and control requirements as new sources by requiring them to cover their primary treatment units and to route the air in the headspace from all covered units, except the primary clarifier, to a control device via a closed vent system. The 2002 POTW NESHAP requires a cover on primary clarifiers, but does not require routing the air collected under the cover to a control device. When the 2002 POTW NESHAP was developed, data from the industry indicated that the only potential major source with covers excluded routing air from the covered primary clarifier to a control device. A primary clarifier is designed to operate with a quiescent surface in order to

promote the settling of solids. Pulling air could potentially cause turbulence on the surface of the water, thus reducing the efficiency of the primary clarifier.

EPA has determined that cover and control of the primary treatment units is an expensive option, and believes that the flexibility to develop a compliance plan to meet the HAP fraction emitted standard will allow subject facilities more latitude to develop a compliance approach to meet the HAP fraction standard. However, EPA is aware that many current facilities do have a cover and control system in place to control odors, and if those systems can be modified or operated in a manner to control HAP emissions then this alternative might be viable for some existing sources. More details related to the costs of covers and controls is located in the *Technology Review Memo,* located in the docket for this rulemaking.

New or reconstructed non-industrial (Group 2) POTW. There were no new or reconstructed non-industrial (Group 2) POTW identified during the technology review. Also, there were no new practices or control technologies that would warrant a change in the 2002 requirements for new or reconstructed non-industrial (Group 2) POTW. Thus, we are not proposing any changes in the standard for new or reconstructed non-industrial (Group 2) POTW as a result of this technology review.

D. What other actions are we proposing?

In addition to the proposed actions described above, we are proposing additional revisions. We are proposing to revise the applicability criteria to clear up confusion related to what emission sources are included in the major source calculations and to remove the applicability condition that affected sources must have a pretreatment program. We are also proposing to revise the subcategory names and definitions to further clarify the difference between them. We are proposing revisions to the startup, shutdown, and malfunction (SSM) provisions of the MACT rule in order to ensure that they are consistent with the court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We are also proposing electronic reporting for certain records. Finally, we are proposing various other technical corrections. Our analyses and proposed changes related to these issues are presented below.

1. Applicability Criteria

There are currently three criteria that a POTW must meet in order to be subject to the POTW NESHAP: (1) You must own or operate a POTW that includes a POTW treatment plant; (2) your POTW is a major source of HAP emissions or any industrial (Group 1) POTW regardless of whether or not it is a major source of HAP emissions; and (3) your POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8.

The EPA is proposing to revise the first and second applicability criteria in order to clarify the original intent of the rule by revising 40 CFR 63.1580(a)(1) and (2) to state, ''(1) You own or operate a POTW that is a major source of HAP emissions; or (2) you own or operate a Group 1 POTW regardless of whether or not it is a major source of HAP.'' *See* section IV.D.2 of this preamble for proposed revisions to the subcategory names.

We are proposing this change because during our review of the 2002 POTW NESHAP, we found several instances where a POTW might not realize they are subject to the standards, or where the applicability criteria could be misinterpreted, thus being read as excluding facilities that should be covered by this NESHAP. In addition, several EPA regional offices expressed concerns that POTW were underrepresenting their HAP emissions and raised questions about whether emissions from equipment comprising the collection systems should be included in those calculations. For instance, one region discussed obtaining measurements of high concentrations of benzene and VOC from perforated manhole covers. Upon further inspection, the elevated readings were attributed to an industrial user that was discharging pretreated wastewater into the collection system for treatment at a nearby POTW. However, that POTW was not accounting for emissions from collection systems and, to their knowledge, had not exceeded the major source threshold. In another region, a pump station located outside the POTW treatment plant had potential emissions that would exceed the major source threshold. However, because these emissions were not part of the POTW treatment plant, they had not been previously considered when determining whether the POTW was a major source of HAP emissions.

The 2002 applicability criteria in 40 CFR 63.1580(a)(2) state that it is the emissions from the entire POTW, not just the POTW treatment plant, that must be considered when determining whether the POTW is a major source. Further, this same provision states that any ''industrial'' (Group 1) POTW, which treats a wastewater stream which is regulated by another NESHAP or MACT, is subject to the rule whether or not it is a major source of HAP. The EPA recognizes that the current wording may cause confusion regarding what emissions sources must be included in the calculation and is proposing revisions to avoid such confusion.

The EPA is also proposing to revise the third applicability criterion in order to clarify the original intent of the rule by revising 40 CFR 63.1580(a) to state, ''You are subject to this subpart if your publicly owned treatment works (POTW) has a design capacity to treat at least 5 million gallons of wastewater per day and treats wastewater from an industrial user, and either paragraph (a)(1) or (a)(2) is true:.'' This proposed revision removes the requirement that a POTW develop and implement a pretreatment program from the applicability criteria, and instead clarifies the original intent of the rule, which is to limit applicability to POTW which treat at least 5 MGD.

The EPA also identified a potential scenario that could inadvertently allow major source POTW to avoid applicability to the rule based on the current third criteria. The 2002 POTW NESHAP states that in order to be subject to the rule, the POTW must be required to develop and implement a pretreatment program (40 CFR 63.1580(a)(3)). During review, we identified a potential scenario where a POTW is a major source of HAP emissions, but is not required to develop a pretreatment program by the EPA or state pretreatment program Approval Authority. In this scenario, the POTW might interpret the third criterion as not applying to them. For instance, 40 CFR 403.10(e) allows a state to assume responsibility for implementing the POTW Pretreatment Program requirements set forth in 403.8(f) in lieu of requiring the POTW to develop a POTW. Only five states have used their authority under this provision (Connecticut, Vermont, Alabama, Mississippi, and Nebraska). Similarly, other approved State Programs which implement their State Pretreatment Program traditionally by approving POTW pretreatment program development must also have procedures to carry out the activities set for in 403.8(f) in the absence of a POTW Pretreatment Program. However, the third applicability criterion in the 2002 POTW NESHAP was not intended to exclude POTW where states or the EPA, in the absence of a POTW approved

Pretreatment Program or a state approved pretreatment program, directly oversee the industrial pretreatment requirements. Instead, the EPA stated in the response to comments from the previous rulemaking [27] that the Agency added the third applicability criterion to the final rule to limit applicability to those POTW that are required to develop and implement a pretreatment program in order to eliminate all POTW with a total design flow less than 5 MGD because it was not likely that a small POTW would have sufficient emissions to trigger major source status. The EPA continues to believe that small POTW that do not trigger major source status should be excluded from the requirements in the POTW NESHAP.

We are proposing to revise the criteria to include POTW that have a design capacity of 5 MGD or greater and that treat wastewater from industrial users. These are equivalent criteria for which POTW are required to develop and implement pretreatment programs as defined in 40 CFR 403.8. However, by not stating that the ''POTW is required to develop or implement,'' we are clarifying that any POTW that is a major source of HAP emissions and meets the general requirements for the development of a pretreatment program is subject to the proposed rule, regardless of whether the state has implemented its own pretreatment program under 40 CFR 403.10(e).

It is not our intent that the requirements apply to small POTW that are not a major source of HAP emissions. Therefore, we are requesting comment on whether these proposed revisions to the applicability criteria inadvertently include POTW that would otherwise have not been included in a major source rule or inadvertently exclude sources that should be covered because they are a Group 1 POTW or are a major source of HAP emissions. Finally, we are requesting comment on whether there is a more appropriate design capacity threshold than the 5 MGD threshold proposed in this rulemaking.

2. Definitions of Subcategories

The EPA is proposing to revise the names and definitions for the subcategories identified in the POTW NESHAP in order to clear up any confusion related to applicability of the rule. The POTW NESHAP has historically subcategorized requirements based on whether or not a POTW is used as a control device to comply with specific requirements in another source category's NESHAP by classifying a POTW as either an ''industrial POTW treatment plant'' or ''non-industrial POTW treatment plant'' (40 CFR 63.1581). The 1998 proposal described how the EPA determined these subcategories for the POTW source category by stating that ''the industrial POTW treatment plant subcategory would include only those POTW treatment plants that are treating a specific regulated industrial waste stream to allow an industrial user to comply with another NESHAP'' (63 FR 66089). We further explained that any POTW not in the industrial POTW treatment plant subcategory would be classified as a non-industrial POTW treatment plant, which accepts waste from industrial users whose waste is not specifically regulated under another NESHAP. While the intent of the subcategorization was explained in the 1998 proposal and the terms are defined in the rule (in 40 CFR 63.1595), there is a potential for confusion related to applicability under the subcategories because the terms ''industrial'' and ''non-industrial'' have common, everyday meanings that are not exactly aligned with how those terms are defined in the rule. For example, a person might incorrectly assume that the term ''industrial POTW'' includes any POTW that accepts waste from an industrial user, even if the industrial user is not subject to another NESHAP, and that a ''non-industrial POTW'' is one that does not take any waste from any industrial users.

To clear up this confusion, we are proposing to change the names and definitions of the subcategories in the POTW source category. A ''Group 1 POTW treatment plant'' is one that accepts a waste stream(s) regulated under another NESHAP from an industrial user for treatment. In this instance, the POTW acts as the control mechanism by which the industrial user is able to comply with the specific requirements for that waste stream in the other NESHAP. For example, a pulp mill may choose to send a waste stream regulated by 40 CFR part 63, subpart S (Pulp and Paper Industry NESHAP) to a local POTW for treatment in lieu of constructing an onsite wastewater treatment facility to comply with the requirements of subpart S. In this example, the POTW is in a contractual agreement with the pulp mill that the POTW will meet the specific requirements for that waste stream and becomes subject to the Pulp and Paper Industry NESHAP in addition to the POTW NESHAP. A Group 1 POTW treatment plant does not have to have HAP emissions in excess of the major source threshold but is instead considered subject to this proposed rule because it is also subject to requirements in another NESHAP. If the Group 1 POTW treatment plant accepts multiple waste streams that are regulated under multiple NESHAP, we are proposing that the POTW would meet the requirements of each appropriate NESHAP for each individual waste stream.

A ''Group 2 POTW treatment plant'' is one that accepts a waste stream(s) that is not specifically regulated by another NESHAP or one that accepts wastewater from an industrial facility that complies with the specific wastewater requirements in their applicable NESHAP prior to discharging the wastewater to the POTW collection system. These waste streams can come from an industrial or commercial source. For example, a chemical plant sends a waste stream to a POTW that is not regulated by any of the chemical manufacturing source categories for treatment as a permitted discharge through the POTW's pretreatment program. In most cases, these waste streams are pretreated at the industrial facility in order to meet specific water quality requirements issued by the POTW through a Significant Industrial User (SIU) permit. Pretreatment programs are discussed in section IV.C.1 of this preamble.

The EPA is proposing the ''Group 1'' and ''Group 2'' names rather than a new pair of descriptive names because (1) the non-descriptive names ''Group 1'' and ''Group 2'' will alert persons to the fact that they need to look to the specific definitions of the subcategories in the rule, and (2) we could not identify any descriptive names that did not create the potential for confusion similar to the current ''industrial'' and ''non-industrial'' labels. The EPA requests ideas for descriptive names for the two subcategories that would not create a potential for confusion.

3. Startup, Shutdown, and Malfunction

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must

[27] *See National Emission Standards for Hazardous Air Pollutants (NESHAP): Publicly Owned Treatment Works—Background Information for Final Standards Summary of Public Comments and Responses.* EPA–453/R–99–008 October 1999.

be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 1 to Subpart VVV of Part 63 (the General Provisions Applicability Table) as is explained in more detail below. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In developing the standards in this rule, the EPA has taken into account startup and shutdown periods and has not proposed alternate standards for those periods. Periods of startup and shutdown at POTW are highly infrequent events. At all times, a plant subject to 40 CFR part 63, subpart VVV must comply with the pretreatment requirements and either the cover and closed vent system standard or the HAP fraction emissions standard.

For pretreatment requirements, startup and shutdown at the POTW do not impact the effect of pretreatment requirements, because these require POTW to apply pretreatment standards on the industrial users. The industrial users meet these standards before the wastewater enters the collection system of the POTW and so those industrial users' ability to meet the pretreatment requirements is not dependent on the operational status of the POTW.

For compliance using covers and closed vent systems routed to a control device, startup and shutdown of the POTW does not affect performance of the control device. The control system can and must be operated when wastewater first enters the system. In the unlikely event of shutdown of the POTW, the control system must be operated until the final wastewaters are treated. Because the physical and chemical characteristic of the gases in the closed vent system are not sufficiently different during startup and shutdown, the emission control system will achieve the same level of emission control that it achieves during normal operation. Therefore, there is no need for an alternative standard during startup and shutdown that is different from the standards for normal operation.

It is possible that control devices (*e.g.,* flares, carbon absorbers, or scrubbers) that receive emissions through the closed vent systems could have startup and shutdown events. This equipment must meet the requirements of 40 CFR part 63, subpart DD (because DD is incorporated by reference into subpart VVV). Subpart DD requires that control devices are operating to fully control emissions when emissions are routed to them, as specified in 40 CFR 63.693 of subpart DD, except for a limited number of hours per year for routine maintenance for control devices controlling tank emissions (40 CFR 63.693(b)(3)).

For compliance using the alternative HAP fraction emissions standard, compliance may be achieved by a combination of a cover and closed vent system to a control device, a biological treatment phase, pretreatment, or modifications to the wastewater treatment process. The covers, closed vents, and the range of potential control devices would all be available throughout startup and shutdown of the POTW. Therefore, we do not expect there to be any significant difference in the emissions due to a startup or shutdown. In addition, compliance with the HAP fraction emissions standard is demonstrated based on a 12-month rolling average. Because the averaging period is annual, any increases in the HAP fraction emitted that do occur during startup or shutdown periods (which are short), can easily be balanced by the longer periods of normal operation and lower HAP fraction emitted during the rest of the averaging period.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent and not reasonably preventable failures of emissions control, process, or monitoring equipment. (See 40 CFR 63.2, definition of Malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the District of Columbia Circuit Court has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. A malfunction should not be treated in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

Further, accounting for malfunctions in setting emission standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' '') See also, *Weyerhaeuser v Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control

device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Similar to startup and shutdown events, malfunctions of the POTW do not impact the effect of pretreatment requirements, because these require POTW to apply pretreatment standards on the industrial users. The industrial users meet these standards before the wastewater enters the collection system of the POTW.

In the case of a POTW that uses covers, closed vent systems, and control devices, the covers and closed vents are typically constructed without moving parts and are frequently permanent structures made of concrete. While malfunctions are theoretically possible, the EPA found no information from affected facilities that malfunctions have actually happened in such systems.

The control devices used to comply with the standards in 40 CFR part 63, subpart VVV are subject to the control device standards in 40 CFR part 63, subpart DD (because subpart DD is incorporated by reference into subpart VVV). A malfunction of control devices that are subject to subpart DD that results in a failure to meet a standard would be subject to the excess emissions recordkeeping and reporting requirements for the relevant device under subpart DD.

For POTW that are complying with the HAP fraction emissions alternative standard, the standard is an annual rolling average of the HAP fraction emitted. A malfunction event at a facility that is properly maintained and operated is likely to result in only a small and short-term increase in emissions that is unlikely to cause an exceedance of the annual standard. In the event that a malfunction causes an exceedance, the facility would report the nature of the malfunction in the excess emission report.

In the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable and was not instead caused in part by poor maintenance or careless operation (see 40 CFR 63.2, definition of Malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the Federal District Court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112 is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations.

The EPA is proposing changes to the SSM provisions of 40 CFR part 63, subpart VVV to comport with the *Sierra Club* court ruling and harmonize with certain provisions of 40 CFR part 63, subpart DD. Subpart VVV incorporates some requirements of subpart DD by reference. In 2015 (see 80 FR 14248), the SSM provisions of subpart DD were revised. The changes proposed here for the SSM provisions in subpart VVV are congruent to the changes already promulgated under subpart DD. This section describes how we propose to revise subpart VVV to harmonize with the SSM changes that have already been promulgated in subpart DD.

a. 40 CFR 63.1583 and 63.1586 General Duty

We are proposing to revise the General Provisions Table, Table 1 to Subpart VVV of part 63, (hereafter referred to as Table 1) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 2 to a ''no.'' Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.1583(d) and 63.1586(e) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption in Table 1. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is proposing for 40 CFR 63.1583(d) and 63.1586(e) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise Table 1 by adding an entry for 40 CFR 63.6(e)(1)(ii) and designating in column 2 that it does not apply with a ''no.'' Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.1583(d) and 63.1586(e).

b. SSM Plan

We are proposing to revise Table 1 by adding an entry for 40 CFR 63.6(e)(3) and designating that it does not apply. Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and thus the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We are proposing to revise table 1 by adding an entry for 40 CFR 63.6(f)(1) and designating that it does not apply. The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply

continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

We are proposing to leave unchanged the Table 1 entry for 40 CFR 63.6(h) because the existing rule indicated that opacity standards are not applicable. The current language of 40 CFR 63.6(h)(1) exempts sources from opacity standards during periods of SSM. Generally, POTW do not have visible emissions.

d. 40 CFR 63.1590 Performance Testing

We are proposing to revise the Table 1 entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 2 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to revise the language used to incorporate the performance testing requirements at 40 CFR 63.694, the performance testing provisions for control devices in 40 CFR part 63, subpart DD. The performance testing requirements in subpart DD differ from the General Provisions performance testing provisions in several respects. The performance testing provisions in 40 CFR 63.694(l) of subpart DD (incorporated by reference) provide that performance tests be based on representative performance (*i.e.,* performance based on normal operating conditions) and exclude periods of startup and shutdown unless specified by the Administrator. And as in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA is proposing to revise the language incorporating those sections of subpart DD that require the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Section 63.7(e) requires that the owner or operator make available to the Administrator such records ''as may be necessary to determine the condition of the performance test'' available to the Administrator upon request, but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to incorporate builds on that requirement and makes explicit the requirement to record the information.

e. Monitoring

We are proposing to revise the table 1 entry for 40 CFR 63.8 by adding specific table entries for 63.8(c)(1)(i) and (iii) and indicating ''no'' in column 2. The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

We are proposing to revise Table 1 by adding an entry for 40 CFR 63.8(d)(3) and indicating ''no'' in column 2. The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement which is no longer applicable. The EPA is proposing to add language to Table 1 that is identical to 40 CFR 63.8(d)(3), except that the final sentence is replaced with the following sentence: ''The program of corrective action should be included in the plan required under § 63.8(d)(2).''

f. 40 CFR 63.1589 Recordkeeping

We are proposing to revise the Table 1 entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 2 to a ''no.'' Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise Table 1 to add an entry for 40 CFR 63.10(b)(2)(ii) and indicating ''no'' in column 2. Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing that the requirements of 40 CFR 63.696(h) and 40 CFR 63.1589(d) be the applicable recordkeeping requirements. The regulatory text we are proposing to make applicable differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that 40 CFR 63.696(h) and 40 CFR 63.1589(d) apply to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The requirements under 40 CFR 63.696(h) and 40 CFR 63.1589(d) also provide that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the General Provisions table (Table 1 entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column 2 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable as a record required by 40 CFR 63.696(h) and 40 CFR 63.1589(d).

We are proposing to revise the General Provisions Table 1 entry for 40 CFR 63.10(b)(2)(v) by adding an entry and indicating ''no'' in column 2. When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise Table 1 by adding an entry for 40 CFR 63.10(c)(15) and indicating ''no'' in column 2. The EPA is proposing that 40 CFR 63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source's startup, shutdown, and malfunction plan or records kept to satisfy the recordkeeping requirements of the startup, shutdown, and malfunction plan specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this

requirement because SSM plans would no longer be required, and therefore 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

g. 40 CFR 63.1590 Reporting

We are proposing to revise the Table 1 entry for 40 CFR 63.10(d)(5) by adding an entry and indicating ''no'' in column 2. Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. Rather than rely on the General Provisions reporting requirement, the EPA is proposing that the existing incorporation in 40 CFR 63.693 of subpart DD adequately provides for reporting of a failure to meet a standard when control devices are being used and 40 CFR 63.1590(a) when there is a failure to meet the standard when other compliance methods are used. Section 63.693 requires that sources that fail to meet an applicable standard at any time must report the information concerning such events in the semi-annual report required for affected facilities under 40 CFR 63.697(b)(3) and (b)(4). The current provisions in subpart DD that we are proposing, which apply when control devices are used as the compliance measure, state that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions. We are proposing a similar report in 40 CFR 63.1590(a) that contains the same reporting elements, but applies when another compliance measure other than a control device, is used. This report is required annually.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to revise the Table 1 entry for 40 CFR 63.10(d)(5)(ii) by adding an entry and indicating ''no'' in column 2. Section 63.10(d)(5)(ii) describes an immediate report for SSM when a source failed to meet an applicable standard but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a SSM were not consistent with an SSM plan, because plans would no longer be required.

We are proposing to revise the Table 1 entry for 40 CFR 63.10(d)(5)(i) by changing the ''yes'' in column 2 to ''no.'' Section 63.10(d)(5)(i) describes the reporting requirements for SSM when a source failed to meet an applicable standard and was subject to 40 CFR 63.6(e)(3). To replace the General Provisions requirement, the EPA is proposing to revise reporting requirements in 40 CFR 63.1590(f) and (g), which referred to SSM plans. The revised language for 40 CFR 63.1590(f) and (g) is proposed to be in 63.1590(b) and (f) respectively. Also, a report has been added at 63.1590(a)(4) for each failure to meet an applicable standard at an affected source, the owner or operator must report the failure and event to the Administrator in an annual Compliance Report. The report must contain the date, time, duration, and the cause of each event (including unknown cause, if applicable), and a sum of the number of events in the reporting period. The report must list for each event the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We are proposing to revise Table 1 by adding an entry for 40 CFR 63.10(d)(5)(ii) and indicating ''no'' in column 2. Section 63.10(d)(5)(ii) describes an immediate report for SSM when a source failed to meet an applicable standard, was subject to 40 CFR 63.6(e)(3), but did not follow the plan. We will no longer require owners or operators to report when actions taken during SSM were not consistent with an SSM plan, because plans would no longer be required.

4. Electronic Reporting

Through this proposal, the EPA is proposing that owners and operators of POTW treatment plants submit electronic copies of required performance test reports and annual reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The EPA believes that the electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community. Under current requirements, paper reports are often stored in filing cabinets or boxes, which make the reports more difficult to obtain and use for data analysis and sharing. Electronic storage of such reports would make data more accessible for review, analyses, and sharing. Electronic reporting can also eliminate paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public.

In 2011, in response to Executive Order 13563, the EPA developed a plan [28] to periodically review its regulations to determine if they should be modified, streamlined, expanded, or repealed in an effort to make regulations more effective and less burdensome. The plan includes replacing outdated paper reporting with electronic reporting. In keeping with this plan and the White House's Digital Government Strategy,[29] in 2013 the EPA issued an Agency-wide policy specifying that new regulations will require reports to be electronic to the maximum extent

[28] *EPA's Final Plan for Periodic Retrospective Reviews,* August 2011. Available at: *https://www.epa.gov/sites/production/files/2015-09/documents/eparetroreviewplan-aug2011_0.pdf.*

[29] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at: *https://www.whitehouse.gov/sites/default/files/omb/egov/digital-government/digital-government-strategy.pdf.*

possible. By requiring electronic submission of specified reports in this proposed rule, the EPA is taking steps to implement this policy.

The EPA Web site that stores the submitted electronic data, WebFIRE, will be easily accessible to everyone and will provide a user-friendly interface that any stakeholder could access. By making data readily available, electronic reporting increases the amount of data that can be used for many purposes. One example is the development of emissions factors. An emissions factor is a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant (*e.g.,* kilograms of particulate emitted per megagram of coal burned). Such factors facilitate the estimation of emissions from various sources of air pollution and are an important tool in developing emissions inventories, which in turn are the basis for numerous efforts, including trends analysis, regional and local scale air quality modeling, regulatory impact assessments, and human exposure modeling. Emissions factors are also widely used in regulatory applicability determinations and in permitting decisions.

The EPA has received feedback from stakeholders asserting that many of the EPA's emissions factors are outdated or not representative of a particular industry emission source. While the EPA believes that the emissions factors are suitable for their intended purpose, we recognize that the quality of emissions factors varies based on the extent and quality of underlying data. We also recognize that emissions profiles on different pieces of equipment can change over time due to a number of factors (fuel changes, equipment improvements, industry work practices), and it is important for emissions factors to be updated to keep up with these changes. The EPA is currently pursuing emissions factor development improvements that include procedures to incorporate the source test data that we are proposing be submitted electronically. By requiring the electronic submission of the reports identified in this proposed action, the EPA would be able to access and use the submitted data to update emissions factors more quickly and efficiently, creating factors that are characteristic of what is currently representative of the relevant industry sector. Likewise, an increase in the number of test reports used to develop the emissions factors will provide more confidence that the factor is of higher quality and representative of the whole industry sector.

Additionally, by making the records, data, and reports addressed in this proposed rulemaking readily available, the EPA, the regulated community, and the public will benefit when the EPA conducts its CAA-required technology and risk-based reviews. As a result of having performance test reports and air emission reports readily accessible, our ability to carry out comprehensive reviews will be increased and achieved within a shorter period of time. These data will provide useful information on control efficiencies being achieved and maintained in practice within a source category and across source categories for regulated sources and pollutants. These reports can also be used to inform the technology-review process by providing information on improvements to add-on control technology and new control technology.

Under an electronic reporting system, the EPA's Office of Air Quality Planning and Standards (OAQPS) would have air emissions and performance test data in hand; OAQPS would not have to collect these data from the EPA Regional Offices or from delegated air agencies or industry sources in cases where these reports are not submitted to the EPA Regional Offices. Thus, we anticipate fewer or less substantial ICRs in conjunction with prospective CAA-required technology and risk-based reviews may be needed. We expect this to result in a decrease in time spent by industry to respond to data collection requests. We also expect the ICRs to contain less extensive stack testing provisions, as we will already have stack test data electronically. Reduced testing requirements would be a cost savings to industry. The EPA should also be able to conduct these required reviews more quickly, as OAQPS will not have to include the ICR collection time in the process or spend time collecting reports from the EPA Regional Offices. While the regulated community may benefit from a reduced burden of ICRs, the general public benefits from the Agency's ability to provide these required reviews more quickly, resulting in increased public health and environmental protection.

Electronic reporting could minimize submission of unnecessary or duplicative reports in cases where facilities report to multiple government agencies and the agencies opt to rely on the EPA's electronic reporting system to view report submissions. Where air agencies continue to require a paper copy of these reports and will accept a hard copy of the electronic report, facilities will have the option to print paper copies of the electronic reporting forms to submit to the air agencies, and, thus, minimize the time spent reporting to multiple agencies. Additionally, maintenance and storage costs associated with retaining paper records could likewise be minimized by replacing those records with electronic records of electronically submitted data and reports.

Air agencies could benefit from more streamlined and automated review of the electronically submitted data. For example, because the performance test data would be readily-available in a standard electronic format, air agencies would be able to review reports and data electronically rather than having to conduct a review of the reports and data manually. Having reports and associated data in electronic format will facilitate review through the use of software ''search'' options, as well as the downloading and analyzing of data in spreadsheet format. Additionally, air agencies would benefit from the reported data being accessible to them through the EPA's electronic reporting system wherever and whenever they want or need access (as long as they have access to the Internet). The ability to access and review air emission report information electronically will assist air agencies to more quickly and accurately determine compliance with the applicable regulations, potentially allowing a faster response to violations which could minimize harmful air emissions. This benefits both air agencies and the general public.

The proposed electronic reporting of data is consistent with electronic data trends (*e.g.,* electronic banking and income tax filing). Electronic reporting of environmental data is already common practice in many media offices at the EPA. The changes being proposed in this rulemaking are needed to continue the EPA's transition to electronic reporting.

5. Reporting

In addition to the changes made to reporting to address the court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008) on SSM requirements described in section IV.D.3 of this preamble, we are proposing several other changes to the reporting requirements. We are proposing to add an annual report; to remove language that is redundant with 40 CFR part 63, subpart A, general provision requirements; and to not delegate the approval of the Inspection and Monitoring Plan. We are also asking for comment on requiring specific test methods and modeling procedures instead of allowing the POTW to specify

their methods in the Inspection and Monitoring Plan. Our analyses and proposed changes related to these issues are presented below.

Annual Report. EPA is proposing to add a requirement to submit an annual report. The proposed contents for the annual report include general identification information for the POTW; information on the monthly HAP fraction emitted calculation results; and cover inspection results for new or reconstructed POTW, depending on which compliance method the POTW selects. Also, we are proposing to include a requirement to report information about periods when the POTW has a failure to meet a standard as part of the annual report. The failure to meet report is discussed in more detail in section IV.D.3.g. We are also proposing that the annual report be submitted electronically. The rationale and benefits of having this report submitted electronically is discussed in section IV.D.4 of this preamble.

EPA is proposing the annual report to address the changes in SSM requirements as described in section IV.D.3.g, to receive timely compliance information from the POTW, and as a method to collect additional information to enhance our ability to carry out comprehensive reviews within a shorter period of time. These data will provide useful information on HAP fraction emissions and inspection results across regulated POTW. These reports can be used to inform the technology-review process, reduce the need for complex ICRs, and could result in a decrease in time spent by industry in responding to data collection requests.

For existing POTW, it is proposed that the initial annual report will cover the first year after the compliance date, which is one year after promulgation, and 3 months are proposed to allow time for the POTW to compile and prepare the information for submittal. Therefore, the first annual report for existing POTW must be submitted to the Administrator 27 months after the promulgation of this rulemaking. For new POTW, the initial annual report must be submitted 15 months after the POTW becomes subject to the rule. The initial annual report must cover the 12-month period following the day the new POTW becomes subject, with 3 months proposed to allow the POTW time to compile and prepare the submittal. All subsequent annual reports, for new or existing POTW, must be submitted annually thereafter.

General Provision requirements. EPA is proposing to revise the reporting and notification requirements in 40 CFR 63.1590 and 63.1591 by removing those requirements that are redundant to requirements that are included in the General Provisions (40 CFR 63, subpart A) and marked as applicable in Table 1 of the POTW NESHAP. Specifically, much of the language in the 2002 POTW NESHAP requirements in 40 CFR 63.1590(a), (b), (d), and 40 CFR 63.1591(a) and (b) is the same or very similar to the requirements in the general provisions at 40 CFR 63.9(h)(2), (h)(3), (a)(4), (a)(4), and (b)(2), respectively. EPA has simplified the language by removing these redundant requirements and removed possible confusion caused by two sets of requirements.

In addition to removing these redundant requirements, EPA is proposing to add provisions that provide specific information on what is required in the Notification of Compliance Status for POTW, see 63.1591(b). We have proposed that submitting an Inspection and Monitoring Plan required for POTW meeting the HAP fraction emitted standard satisfies the requirement for submitting a Notification of Compliance Status. We have also clarified in the proposed rule, for new or reconstructed POTW that select the cover and control compliance option, the Notification of Compliance Status report must include a description of the POTW treatment units and installed covers, in addition to the performance test results.

Inspection and Monitoring Plan. The Inspection and Monitoring Plan is required in 40 CFR 63.1588(c) for a POTW meeting the HAP fraction emitted standard. It requires the POTW to document their plan for determining the HAP faction emitted, including the test methods and equipment to be used to collect the necessary data, the method for calculating the HAP fraction emitted, and the method that will be used to demonstrate continuous compliance with the HAP fraction emitted standard. The Inspection and Monitoring Plan must be submitted for approval. EPA is proposing in this rulemaking that the Inspection and Monitoring Plan can only be approved by the EPA and the authority to approve this plan cannot be delegated to a state, local or tribal agency. Because the methods and procedures used to determine the HAP fraction emitted are critical in accurately determining whether the POTW is in compliance, and the continuous compliance monitoring methods proposed by the POTW in their Inspection and Monitoring Plan could vary widely, EPA is retaining this authority to ensure that consistent and accurate test and monitoring methods are used. EPA considers it necessary to keep this approval authority so that all Inspection and Monitoring Plans can be reviewed consistently by one agency.

Test Methods and Modeling Procedures/Software. In the Inspection and Monitoring Plans, the POTW must specify the test methods they will use to determine flowrates and HAP concentrations of incoming wastewater streams, as well as how they will model and determine their HAP emissions. We are considering requiring specific test methods that must be used to determine the flowrate of wastewater to the POTW and the HAP concentrations in incoming wastewater streams. We are also considering requiring specific modeling procedures and/or software to be used to determine HAP emissions. By specifying the specific test methods and modeling procedures to be used for this data and not allowing POTW to select any method they choose, EPA can ensure consistency and accuracy of the data used to determine compliance with the rule. EPA requests comment on whether we should require specific test methods and modeling procedures/software in the final regulation. We request comment on which test methods or modeling procedures/software should be required. We are interested in information on test methods and modeling procedures/software with respect to their accuracy, what are typically used at POTW, and whether there are specific methods that are required in Title V or NPDES permit requirements.

6. Other Corrections or Clarifications

The EPA is also proposing the following technical corrections:

- Revising all references to ''new or reconstructed POTW'' to refer to ''new POTW'' because the definition of ''new'' includes reconstructed POTW.
- Combining text from 40 CFR 63.1581 and 63.1582 because the language was redundant and confusing. Revising 40 CFR 63.1581 to include all combined text. Revising 40 CFR 63.1583(c) to include the text from the current 40 CFR 63.1582(c).
- Revising 40 CFR 63.1586(b)(1) to require covers ''designed and operated to prevent exposure of the wastewater to the atmosphere.'' instead of ''designed and operated to minimize exposure of the wastewater to the atmosphere.'' This clarification has also been made to the definition of ''cover'' in 40 CFR 63.1595.
- Revising 40 CFR 63.1587 to include compliance requirements that are currently found in 40 CFR 63.1584 and 63.1587 and deleting 40 CFR 63.1584.
- Revising all references to ''annual'' rolling average to ''12-month'' rolling

average to clarify that the HAP fraction must be determined on a monthly basis and not an annual basis.

• Revising all references to ''annual HAP mass loadings'' and ''annual HAP emissions'' to now state ''monthly HAP mass loadings'' and ''monthly HAP emissions'' to further clarify that the HAP faction must be determined on a monthly basis.

• Clarifying method for calculating the HAP fraction emitted. Moving the detailed instructions about how the HAP fraction emitted should be calculated from 40 CFR 63.1588(c)(4) to 40 CFR 63.1588(c)(3). The requirements in 40 CFR 63.1588(c)(3) specifically address how the HAP fraction emitted should be calculated, while the requirements in 40 CFR 63.1588(c)(4) are about monitoring for continuous compliance.

• Revising 40 CFR 63.1588(a)(3) to clarify that a cover defect must be repaired within 45 ''calendar'' days; currently the paragraph says ''45 days.''

• Adding definitions of existing source/POTW and new source/POTW to 40 CFR 63.1595 to clarify the date that determines whether a POTW is existing or new.

• Revising the definition of ''affected source'' in 40 CFR 63.1595 to clarify that the affected source is the source that is subject to the rule.

• Revising references to ''POTW treatment plant'' to refer to ''POTW'' to clarify that the rule applies to all parts of the POTW and not just the treatment plant portion. Updating the title of 40 CFR 63.1588 to ''How do Group 1 and Group 2 POTW demonstrate compliance?'' from ''What inspections must I conduct?'' The new title better reflects the contents of this section.

• Removing the details on how to calculate the HAP fraction emitted from the definition of HAP fraction emitted. The procedure for how to calculate the HAP fraction emitted is provided within the text of the rule. Having a summarized version of this procedure in the definition was redundant and could cause confusion where the language was not the same.

• Revising two references to dates to insert the actual date. The phrase ''six months after October 26, 1999'' was replaced with ''April 26, 2000''; and the phrase ''60 days after October 26, 1999'' was replaced with ''December 27, 1999''. These changes do not result in a change in the date, it only clarifies the specific dates being referenced.

• Clarifying that the reports required in 40 CFR 63.1589(b)(1) include the records associated with the HAP loading and not just the records associated with the HAP emissions determination.

• Removing definition of ''Reconstruction'' in 40 CFR 63.1595 as ''Reconstruction'' is already defined in the General Provisions of 40 CFR 63.2.

E. What compliance dates are we proposing?

The EPA is proposing that all of the amendments being proposed in this action would be effective on the date 30 days after these proposed amendments are final, *see* 40 CFR 63.1587. Additionally, the EPA is proposing a 12-month compliance schedule so that existing non-industrial (Group 2) POTW treatment plants have time to develop the recordkeeping and reporting systems needed to comply with the requirements of the HAP fraction emission limit. Likewise, industrial (Group 1) POTW treatment plants need time to develop methods to demonstrate compliance with both the POTW NESHAP and the other applicable NESHAP, including development of the recordkeeping and reporting systems, and 12 months will provide industrial (Group 1) POTW the time needed to make these changes. Finally, POTW need time to examine their SIU pretreatment permits and evaluate if additional limits should be incorporated, and issue those revised permits. We estimate that 12 months should provide the time necessary to perform this evaluation and revise permits, as needed. Table 4 below describes the compliance dates and applicable standards for new and existing sources based on their subcategory and date of construction or reconstruction.

TABLE 4 TO SUBPART VVV OF PART 63—COMPLIANCE DATES AND REQUIREMENTS

If the construction/reconstruction date is . . .	Then the owner or operators must comply with . . .	And the owner or operators must achieve compliance . . .
Group 1 POTW:		
(1) After December 27, 2016.	(i) New source requirements in §§ 63.1583(b); 63.1586(b) or (c); 63.1586(d); and 63.1588 through 63.1591.	Upon initial startup.
(2) After December 1, 1998 but on or before December 27, 2016.	(i) New source requirements in § 63.1583(b) but instead of complying with both requirements, you must comply with the most stringent requirement [1]. (ii) New source requirements in §§ 63.1586(b) or (c); 63.1586(d); and 63.1588 through 63.1591.	(i) Upon initial startup through the date 12 months after the final rule is published in the **Federal Register**. (ii) On or before date 12 months after the final rule is published in the **Federal Register**.
(3) On or before December 1, 1998.	(i) Existing source requirements in § 63.1583(a) but instead of complying with both requirements, you must comply with only the other applicable NESHAP. (ii) Existing source requirements in §§ 63.1583(a); 63.1586(a) and (d); and 63.1588 through 63.1591.	(i) By the compliance date specified in the other applicable NESHAP. (ii) On or before date 12 months after the final rule is published in the **Federal Register**.
Group 2 POTW:		
(4) After December 27, 2016.	(i) New source requirements in §§ 63.1586(b) or (c); 63.1586(d); and 63.1588 through 63.1591.	Upon initial startup.
(5) After December 1, 1998 but on or before December 27, 2016.	(i) New source requirements in § 63.1586(b) or (c) [1] ..... (ii) New source requirements in §§ 63.1586(b) or (c); 63.1586(d); and 63.1588 through 63.1591.	(i) Upon initial startup through the date 12 months after the final rule is published in the **Federal Register**. (ii) On or before date 12 months after the final rule is published in the **Federal Register**.
(6) On or before December 1, 1998.	(i) Existing source requirements in §§ 63.1586(a) and (d); and 63.1588 through 63.1591.	On or before date 12 months after the final rule is published in the **Federal Register**.

[1] **Note:** This represents the requirements in the original 1999 NESHAP, which are applicable until 12-months after the final rule is published in the **Federal Register**. During those 12-months, you must transition to the new requirements in Table 2 (2)(ii) and (5)(ii) for Group 1 and Group 2 POTW, respectively.

The tasks necessary for existing and new POTW to comply with electronic reporting of annual reports requires two years for compliance. The EPA is proposing that the compliance date for electronically submitting annual reports would be two years after the date the final rule is published in the **Federal Register** or once the form has been available in CEDRI for at least 1 year, whichever date is later. Prior to that date, you must submit these reports to the Administrator at the address listed in 40 CFR 63.13, unless another format is agreed upon with the Administrator. We will post the date that each form becomes available on the CEDRI Web site (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) and notice will be sent out through the Clearinghouse for Inventories and Emissions Factors (CHIEF) Listserv (*https://www.epa.gov/chief/chief-listserv*). This extended compliance period affords you more time to reprogram systems that collect data for periodic reports and to become familiar with the new reporting form. This time extension will also allow air agencies more time to implement electronic reporting and to begin making any needed permit revisions to accommodate electronic reporting. In addition, it will provide sufficient time for you and us to conduct beta testing of the CEDRI form in advance of initial reporting. We believe that this will instill confidence that any technical issues with the forms will be resolved prior to requiring the use of the forms for compliance purposes, such that use of the forms will not interfere with your ability to comply with the requirement for electronic submittal.

The tasks necessary to comply with the other proposed amendments require no time or resources. Therefore, the EPA believes that existing facilities will be able to comply with the other proposed amendments, including those related to SSM periods, as soon as the final rule is effective, which will be the date 30 days after publication of the final rule. Therefore, the EPA is specifically soliciting comment and additional data on the burden of complying with the other proposed amendments.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The EPA estimates, based on the responses to the 2015 ICR and the 2011 NEI, that there are six POTW that are engaged in treatment of industrial wastewater and are currently subject to the POTW NESHAP. Two of these facilities are considered industrial (Group 1) POTW, while the remaining four are considered non-industrial (Group 2) POTW. The EPA estimates that all six POTW currently subject to the POTW NESHAP would be affected by the proposed pretreatment requirements, and the two industrial (Group 1) POTW would be affected by the requirement for these facilities to comply with both the requirements for existing non-industrial (Group 2) POTW (*see* section IV.C.3 of this preamble) and the other applicable NESHAP. In addition, the EPA estimates that the four existing non-industrial (Group 2) POTW would be affected by the proposed requirement to meet the 0.08 HAP fraction emitted limit. The EPA is not currently aware of any planned or potential new or reconstructed industrial (Group 1) or non-industrial (Group 2) POTW.

B. What are the air quality impacts?

The EPA estimates that annual organic HAP emissions from the six POTW subject to the rule are approximately 20 tpy; there are no expected inorganic HAP emissions from this category. The EPA does not anticipate any additional emission reductions from the proposed changes to the rule because each of the subject facilities is currently able to meet the proposed emission limits and there are no anticipated new or reconstructed facilities.

C. What are the cost impacts?

The six POTW subject to this proposal will incur costs to meet recordkeeping and reporting requirements. Nationwide annual costs associated with the proposed requirements are estimated to be $10,530 per year. We believe that the six POTW which are known to be subject to this proposed rule can meet these proposed requirements without incurring additional capital or operational costs. Therefore, the only costs associated with this proposed rule are related to recordkeeping and reporting. For further information on the proposed requirements for this rule, see section IV of this preamble. For further information on the costs associated with the proposed requirements of this rule, see the document titled *Supporting Statement for Publicly Owned Treatment Works* in the docket. The *Technology Review Memo* in the docket for this action presents cost estimates associated with the regulatory options that were not selected for inclusion in this proposed rule.

D. What are the economic impacts?

The economic impact analysis is designed to inform decision makers about the potential economic consequences of a regulatory action. For the current proposal, the EPA estimated the annual cost of recordkeeping and reporting as a percentage of reported sewage fees received by the affected POTW. For the proposed regulations, costs are expected to be less than 0.05 percent of collected sewage fees, based on publicly available financial reports from the fiscal year ending in 2015 for the affected entities.

In addition, the EPA performed a screening analysis for impacts on small businesses by comparing estimated population served by the affected entities to the population limit set forth by the U.S. Small Business Administration. The screening analysis found that the population served for all affected entities is greater than the limit qualifying a public entity as small.

More information and details of EPA's analysis of the economic impacts, including the conclusions stated above, is provided in the technical document ''Economic Impact Analysis for the Publicly Owned Treatment Works National Emissions Standards for Hazardous Air Pollutants Risk and Technology Review,'' which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2016–0490).

E. What are the benefits?

As all affected entities are already in compliance with the proposed regulations, no additional emissions reductions are expected, but the proposed requirements will ensure that future emissions do not increase beyond current levels. Moreover, the EPA believes that the electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends of data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community. See section IV.D.4 of this preamble for more information.

VI. Request for Comments

We solicit comments on all aspects of this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used

for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

In addition to the requests for comment in this section, the EPA requests comments on topics already identified in these sections:

The EPA requests identification of any additional POTW that are subject to the POTW NESHAP, other than those listed in the list of facilities in the POTW RTR database. The database can be found in the docket for this action. In addition, the EPA is not currently aware of any planned or potential new or reconstructed industrial (Group 1) or non-industrial (Group 2) POTW. Thus, the EPA requests comment on any other POTW that are subject to the POTW NESHAP or could potentially become subject in the future.

The EPA requests comment on the extent to which HAP emissions from other POTW not evaluated in the environmental risk screening assessment may cause adverse environmental effects. Such information should include references to peer-reviewed ecological effects benchmarks that are of sufficient quality for making regulatory decisions, as well as information on the presence of organisms located near facilities within the source category that such benchmarks indicate could be adversely affected.

We are requesting comment on whether POTW should evaluate volatile organic HAP and set limits within the pretreatment programs for these pollutants.

We are soliciting comment on the effectiveness of caustic scrubbers and carbon adsorbers to co-control HAP while primarily functioning as odor control devices. In addition, we are requesting quantitative feedback on the effectiveness of using covers only to suppress emissions, and identification of any other key operating parameters that may affect HAP emissions levels such as ventilation rates or control device maintenance practices.

We are also requesting comment on whether we should provide an alternative to the 0.08 HAP fraction emitted standard that would require either covering the primary clarifier, or would require covering and control of all primary treatment units (except primary clarifiers, which would only require covering). The second alternative would keep the requirements for existing sources consistent with those for new sources, namely to cover and control their primary treatment units or to meet the HAP fraction standard.

We do not intend to include small POTW that are not a major source of HAP emissions. Therefore, we request comment on whether the proposed revisions to the applicability criteria inadvertently include POTW that would otherwise have not been included in a major source rule.

We are requesting comment on any specific test methods or emission estimation software that EPA could require for determining the HAP fraction emitted. Additionally, we are requesting comment on whether EPA should specify test methods and emission estimation software instead of allowing the POTW to submit site-specific methods with the Inspection and Monitoring Plan.

We are requesting comment on our proposal that subject POTW would be in compliance with all of the amendments by 1 year after publication of the final rule. We believe that is enough time for (1) non-industrial (Group 2) POTW treatment plants need to set up recordkeeping and reporting systems to comply with the HAP fraction emission limit; (2) industrial (Group 1) POTW treatment plants to develop recordkeeping and reporting systems to comply with both the POTW NESHAP and the other applicable NESHAP; and (3) POTW to examine their SIU pretreatment permits and evaluate if additional limits should be incorporated and issue those revised permits. The EPA also believes that existing facilities will be able to comply with the other proposed amendments, including those related to SSM periods, as soon as the final rule is effective, which will be the date 30 days after publication of the final rule. The EPA is specifically soliciting comment and additional data on the burden of complying with the other proposed amendments.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR Web site at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html*. The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR Web site, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (*i.e.*, commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).
3. Gather documentation for any suggested emissions revisions (*e.g.*, performance test reports, material balance calculations, etc.).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2016–0490 (through the method described in the **ADDRESSES** section of this preamble).
5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility. We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR Web site at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html*.

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

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

This action is not a significant regulatory action and, therefore, was not submitted to OMB for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1891.08. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information to be collected includes annual reports of the HAP fraction emitted, an inspection and monitoring plan explaining how compliance with the HAP fraction emitted limit will be achieved, and pretreatment reports required under 40

CFR part 403. This information will be used to ensure that the requirements are being implemented and are complied with on a continuous basis. Specifically, the information will be used to: (1) Identify sources subject to the standards; (2) ensure that the POTW NESHAP is being properly applied; and (3) ensure that the POTW NESHAP is being complied with.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners and operators of POTW. The North American Industry Classification System code for the respondents affected by the standard is 221320 (Sewage Treatment Facilities), which corresponds to the United States Standard Industrial Classification code 4952 (Sewerage Systems).

Respondent's obligation to respond: Respondents are obligated to respond in accordance with the reporting requirements under 40 CFR 63.1590(a)(2), 63.1590(e), and 63.1590(g).

Estimated number of respondents: Six.

Frequency of response: Twelve per year.

Total estimated burden: Ninety-nine hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $10,350 (per year), includes $0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oria_submissions@omb.eop.gov*, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than January 26, 2017. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. There are no small entities affected in this regulated industry. See the technical document, *Economic Impact Analysis for the Publicly Owned Treatment Works National Emissions Standards for Hazardous Air Pollutants Risk and Technology Review* which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2016–0490) for more detail.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. As discussed in section II.B.1 of this preamble, we have identified only seven POTW that are subject to this proposed rule and none of those POTW are owned or operated by tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

The action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and B and sections IV.A and B of this preamble and the *Residual Risk Report* memorandum contained in the docket for this rulemaking.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

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

The documentation for this decision is contained in section III.A.6 of this preamble and in the corresponding technical report, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Publicly Owned Treatment Works,* available in the docket for this action. The proximity results indicate, for eight of the 11 demographic categories, that the population percentages within 5 km and 50 km of source category emissions are greater than the corresponding national percentage for those same demographics. However, the results of the risk analysis presented in section III.A.6 of this preamble and in the corresponding technical report indicate that there are no people exposed to a cancer risk greater than or equal to 1-in-1 million as a result of emissions from POTW.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 8, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend part 63 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

■ 2. Subpart VVV of part 63 is revised to read as follows:

Subpart VVV—National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

Sec.

Applicability

63.1580 Am I subject to this subpart?
63.1581 Does the subpart distinguish between different types of POTW?

Group 1 POTW Description and Requirements

63.1582 [Reserved]
63.1583 What are the emission points and control requirements for a Group 1 POTW?
63.1584 [Reserved]
63.1585 How does a Group 1 POTW demonstrate compliance?

Group 1 and Group 2 POTW Requirements

63.1586 What are the emission points and control requirements for Group 1 and Group 2 POTW?
63.1587 When do I have to comply?
63.1588 How do Group 1 and Group 2 POTW demonstrate compliance?
63.1589 What records must I keep?
63.1590 What reports must I submit?

General Requirements

63.1591 What are my notification requirements?
63.1592 Which General Provisions apply to my POTW?
63.1593 [Reserved]
63.1594 Who enforces this subpart?
63.1595 List of definitions.

Table 1 to Subpart VVV of Part 63—Applicability of 40 CFR Part 63 General Provisions to Subpart VVV

Table 2 to Subpart VVV of Part 63—Compliance Dates and Requirements

Subpart VVV—National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

Applicability

§ 63.1580 Am I subject to this subpart?

(a) You are subject to this subpart if your publicly owned treatment works (POTW) has a design capacity to treat at least 5 million gallons of wastewater per day and treats wastewater from an industrial or commercial facility; and either paragraph (a)(1) or (2) of this section is true:

(1) You own or operate a POTW that is a major source of HAP emissions; or

(2) You own or operate a Group 1 POTW regardless of whether or not it is a major source of hazardous air pollutants (HAP).

(b) If your existing POTW is not located at a major source as of October 26, 1999, but thereafter becomes a major source for any reason other than reconstruction, then, for the purpose of this subpart, your POTW would be considered an existing source.

Note to Paragraph (b): See § 63.2 of the National Emission Standards for Hazardous Air Pollutants (NESHAP) General Provisions in subpart A of this part for the definitions of major source and area source.

(c) If you commence construction or reconstruction of your POTW after December 1, 1998, then the requirements for a new POTW apply.

§ 63.1581 Does the subpart distinguish between different types of POTW?

Yes, POTW are divided into two subcategories: Group 1 POTW and Group 2 POTW, as described in paragraphs (a) through (c) of this section.

(a) Your POTW is a Group 1 POTW if an industrial discharger complies with its NESHAP by using the treatment and control located at your POTW. Your POTW accepts the regulated waste stream and provides treatment and controls as an agent for the industrial discharger. Group 1 POTW is defined in § 63.1595.

(b) Your POTW is a Group 2 POTW if you treat wastewater that is not subject to control by another NESHAP or the industrial facility does not comply with its NESHAP by using the treatment and controls located at your POTW. Group 2 POTW is defined in § 63.1595.

(c) If, in the future, an industrial discharger complies with its NESHAP by using the treatment and control located at your POTW, then your Group 2 POTW becomes a Group 1 POTW on the date your POTW begins treating that regulated industrial wastewater stream.

Group 1 POTW Description and Requirements

§ 63.1582 [Reserved]

§ 63.1583 What are the emission points and control requirements for a Group 1 POTW?

(a) The emission points and control requirements for an existing Group 1 POTW are both those specified by the appropriate NESHAP for which the POTW treats regulated industrial wastewater and those emission points and control requirements set forth in § 63.1586(a) and (d).

(b) The emission points and control requirements for a new Group 1 POTW are both those specified by the appropriate NESHAP for which the POTW treats regulated industrial wastewater and those emission points and control requirements set forth in § 63.1586(b) or (c), and (d), as applicable.

(c) If your Group 1 POTW accepts one or more specific regulated industrial waste streams as part of compliance with one or more other NESHAP, then you are subject to all the requirements of each appropriate NESHAP for each waste stream and the applicable requirements set forth in § 63.1586.

(d) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 63.1584 [Reserved]

§ 63.1585 How does a Group 1 POTW demonstrate compliance?

(a) A Group 1 POTW demonstrates compliance by operating treatment and control devices that meet all requirements specified in the appropriate NESHAP.

(b) A Group 1 POTW must also demonstrate compliance by meeting the requirements specified in § 63.1586, as applicable, as well as the applicable requirements in §§ 63.1587 through 63.1595.

Group 1 and Group 2 POTW Requirements

§ 63.1586 What are the emission points and control requirements for Group 1 and Group 2 POTW?

(a) Existing Group 1 and Group 2 POTW must demonstrate that the HAP fraction emitted from all emission points up to, but not including, the secondary influent pumping station or the secondary treatment units does not exceed 0.08 on a 12-month rolling average. You must demonstrate that for your POTW, the sum of all HAP emissions from these emission points divided by the sum of all HAP mass loadings to the POTW results in a 12-month rolling average of the fraction emitted no greater than 0.08. You may use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard.

(b) Except as provided in paragraph (c) of this section, new Group 1 and Group 2 POTW must install covers on the emission points up to, but not including, the secondary influent pumping station or the secondary treatment units. These emission points are treatment units that include, but are not limited to, influent waste stream conveyance channels, bar screens, grit chambers, grinders, pump stations, aerated feeder channels, primary clarifiers, primary effluent channels, and primary screening stations. In addition, all covered units, except primary clarifiers, must have the air in the headspace underneath the cover ducted to a control device in accordance with the standards for closed-vent systems and control devices in § 63.693, except you may substitute visual inspections for leak detection rather than Method 21 of appendix A–7 of part 60 of this chapter. Covers must meet the following requirements:

(1) Covers must be tightly fitted and designed and operated to prevent exposure of the wastewater to the atmosphere. This includes, but is not limited to, the absence of visible cracks, holes, or gaps in the roof sections or between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) If wastewater is in a treatment unit, each opening in the cover must be maintained in a closed, sealed position, unless plant personnel are present and conducting wastewater or sludge sampling, or equipment inspection, maintenance, or repair.

(c) As an alternative to the requirements in paragraph (b) of this section, a new Group 1 and Group 2 POTW may comply by demonstrating, for all emission points up to the secondary influent pumping station or the secondary treatment units, that the HAP fraction emitted does not exceed 0.014 on a 12-month rolling average. You must demonstrate that for your POTW, the sum of all HAP emissions from these units divided by the sum of all HAP mass loadings to the POTW results in a 12-month rolling average of the HAP fraction emitted of no greater than 0.014. You may use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard.

(d) Existing and new Group 1 and Group 2 POTW must develop and implement a pretreatment program as defined by § 403.8 of this chapter.

(e) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if the requirements of the applicable standard have been met. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 63.1587 When do I have to comply?

Sources subject to this subpart are required to achieve compliance on or before the dates specified in table 2 to this subpart.

§ 63.1588 How do Group 1 and Group 2 POTW demonstrate compliance?

(a) If you are complying with § 63.1586(b) by using covers, you must conduct the following inspections:

(1) You must visually check the cover and its closure devices for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) You must perform an initial visual inspection within 60 calendar days of becoming subject to this NESHAP and perform follow-up inspections at least once per year, thereafter.

(3) In the event that you find a defect on a treatment unit in use, you must repair the defect within 45 calendar days. If you cannot repair within 45 calendar days, you must notify the EPA or the designated state authority immediately and report the reason for the delay and the date you expect to complete the repair. If you find a defect on a treatment unit that is not in service, you must repair the defect prior to putting the treatment unit back in wastewater service.

(b) If you own or operate a control device used to meet the requirements for § 63.1586(b), you must comply with the inspection and monitoring requirements of § 63.695(c).

(c) To comply with the performance standard specified in § 63.1586(a) or (c), you must develop, to the satisfaction of the Administrator, an Inspection and Monitoring Plan. This Inspection and Monitoring Plan must include, at a minimum, the following:

(1) A method to determine the influent HAP mass loading, *i.e.,* the monthly mass quantity for each HAP entering the wastewater treatment plant.

(2) A method to determine your POTW's monthly HAP emissions for all units up to but not including the secondary influent pumping station or the secondary treatment units. The method you use to determine your HAP emissions, such as modeling or direct source measurement, must:

(i) Be approved by the Administrator for use at your POTW;

(ii) Account for all factors affecting emissions from your plant including, but not limited to, emissions from wastewater treatment units; emissions resulting from inspection, maintenance, and repair activities; fluctuations (*e.g.,* daily, monthly, annual, seasonal) in your influent wastewater HAP concentrations; annual industrial loading; performance of control devices; or any other factors that could affect your annual HAP emissions; and

(iii) Include documentation that the values and sources of all data, operating conditions, assumptions, etc., used in your method result in an accurate estimation of monthly emissions from your plant.

(3) A method to demonstrate that your POTW meets the HAP fraction emitted standards specified in § 63.1586(a) or (c), *i.e.,* the sum of all monthly HAP emissions over a 12-month period from paragraph (c)(2) of this section divided by the sum of all monthly HAP mass loadings over a 12-month period from paragraph (c)(1) of this section results in a fraction emitted of 0.08 or less to demonstrate compliance with § 63.1586(a) or 0.014 or less to demonstrate compliance with § 63.1586(c). The Inspection and Monitoring plan must require, at a minimum, that you perform the calculations shown in paragraphs (c)(3)(i) through (viii) of this section by the end of each month for the previous month. This calculation shall demonstrate that your 12-month rolling average of the HAP fraction emitted is 0.08 or less when demonstrating compliance with § 63.1586(a) or 0.014 or less when demonstrating compliance with § 63.1586(c).

(i) Determine the average daily flow in million gallons per day (MGD) of the wastewater entering your POTW for the previous month;

(ii) Determine the concentration of each HAP in your influent listed in Table 1 to subpart DD of this part for the previous month;

(iii) Using the previous month's information in paragraphs (c)(3)(i) and (ii) of this section, determine a total monthly flow-weighted loading in pounds per day (lbs/day) of each HAP entering your POTW for the previous month;

(iv) Sum up the values for each individual HAP loading in paragraph (c)(3)(iii) of this section and determine a total monthly flow-weighted loading value (lbs/day) for all HAP entering your POTW for the previous month;

(v) Based on the previous month's information in paragraph (c)(3)(iii) of this section along with source testing and emission modeling, for each HAP, determine the monthly emissions (lbs/day) from all wastewater treatment units up to, but not including, secondary treatment units for the previous month;

(vi) Sum the values of emissions for each individual HAP determined in paragraph (c)(3)(v) of this section and calculate the total monthly emissions value for the previous month for all HAP from all wastewater treatment units up to, but not including, secondary treatment units;

(vii) Calculate the HAP fraction emitted value for the previous month, using Equation 1 of this section as follows:

$$f_e \text{ monthly} = \Sigma E / \Sigma L \quad \text{(Eq. 1)}$$

Where:

f_e monthly = HAP fraction emitted for the previous month

ΣE = Total HAP emissions value from paragraph (c)(3)(vi) of this section

ΣL = Total monthly loading from paragraph (c)(3)(iv) of this section

(viii) Average the HAP fraction emitted value for the month determined in paragraph (c)(3)(vii) of this section, with the values determined for the previous 11 months, to calculate a 12-month rolling average of the HAP fraction emitted.

(4) A method to demonstrate, to the satisfaction of the Administrator, that your POTW is in continuous compliance with the requirements of § 63.1586(a) or (c). Continuous compliance means that your emissions, when averaged over the course of a 12-month period, do not exceed the level of emissions that allows your POTW to comply with § 63.1586(a) or (c) on a monthly basis. For example, you may identify a parameter(s) that you can monitor that assures your emissions, when averaged over a 12-month period, will meet the requirements in § 63.1586(a) or (c) each month. Some example parameters that may be considered for monitoring include your wastewater influent HAP concentration and flow, industrial loading from your permitted industrial dischargers, and your control device performance criteria. Where emission reductions are due to proper operation of equipment, work practices, or other operational procedures, your demonstration must specify the frequency of inspections and the number of days to completion of repairs.

(d) Prior to receiving approval on the Inspection and Monitoring Plan, you must follow the plan submitted to the Administrator as specified in § 63.1590(e) or (f), as applicable.

§ 63.1589 What records must I keep?

(a) To comply with the equipment standard specified in § 63.1586(b), you must prepare and maintain the records required in paragraphs (a)(1) through (4) of this section:

(1) A record for each treatment unit inspection required by § 63.1588(a). You must include a treatment unit identification number (or other unique identification description as selected by you) and the date of inspection.

(2) For each defect detected during inspections required by § 63.1588(a), you must record the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and the date the repair to correct the defect is completed.

(3) If repair of the defect is delayed as described in § 63.1588(a)(3), you must also record the reason for the delay and the date you expect to complete the repair.

(4) If you own or operate a control device used to meet the requirements for § 63.1586(b), you must comply with the recordkeeping requirements of § 63.696(a), (b), (g), and (h).

(b) To comply with the performance standard specified in § 63.1586(a) or (c), you must prepare and maintain the records required in paragraphs (b)(1) through (3) of this section:

(1) A record of the methods and data used to determine your POTW's monthly HAP loading and emissions as determined in § 63.1588(c)(1) and (2);

(2) A record of the methods and data used to determine that your POTW meets the HAP fraction emitted standard (either 0.08 or 0.014), as determined in § 63.1588(c)(3); and

(3) A record of the methods and data that demonstrates that your POTW is in continuous compliance with the requirements of § 63.1588(c)(4).

(c) To comply with the requirement to meet the pretreatment program requirements defined by § 403.8 of this chapter as specified in § 63.1586(d), you must maintain records as required in part 403 of this chapter.

(d) An owner or operator must record the malfunction information specified in paragraphs (d)(1) through (3) of this section.

(1) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure, record the date, time, and duration of the failure.

(2) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the volume of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) Record actions taken to minimize emissions in accordance with § 63.1583(d) or § 63.1586(e) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

§ 63.1590 What reports must I submit?

(a) You must submit annual reports containing the information specified in paragraphs (a)(1) through (4) of this section, if applicable. You must submit annual reports following the procedure specified in paragraph (a)(5) of this section. For existing units, the initial annual report is due no later than date 27 months after the final rule is published in the **Federal Register** and must cover the 12-month timeframe beginning date 12 months after the final rule is published in the **Federal Register**. For new units, the initial annual report is due 15 months after your POTW becomes subject to the requirements in this subpart and must cover the first 12 months of operation after your POTW becomes subject to the requirements of this subpart. Subsequent annual reports are due by the same date each year as the initial annual report and must contain information for the 12-month period following the 12-month period included in the previous annual report.

(1) The general information specified in paragraphs (a)(1)(i) and (ii) of this section must be included in all reports.

(i) The company name, POTW treatment plant name, and POTW treatment plant address; and

(ii) Beginning and ending dates of the reporting period.

(2) The monthly HAP fraction emitted as calculated in § 63.1588(c)(3)(vii) for each month in the 12-month period covered by the annual report.

(3) If you use covers to comply with the requirements of § 63.1586(b), you must submit the following:

(i) The dates of each visual inspection conducted;

(ii) The defects found during each visual inspection; and

(iii) For each defect found during a visual inspection, how the defects were repaired, whether the repair has been completed and either the date each repair was completed or the date each repair is expected to be completed.

(4) If a source fails to meet an applicable standard, report such events in the annual report. Report the number of failures to meet an applicable standard. For each instance, report the date, time, and duration of each failure. For each failure, the report must include a list of the affected sources or equipment, an estimate of the volume of each regulated pollutants emitted over any emission limit, and a description of the method used to estimate the emissions.

(5) You must submit the report to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method. Beginning on the date 2 years after date the final rule is published in the **Federal Register** or once the reporting form has been available in CEDRI for 1 year, whichever is later, you must submit subsequent annual reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*)). You must use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the CEDRI Web site (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date forms become available in CEDRI will be listed on the CEDRI Web site. The reports must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted.

(b) If you own or operate a control device used to meet the requirements of § 63.1586(b), you must submit the notifications and reports required by § 63.697(b), including a notification of performance tests; a performance test report; a malfunction report; and a summary report. These notifications and reports must be submitted to the Administrator, except for performance test reports. Within 60 calendar days after the date of completing each performance test (as defined in § 63.2) required by subpart DD of this part, you must submit the results of the performance test following the procedure specified in either paragraph (b)(1) or (2) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via CEDRI. Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the XML schema listed on the EPA's ERT Web site.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13 subpart A of this part, unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (b)(1) of this section is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (b)(1) of this section.

(c) You must comply with the delay of repair reporting required in § 63.1588(a)(3).

(d) You may apply to the Administrator for a waiver of recordkeeping and reporting requirements by complying with the requirements of § 63.10(f). Electronic reporting to the EPA cannot be waived.

(e) To comply with the performance standard specified in § 63.1586(a), you must submit, for approval by the Administrator, an Inspection and Monitoring Plan explaining your compliance approach by date 180 days after the final rule is published in the **Federal Register**.

(f) To comply with the performance standard specified in § 63.1586(c), you must submit, for approval by the Administrator, an Inspection and Monitoring Plan explaining your compliance approach 90 calendar days prior to beginning operation of your new POTW or by date 180 days after the final rule is published in the **Federal Register**, whichever is later.

(g) To comply with the pretreatment requirements specified in § 63.1586(d), you must submit the reports required by § 403.12 this chapter.

General Requirements

§ 63.1591 What are my notification requirements?

(a) You must submit an initial notification as required in § 63.9(b).

(b) You must submit a notification of compliance status as required in § 63.9(h), as specified below:

(1) If you comply with § 63.1586(a) or (c) by meeting the applicable HAP fraction emitted standard, submission of the Inspection and Monitoring Plan as required in § 63.1588(c) and § 63.1590(e) and (f), as applicable, meets the requirement for submitting a notification of compliance status report in § 63.9(h).

(2) If you comply with § 63.1586(b) and use covers on the emission points and route air in the headspace underneath the cover to a control device, you must submit a notification of compliance status as specified in § 63.9(h) that includes a description of the POTW treatment units and installed covers, as well as the information required for control devices including the performance test results.

(c) You must notify the Administrator, within 30 calendar days of discovering that you are out of compliance with an applicable requirement of this subpart, including the following:

(1) The HAP fraction emitted standard as specified in § 63.1586(a) or (c), as applicable.

(2) The requirement to route the air in the headspace underneath the cover of all units equipped with covers, except primary clarifiers, to a control device as specified in § 63.1586(b).

(3) The requirement to develop and implement a pretreatment program as specified in § 63.1586(d).

(4) The requirement to operate and maintain the affected source as specified in § 63.1586(e).

(5) The requirement to inspect covers annually and repair defects as specified in § 63.1588(a).

(6) The requirement to comply with the inspection and monitoring

requirements of § 63.695(c) as specified in § 63.1588(b).

(7) The procedures specified in an Inspection and Monitoring Plan prepared as specified in § 63.1588(c).

(8) The requirements specified in an appropriate NESHAP for which the Group 1 POTW treats regulated industrial waste as specified in § 63.1583(a) or (b), as applicable.

§ 63.1592 Which General Provisions apply to my POTW?

(a) Table 1 to this subpart lists the General Provisions (40 CFR part 63, subpart A) that do and do not apply to POTW.

(b) Unless a permit is otherwise required by law, the owner or operator of a Group 1 POTW that is not a major source is exempt from the permitting requirements established by 40 CFR part 70.

§ 63.1593 [Reserved]

§ 63.1594 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable state, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a state, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under subpart E of this part, the authorities listed in (b)(1) through (5) of this section are retained by the Administrator of U.S. EPA and cannot be delegated to the state, local, or tribal agency.

(1) Approval of alternatives to the requirements in §§ 63.1580, 63.1583, and 63.1586 through 63.1588.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

§ 63.1595 List of definitions.

Affected source means a POTW that has a design capacity of 5 million gallons of wastewater per day or more, treats industrial wastewater, and is either a Group 1 POTW or a major source that is a Group 2 POTW.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the waste material managed in a treatment unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the treatment unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the treatment unit, or a cover may be formed by structural features permanently integrated into the design of the treatment unit. The cover and its closure devices must be made of suitable materials that will prevent exposure of the waste material to the atmosphere and will maintain the integrity of the cover and its closure devices throughout its intended service life.

Existing source or Existing POTW means a POTW that commenced construction on or before December 1, 1998, and has not been reconstructed after December 1, 1998.

Fraction emitted means the fraction of the mass of HAP entering the POTW wastewater treatment plant which is emitted prior to secondary treatment.

Group 1 POTW means a POTW that accepts a waste stream regulated by another NESHAP and provides treatment and controls as an agent for the industrial discharger. The industrial discharger complies with its NESHAP by using the treatment and controls located at the POTW. For example, an industry discharges its benzene-containing waste stream to the POTW for treatment to comply with 40 CFR part 61, subpart FF—National Emission Standard for Benzene Waste Operations. This definition does not include POTW treating waste streams not specifically regulated under another NESHAP.

Group 2 POTW means a POTW that does not meet the definition of a Group 1 POTW. A Group 2 POTW can treat a waste stream that is either:

(1) Not specifically regulated by another NESHAP, or

(2) from an industrial facility that complies with the specific wastewater requirements in their applicable NESHAP prior to discharging the waste stream to the POTW collection system.

New source or New POTW means any POTW that commenced construction or reconstruction after December 1, 1998.

Publicly owned treatment works (POTW) means a treatment works, as that term is defined by section 112(e)(5) of the Clean Air Act, which is owned by a municipality (as defined by section 502(4) of the Clean Water Act), a state, an intermunicipal or interstate agency, or any department, agency, or instrumentality of the federal government. This definition includes any intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The wastewater treated by these facilities is generated by industrial, commercial, and domestic sources. As used in this regulation, the term POTW refers to both any publicly owned treatment works which is owned by a state, municipality, or intermunicipal or interstate agency and, therefore, eligible to receive grant assistance under the Subchapter II of the Clean Water Act, and any federally owned treatment works as that term is described in section 3023 of the Solid Waste Disposal Act.

POTW treatment plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

Secondary treatment means treatment processes, typically biological, designed to reduce the concentrations of dissolved and colloidal organic matter in wastewater.

Waste and wastewater means a material, or spent or used water or waste, generated from residential, industrial, commercial, mining, or agricultural operations or from community activities that contain dissolved or suspended matter, and that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated in a publicly owned treatment works.

TABLE 1 TO SUBPART VVV OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.1		Applicability.

TABLE 1 TO SUBPART VVV OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.1(a)(1)	Yes	Terms defined in the Clean Air Act.
§ 63.1(a)(2)	Yes	General applicability explanation.
§ 63.1(a)(3)	Yes	Cannot diminish a stricter NESHAP.
§ 63.1(a)(4)	Yes	Not repetitive. Doesn't apply to section 112(r).
§ 63.1(a)(5)	Yes	Section reserved.
§ 63.1(a)(6)–(8)	Yes	Contacts and authorities.
§ 63.1(a)(9)	Yes	Section reserved.
§ 63.1(a)(10)	Yes	Time period definition.
§ 63.1(a)(11)	Yes	Postmark explanation.
§ 63.1(a)(12)–(14)	Yes	Time period changes. Regulation conflict. Force and effect of subpart A.
§ 63.1(b)(1)	Yes	Initial applicability determination of subpart A.
§ 63.1(b)(2)	Yes	Section reserved.
§ 63.1(b)(3)	No	Subpart VVV specifies recordkeeping of records of applicability determination.
§ 63.1(c)(1)	Yes	Requires compliance with both subpart A and subpart VVV.
§ 63.1(c)(2)(i)	No	State options regarding title V permit. Unless required by the State, area sources subject to subpart VVV are exempted from permitting requirements.
§ 63.1(c)(2)(ii)–(iii)	No	State options regarding title V permit.
§ 63.1(c)(3)	Yes	Section reserved.
§ 63.1(c)(4)	Yes	Extension of compliance.
§ 63.1(c)(5)	No	Subpart VVV addresses area sources becoming major due to increase in emissions.
§ 63.1(d)	Yes	Section reserved.
§ 63.1(e)	Yes	Title V permit before a relevant standard is established.
§ 63.2	Yes	Definitions.
§ 63.3	Yes	Units and abbreviations.
§ 63.4		Prohibited activities and circumvention.
§ 63.4(a)(1)–(3)	Yes	Prohibits operation in violation of subpart A.
§ 63.4(a)(4)	Yes	Section reserved.
§ 63.4(a)(5)	Yes	Compliance dates.
§ 63.4(b)	Yes	Circumvention.
§ 63.4(c)	Yes	Severability.
§ 63.5		Preconstruction review and notification requirements.
§ 63.5(a)(1)	Yes	Construction and reconstruction.
§ 63.5(a)(2)	Yes	New source—effective dates.
§ 63.5(b)(1)	Yes	New sources subject to relevant standards.
§ 63.5(b)(2)	Yes	Section reserved.
§ 63.5(b)(3)	Yes	No new major sources without Administrator approval.
§ 63.5(b)(4)	Yes	New major source notification.
§ 63.5(b)(5)	Yes	New major sources must comply.
§ 63.5(b)(6)	Yes	New equipment added considered part of major source.
§ 63.5(c)	Yes	Section reserved.
§ 63.5(d)(1)	Yes	Implementation of section 112(l)(2)—application of approval of new source construction.
§ 63.5(d)(2)	Yes	Application for approval of construction for new sources listing and describing planned air pollution control system.
§ 63.5(d)(3)	Yes	Application for reconstruction.
§ 63.5(d)(4)	Yes	Administrator may request additional information.
§ 63.5(e)	Yes	Approval of reconstruction.
§ 63.5(f)(1)	Yes	Approval based on State review.
§ 63.5(f)(2)	Yes	Application deadline.
§ 63.6		Compliance with standards and maintenance requirements.
§ 63.6(a)	Yes	Applicability of compliance with standards and maintenance requirements.
§ 63.6(b)	Yes	Compliance dates for new and reconstructed sources.
§ 63.6(c)	Yes	Compliance dates for existing sources apply to existing Group 1 POTW.
§ 63.6(d)	Yes	Section reserved.
§ 63.6(e)	Yes, except as noted	Operation and maintenance requirements apply to new sources.
§ 63.6(e)(1)(i)	No	General duty; See § 63.1583(d) and § 63.1586(e) for general duty requirements.
§ 63.6(e)(1)(ii)	No	Requirement to correct malfunctions.
§ 63.6(e)(3)	No	SSM plans are not required.
§ 63.6(f), except as noted	Yes, except as noted	Compliance with non-opacity emission standards applies to new sources.
§ 63.6(f)(1)	No	Standards apply at all times.
§ 63.6(g)	Yes	Use of alternative non-opacity emission standards applies to new sources.
§ 63.6(h)	No	POTW do not typically have visible emissions.
§ 63.6(i)	Yes	Extension of compliance with emission standards applies to new sources.
§ 63.6(j)	Yes	Presidential exemption from compliance with emission standards.
§ 63.7		Performance testing requirements.
§ 63.7(a)	Yes	Performance testing is required for new sources.

TABLE 1 TO SUBPART VVV OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.7(b)	Yes	New sources must notify the Administrator of intention to conduct performance testing.
§ 63.7(c)	Yes	New sources must comply with quality assurance program requirements.
§ 63.7(d)	Yes	New sources must provide performance testing facilities at the request of the Administrator.
§ 63.7(e)	Yes, except as noted	Requirements for conducting performance tests apply to new sources.
§ 63.7(e)(1)	No	The performance testing provisions of § 63.694 for control devices are incorporated by reference into subpart DD of this part.
§ 63.7(f)	Yes	New sources may use an alternative test method.
§ 63.7(g)	Yes	Requirements for data analysis, recordkeeping, and reporting associated with performance testing apply to new sources.
§ 63.7(h)	Yes	New sources may request a waiver of performance tests.
§ 63.8		Monitoring requirements.
§ 63.8(a)	Yes	Applicability of monitoring requirements.
§ 63.8(b)	Yes	Monitoring shall be conducted by new sources.
§ 63.8(c)	Yes, except as noted	New sources shall operate and maintain continuous monitoring systems (CMS).
§ 63.8(c)(1)(i)	No	See § 63.1583(d) for general duty requirement with respect to minimizing emissions and continuous monitoring requirements.
§ 63.8(c)(1)(iii)	No	See the applicable CMS quality control requirements under § 63.8(c) and (d).
§ 63.8(d)	Yes, except as noted	New sources must develop and implement a CMS quality control program.
§ 63.8(d)(3)	No	The owner or operator must keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, and make them available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator must keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).
§ 63.8(e)	Yes	New sources may be required to conduct a performance evaluation of CMS.
§ 63.8(f)	Yes	New sources may use an alternative monitoring method.
§ 63.8(g)	Yes	Requirements for reduction of monitoring data.
§ 63.9		Notification requirements.
§ 63.9(a)	Yes	Applicability of notification requirements.
§ 63.9(b)	Yes, except as noted	Initial Notification due February 23, 2000 or 60 days after becoming subject to this subpart.
§ 63.9(c)	Yes	Request for extension of compliance with subpart VVV.
§ 63.9(d)	Yes	Notification that source is subject to special compliance requirements as specified in § 63.6(b)(3) and (4).
§ 63.9(e)	Yes	Notification of performance test.
§ 63.9(f)	No	POTW do not typically have visible emissions.
§ 63.9(g)	Yes	Additional notification requirements for sources with continuous emission monitoring systems.
§ 63.9(h)	Yes, except as noted	Notification of compliance status when the source becomes subject to subpart VVV. See exceptions in § 63.1591(b).
§ 63.9(i)	Yes	Adjustments to time periods or postmark deadlines or submittal and review of required communications.
§ 63.9(j)	Yes	Change of information already provided to the Administrator.
§ 63.10		Recordkeeping and reporting requirements.
§ 63.10(a)	Yes	Applicability of notification and reporting requirements.
§ 63.10(b)(1)–(2)	Yes, except as noted	General recordkeeping requirements.
§ 63.10(b)(2)(i)	No	Recordkeeping for occurrence and duration of startup and shutdown.
§ 63.10(b)(2)(ii)	No	Recordkeeping for failure to meet a standard, see § 63.696.
§ 63.10(b)(2)(iii)	Yes	Maintenance records.
§ 63.10(b)(2)(iv)	No	Actions taken to minimize emissions during SSM.
§ 63.10(b)(2)(v)	No	Actions taken to minimize emissions during SSM.
§ 63.10(b)(2)(vi)	Yes	Recordkeeping for CMS malfunctions.
§ 63.10(b)(2)(vii)–(ix)	Yes	Other CMS requirements.
§ 63.10(b)(3)	No	Recording requirement for applicability determination.
§ 63.10(c)	Yes, except as noted	Additional recordkeeping requirements for sources with continuous monitoring systems.
§ 63.10(c)(8)	No	See § 63.696(h) for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the volume of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.

TABLE 1 TO SUBPART VVV OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.10(c)(7)	No	See § 63.696(h) for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the volume of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(c)(15)	No	Use of SSM plan.
§ 63.10(d)	Yes, except as noted	General reporting requirements.
§ 63.10(d)(5)	No	See § 63.697(b) for malfunction reporting requirements.
§ 63.10(e)	Yes	Additional reporting requirements for sources with continuous monitoring systems.
§ 63.10(f)	Yes	Waiver of recordkeeping and reporting requirements.
§ 63.11	Yes	Control device and equipment leak work practice requirements.
§ 63.11(a) and (b)	Yes	If a new source uses flares to comply with the requirements of subpart VVV, the requirements of § 63.11 apply.
§ 63.11(c), (d) and (e)	Yes	Alternative work practice for equipment leaks.
§ 63.12	Yes	State authority and designation.
§ 63.13	Yes	Addresses of State air pollution control agencies and EPA Regional Offices.
§ 63.14	Yes	Incorporation by reference.
§ 63.15	Yes	Availability of information and confidentiality.

TABLE 2 TO SUBPART VVV OF PART 63—COMPLIANCE DATES AND REQUIREMENTS

If the construction/reconstruction date is . . .	Then the owner or operators must comply with . . .	And the owner or operators must achieve compliance . . .
Group 1 POTW:		
(1) After [date of publication of the final rule in the **Federal Register**].	(i) New source requirements in §§ 63.1583(b); 63.1586(b) or (c); 63.1586(d); and 63.1588 through 63.1591.	Upon initial startup.
(2) After December 1, 1998 but on or before [date of publication of the final rule in the **Federal Register**].	(i) New source requirements in § 63.1583(b) but instead of complying with both requirements, you must comply with the most stringent requirement [1].	(i) Upon initial startup through the date 12 months after the final rule is published in the **Federal Register**.
	(ii) New source requirements in §§ 63.1586(b) or (c); 63.1586(d); and 63.1588 through 63.1591.	(ii) On or before date 12 months after the final rule is published in the **Federal Register**.
(3) On or before December 1, 1998	(i) Existing source requirements in § 63.1583(a) but instead of complying with both requirements, you must comply with only the other applicable NESHAP.	(i) By the compliance date specified in the other applicable NESHAP.
	(ii) Existing source requirements in §§ 63.1583(a); 63.1586(a) and (d); and 63.1588 through 63.1591.	(ii) On or before date 12 months after the final rule is published in the **Federal Register**.
Group 2 POTW:		
(4) After [date of publication of the final rule in the **Federal Register**].	(i) New source requirements in §§ 63.1586(b) or (c); 63.1586(d); and 63.1588 through 63.1591.	Upon initial startup.
(5) After December 1, 1998 but on or before [date of publication of the final rule in the **Federal Register**].	(i) New source requirements in § 63.1586(b) or (c) [1].	(i) Upon initial startup through the date 12 months after the final rule is published in the **Federal Register**.
	(ii) New source requirements in §§ 63.1586(b) or (c); 63.1586(d); and 63.1588 through 63.1591.	(ii) On or before date 12 months after the final rule is published in the **Federal Register**.
(6) On or before December 1, 1998	(i) Existing source requirements in §§ 63.1586(a) and (d); and 63.1588 through 63.1591.	On or before date 12 months after the final rule is published in the **Federal Register**.

[1] **Note:** This represents the requirements in the original 1999 NESHAP, which are applicable until 12-months after the final rule is published in the **Federal Register**. During those 12-months, you must transition to the new requirements in Table 2 (2)(ii) and (5)(ii) for Group 1 and Group 2 POTW, respectively.

[FR Doc. 2016–30471 Filed 12–23–16; 8:45 am]

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