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Contents

Federal Register

Vol. 82, No. 141

Tuesday, July 25, 2017

Agriculture Department
See Animal and Plant Health Inspection Service
See Rural Utilities Service
NOTICES
Raw Sugar Tariff-Rate Quota:
Increases Fiscal Year 2017, 34472

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Animal Health Monitoring System; Emergency Epidemiologic Investigations, 34472–34473

Antitrust Division
NOTICES
Changes Under National Cooperative Research and Production Act:
Border Security Technology Consortium, 34551–34552
IMS Global Learning Consortium, Inc., 34550–34551
PXI Systems Alliance, Inc., 34550
Southwest Research Institute—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in Permian Strata of Texas and New Mexico: Implications for Exploitation of Permian Basin, 34551

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 34529–34530

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 34530–34531

Civil Rights Commission
NOTICES
Meetings:
Delaware Advisory Committee, 34475

Coast Guard
RULES
Drawbridge Operations:
Hackensack River, Little Snake Hill, NJ, 34404
Sacramento River, Sacramento, CA, 34404
Safety Zones:
Annual Event in Captain of the Port Buffalo Zone—Celebrate Erie Fireworks, 34405
D-Day Conneaut Air Show, Conneaut, OH, 34404–34405
Head of Cuyahoga Regatta, Cuyahoga River, Cleveland, OH, 34407–34408
Selfridge Air Show, Clinton River, Harrison Township, MI, 34405–34407

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Uniform Interagency Transfer Agent Registration and Deregistration Forms, 34571–34572

Copyright Royalty Board
NOTICES
Intents to Audit, 34554–34555

Drug Enforcement Administration
NOTICES
Decisions and Orders:
Mohammed S. Aljanaby, M.D., 34552–34553

Education Department
NOTICES
Requests for Comments:
Review of Accrediting Agencies, 34511–34513

Employment and Training Administration
NOTICES
Requests for Nominations:
Task Force on Apprenticeship Expansion, 34553–34554

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program for Certain Commercial and Industrial Equipment:
Test Procedure for Certain Categories of Commercial Air Conditioning and Heating Equipment, 34427–34449

Energy Efficiency and Renewable Energy Office
NOTICES
Preliminary Analysis Regarding Energy Efficiency Improvements:
Energy Standard for Buildings, Except Low-Rise Residential Buildings, 34513–34515

Federal Aviation Administration
RULES
Removal of References to Obsolete Navigation Systems; Technical Amendment, 34397–34400
PROPOSED RULES
Airworthiness Directives:
Airbus Airplanes, 34449–34456
NOTICES
Aircraft Certification Service Organizational Changes, 34564

Federal Communications Commission
PROPOSED RULES
Petitions for Partial Reconsideration, or in Alternative, Suspension of Action in Rulemaking Proceeding, 34471
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 34519–34522
Radio Broadcasting Services:
AM or FM Proposals To Change Community of License, 34519

Federal Deposit Insurance Corporation
NOTICES
Guidelines for Appeals of Material Supervisory Determinations, 34522–34529

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Community Preparedness and Participation Survey, 34548
Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs, 34547–34548
Staffing for Adequate Fire and Emergency Response (SAFER) Grants, 34548–34549

Federal Energy Regulatory Commission
NOTICES
Applications:
Paiute Pipeline Co., 34515–34516
Combined Filings, 34515, 34518
Environmental Reviews:
Northwest Pipeline, LLC, 34517–34518
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Southern Partners, 34518–34519
Requests under Blanket Authorizations:
National Fuel Gas Supply Corp., 34516–34517

Federal Housing Finance Agency
RULES
Minority and Women Inclusion Amendments, 34388–34397

Federal Motor Carrier Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Revocation of Authority Granted, 34568–34569
Qualification of Drivers; Exemption Applications:
Diabetes Mellitus, 34566–34568
Vision, 34564–34566

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Work Force Development Survey, 34569–34570

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 34529

Fish and Wildlife Service
RULES
Migratory Bird Permits:
Control Order for Introduced Migratory Bird Species in Hawaii, 34419–34426

Food and Drug Administration
RULES
Civil Money Penalty Definitions; Technical Amendment, 34402
Food Labeling:
Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Comment Period; Correction, 34401
NOTICES
Guidance:
Animal Drug User Fees and Fee Waivers and Reductions, 34534–34535
Institutional Review Board Waiver or Alteration of Informed Consent for Clinical Investigations Involving No More Than Minimal Risk to Human Subjects, 34535–34536
M4E(R2): Common Technical Document—Efficacy; International Council for Harmonisation, 34538–34540
Recommendations for Permitted Daily Exposures for Two Solvents, Triethylamine and Methylisobutylketone. etc., 34537–34538
Meetings:
Voluntary Medical Device Manufacturing and Product Quality Program, 34531–34534
Statements of Organization, Functions, and Delegations of Authority, 34540–34542

Foreign-Trade Zones Board
NOTICES
Subzone Expansions; Applications:
Lam Research Corp., Foreign-Trade Zone 18, San Jose, CA, 34475–34476

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
ONC Health IT Certification Program IT Certification Program:
Process for Availability of Test Tools and Test Procedures Approved by National Coordinator, 34543
Requests for Applications:
Health Information Technology Advisory Committee, 34542

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Customs and Border Protection

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Indian Gaming Commission

Internal Revenue Service
PROPOSED RULES
Nuclear Decommissioning Funds:
Public Hearings, 34456–34457

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Pasta From Italy, 34481–34483
Certain Steel Nails From Malaysia, 34476–34477
Initiation of Less-Than-Fair-Value Investigations:
Certain Tapered Roller Bearings From Republic of Korea, 34477–34481

International Trade Commission
NOTICES
Complaints:
Certain Road Milling Machines and Components Thereof, 34549–34550

Justice Department
See Antitrust Division
See Drug Enforcement Administration
NOTICES
Proposed Consent Decrees Under Clean Air Act, 34553

Labor Department
See Employment and Training Administration

Land Management Bureau
PROPOSED RULES
Oil and Gas:
Hydraulic Fracturing on Federal and Indian Lands; Recission, 34464–34471

Library of Congress
See Copyright Royalty Board

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation Supplements:
Award Term, 34416–34419

National Archives and Records Administration
NOTICES
Records Schedules, 34555–34556

National Endowment for the Arts
NOTICES
Meetings:
Arts Advisory Panel, 34556

National Foundation on the Arts and the Humanities
See National Endowment for the Arts

National Highway Traffic Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 34570–34571

National Indian Gaming Commission
RULES
Privacy Act Procedures; Corrections, 34402–34403

National Institute of Standards and Technology
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
NIST Summer Institute for Middle School Science Teachers and NIST Research Experience for Teachers Application Requirements, 34483–34485
Safety and Health Data, 34484–34485
Exclusive Patent Licenses, 34484

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 34544–34545
National Cancer Institute, 34545
National Heart, Lung, and Blood Institute, 34543–34544
National Institute of Biomedical Imaging and Bioengineering, 34543
National Institute of Mental Health; Correction, 34545
National Institutes of Health, 34544

National Oceanic and Atmospheric Administration
RULES
Fisheries of Caribbean, Gulf of Mexico, and South Atlantic:
Reef Fish Fishery of Gulf of Mexico; Hogfish Management Measures in Amendment 43, 34574–34581
Snapper-Grouper Fishery of South Atlantic Region; Amendment 37, 34584–34596
NOTICES
Takes of Marine Mammals Incidental to Specified Activities:
Pile Driving Activities for Restoration of Pier 62, Seattle Waterfront, Elliot Bay, 34486–34506

Nuclear Regulatory Commission
RULES
List of Approved Spent Fuel Storage Casks:
TN Americas, LLC, NUHOMS EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042; Correction, 34387–34388
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Safeguards on Nuclear Material—Implementation of United States/International Atomic Energy Agency Agreement, 34556–34557

Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Patent Petitions Related to Application and Reexamination Processing Fees, 34506–34509
Responses to Office Action and Voluntary Amendment Forms, 34506
Substantive Submissions Made During Prosecution of Trademark Application, 34509–34511

Presidential Documents
EXECUTIVE ORDERS
Committees; Establishment, Renewal, Termination, etc.:
Infrastructure, Presidential Advisory Council on; Establishment (EO 13805), 34383–34385

Rural Utilities Service
NOTICES
Funding Availability:
Rural Broadband Access Loan and Loan Guarantee Program, 34473–34475

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 34560, 34563–34564
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 34560–34563
NASDAQ Stock Market, LLC, 34557–34559

Social Security Administration
RULES
Extension of Sunset Date for Attorney Advisor Program, 34400–34401

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration

See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service

U.S. Customs and Border Protection
NOTICES
Commercial Gaugers and Laboratories; Accreditations and Approvals:
Intertek USA, Inc., 34545–34547

Veterans Affairs Department
RULES
Ensuring Safe Environment for Community Residential Care Residents, 34408–34416
PROPOSED RULES
Homeless Providers Grant and Per Diem Program, 34457–34464

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 34574–34581

Part III
Commerce Department, National Oceanic and Atmospheric Administration, 34584–34596

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

13805 34383

10 CFR

72 34387

Proposed Rules:

429 34427
431 34427

12 CFR

1223 34388

14 CFR

1 34397
63 34397
121 34397
125 34397
135 34397
147 34397
170 34397

Proposed Rules:

39 (2 documents) 34449, 34453

20 CFR

404 34400
416 34400

21 CFR

11 34401
17 34402
101 34401

25 CFR

515 34402

26 CFR

Proposed Rules:

1 34456

33 CFR

117 (2 documents) 34404
165 (4 documents) 34404, 34405, 34407

38 CFR

17 34408

Proposed Rules:

61 34457

43 CFR

Proposed Rules:

3160 34464

47 CFR

Proposed Rules:

64 34471

48 CFR

1816 34416
1852 34416

50 CFR

21 34419
622 (2 documents) 34573, 34583

Presidential Documents

Title 3—

The President

Executive Order 13805 of July 19, 2017

Establishing a Presidential Advisory Council on Infrastructure

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It shall be the policy of the executive branch to advance infrastructure projects that create high-quality jobs for American workers, enhance productivity, improve quality of life, protect the environment, and strengthen economic growth.

Sec. 2. *Establishment of Council.* There is established in the Department of Commerce the Presidential Advisory Council on Infrastructure (Council).

Sec. 3. *Membership of Council.* (a) The Council shall be composed of not more than 15 members. The members shall be appointed by the President and drawn from the public with relevant experience or subject-matter expertise to represent the interests of the following infrastructure sectors:

(i) real estate;

(ii) finance;

(iii) construction;

(iv) communications and technology;

(v) transportation and logistics;

(vi) labor;

(vii) environmental policy;

(viii) regional and local economic development; and

(ix) other sectors determined by the President to be of value to the Council.

(b) The President shall designate two Co-Chairs of the Council from among the Council's members. The Co-Chairs may designate one or more Vice Chairs from among the Council's members.

Sec. 4. *Mission of Council.* The Council shall study the scope and effectiveness of, and make findings and recommendations to the President regarding, Federal Government funding, support, and delivery of infrastructure projects in several sectors, including surface transportation, aviation, ports and waterways, water resources, renewable energy generation, electricity transmission, broadband, pipelines, and other such sectors as determined by the Council. In pursuing its mission, the Council shall make findings and recommendations concerning the following:

(a) prioritizing the Nation's infrastructure needs;

(b) accelerating pre-construction approval processes;

(c) developing funding and financing options capable of generating new infrastructure investment over the next 10 years;

(d) identifying methods to increase public-private partnerships for infrastructure projects, including appropriate statutory or regulatory changes;

(e) identifying best practices in and opportunities to improve procurement methods, grant procedures, and infrastructure delivery systems; and

(f) promoting advanced manufacturing and infrastructure-related technological innovation.

Sec. 5. *Administration of Council.* (a) The Department of Commerce shall provide the Council with such administrative support, including staff, facilities, equipment, and other support services, as may be necessary to carry out its mission.

(b) The Secretary of Commerce shall, within 60 days of the date of this order, submit questions to the Council for consideration in its work and report.

(c) Members of the Council shall serve without any additional compensation for their work on the Council. Members of the Council appointed from among private citizens of the United States, while engaged in the work of the Council, may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of appropriations.

(d) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the Council, any functions of the President under that Act, except for those in section 6 and section 14 of that Act, shall be performed by the Secretary of Commerce, in accordance with the guidelines that have been issued by the Administrator of General Services.

Sec. 6. *Report of Council.* The Council shall submit to the President a report containing its findings and recommendations.

Sec. 7. *Termination of Council.* The Council shall terminate on December 31, 2018, unless extended by the President before that date, or within 60 days after submitting its report pursuant to section 6 of this order, whichever occurs first.

Sec. 8. *General Provisions.* (a) The heads of executive departments and agencies shall cooperate with and provide information to the Council as may be necessary to carry out the mission of the Council, consistent with applicable law.

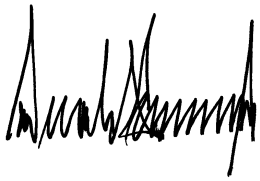
(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
July 19, 2017.

[FR Doc. 2017–15680
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Rules and Regulations

Federal Register
Vol. 82, No. 141
Tuesday, July 25, 2017

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2016–0254]

RIN 3150–AJ88

List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System, Certificate of Compliance No. 1042; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) published a direct final rule in the **Federal Register** on March 24, 2017, that amended NRC's spent fuel storage regulations by adding the TN Americas LLC, NUHOMS® Extended Optimized Storage (EOS) Dry Spent Fuel Storage System to the ''List of approved spent fuel storage casks'' as Certificate of Compliance (CoC) No. 1042. This action is necessary to correct the certificate expiration date.

DATES: The correction is effective July 25, 2017.

ADDRESSES: Please refer to Docket ID NRC–2016–0254 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0254. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Edward Lohr, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0253; email: *Edward.Lohr@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC published a direct final rule in the **Federal Register** on March 24, 2017 (82 FR 14991), which added the TN Americas LLC NUHOMS® EOS Dry Spent Fuel Storage System to the ''List of approved spent fuel storage casks'' as CoC No. 1042. The direct final rule was effective on June 7, 2017. The CoC expiration date listed in the direct final rule was incorrect. This document corrects the CoC expiration date.

Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on the amendment because it will have no substantive impact and is of a minor and administrative nature dealing with a correction to a CFR section related only to management, organization, procedure, and practice. Specifically, this amendment is to correct an editorial error. This amendment does not require action by any person or entity regulated by the NRC. Also, this final rule does not change the substantive responsibilities of any person or entity regulated by the NRC. Accordingly, for the reasons stated, the NRC finds, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make this rule effective upon publication.

List of Subjects in 10 CFR Part 72

Administrative practice and procedures, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendment to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1042 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1042.

Initial Certificate Effective Date: June 7, 2017.

SAR Submitted by: TN Americas LLC.

SAR Title: Final Safety Analysis Report for the NUHOMS® EOS Dry Spent Fuel Storage System.

Docket Number: 72–1042.

Certificate Expiration Date: June 7, 2037.

Model Number: EOS–37PTH, EOS–89BTH.

Dated at Rockville, Maryland, this 19th day of July, 2017.

For the Nuclear Regulatory Commission.

Cindy Bladey,

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

[FR Doc. 2017–15521 Filed 7–24–17; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1223

RIN 2590–AA78

Minority and Women Inclusion Amendments

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to require the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the Enterprises), and the Federal Home Loan Banks (Banks or Bank System) and the Bank System's Office of Finance (collectively, the regulated entities) to promote diversity and ensure the inclusion of minorities and women in all business and activities at all levels, including management, employment, and contracting. The Federal Housing Finance Agency (FHFA) is issuing this final rule amending its regulations on minority and women inclusion (MWI) to clarify the scope of the regulated entities' obligation. The final rule requires the regulated entities to: Adopt strategic plans to promote the inclusion of minorities-, women-, and disabled individuals, and the businesses they own (MWDOB); amend their policies on equal employment opportunity (EEO) to include sexual orientation, gender identity, and status as a parent; and enhance the usefulness of information the regulated entities report to FHFA on their efforts to advance diversity and inclusion (D&I).

DATES: This rule is effective August 24, 2017.

FOR FURTHER INFORMATION CONTACT: Sharron P.A. Levine, Director, Office of Minority and Women Inclusion, *Sharron.Levine@fhfa.gov,* (202) 649–3496; or James Jordan, Assistant General Counsel, *James.Jordan@fhfa.gov,* (202) 649–3075 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

Section 1116 of HERA[1] amended section 1319A of the Safety and Soundness Act to require, in part, that each regulated entity establish an Office of Minority and Women Inclusion (OMWI), responsible for carrying out all matters relating to diversity in the management, employment, and business activities of the entity. Section 1116 of HERA mandates that each regulated entity[2] implement standards for promoting diversity in all its business and activities, and submit an annual report to FHFA detailing related actions taken during the preceding year. Additionally, 12 U.S.C. 1833e(b),[3] and Executive Order (E.O.)11478,[4] require the regulated entities to promote EEO.

B. Regulatory History

The following FHFA rulemaking activities implement section 1116 of HERA, 12 U.S.C. 1833e, and E.O. 11478, as amended.

1. 2010 Minority and Women Inclusion Rulemaking (MWI Rule)

FHFA adopted a final rule in December 2010, establishing the minimum requirements for the regulated entities' diversity programs and reporting requirements.[5] The regulations, located at 12 CFR part 1223,[6] require each regulated entity to submit a detailed annual report to FHFA's Director summarizing their D&I activities during the preceding reporting year. Part 1223 also provides that, pursuant to 12 U.S.C. 4517, FHFA's Director may conduct examinations of a regulated entity's compliance.

2. 2015 Board Diversity Amendments to the MWI Rule

In 2015, FHFA amended the MWI Rule to require the Banks and the Office of Finance to report annually on demographic information related to their boards of directors.[7]

3. 2016 Strategic Planning Proposed Amendments to the MWI Rule (2016 Notice of Proposed Rulemaking or ''2016 NPRM'' or ''the Proposed Amendments'')[8]

FHFA published the 2016 NPRM in the **Federal Register** on October 27, 2016, to amend the MWI rule. The Proposed Amendments require the regulated entities to adopt strategies for promoting diversity and ensuring inclusion. The Proposed Amendments specifically would: (i) Encourage the regulated entities to provide subcontracting (tier 2) opportunities for MWDOBs; (ii) require the regulated entities to amend their EEO policies by adding sexual orientation, gender identity, and status as a parent to the list of protected classes; (iii) affirm that the regulated entities may expand the scope of their outreach and inclusion programs beyond the requirements of part 1223 (to include, for example, veterans, and lesbian, gay, bisexual, or transgender (LGBT) outreach); (iv) require the regulated entities to provide additional information on their MWI efforts; and (v) add, revise, or remove several definitions in order to clarify the existing and new reporting requirements.

The public comment period for the Proposed Amendments closed on December 27, 2016. FHFA received 31 comments (including comments from Fannie Mae, Freddie Mac, the Bank System and their Presidents and Chief Executive Officers, the Equal Employment Opportunity Commission (EEOC), trade associations, non-profit organizations, potential vendors, and individual members of the public). Twenty commenters expressed support for the proposed amendments, three expressly opposed them, and the

[1] Public Law 110–289, 122 Stat. 2654, enacted July 30, 2008.

[2] For readability, where the preamble refers to a ''regulated entity'' or the ''regulated entities'' the provisions apply equally to the Office of Finance, unless such application would conflict with a statute or regulation that specifically distinguishes the treatment of the Office of Finance from the regulated entities.

[3] *See* Public Law 101–73, title XII, sec. 1216, Aug. 9, 1989, 103 Stat. 529; Public Law 102–233, title III, sec. 302(a), Dec. 12, 1991; Public Law 110–289, div. A, title II, sec. 1216(g), July 30, 2008, 122 Stat. 2793; Public Law 111–203, title III, sec. 367(9), July 21, 2010, 124 Stat. 1557.

[4] E.O. 11478—Equal Employment Opportunity in the Federal Government, August 8, 1969, as amended.

[5] *See* 75 FR 81395 (December 28, 2010).

[6] These regulations were formerly located at 12 CFR part 1207. On March 24, 2017, FHFA's Minority Outreach Program (MWOP) rulemaking redesignated the MWI regulation as part 1223 of title 12 of the CFR and the new MWOP regulation as part 1207, in order to organize all FHFA regulations related to FHFA's Organization & Operations in subchapter A, and those regulations related to Regulated Entities in subchapter B.

[7] *See* 80 FR 25209 (May 4, 2015).

[8] *See* 80 FR 74731 (October 27, 2015).

remaining eight indicated limited support on specific issues. After considering all comments (*discussed below*), with limited revision, FHFA is adopting the Proposed Amendments in this final rule.

II. Discussion of Comments on Major Issues

A. Comments on FHFA's Authority

A member of the public commented that the 2016 NPRM exceeded FHFA's authority under HERA. FHFA notes that Section 1116 of HERA plainly states that the regulated entities' OMWI ''carry out . . . all matters of the entity relating to diversity . . . *in accordance with such standards and requirements as the Director shall establish.*'' 12 U.S.C. 4520(a) (emphasis added).

The same commenter argued that FHFA should postpone implementation of the final rule in light of *PHH Corp.* v. *Consumer Financial Protection Bureau* (CFPB) [9] which held that an independent agency headed by a single Director is unconstitutional. The commenter noted that FHFA shares the same governance structure as CFPB, and that any action taken by the FHFA Director would be subject to challenge and nullification. FHFA notes that *PHH* did not directly address the constitutionality of the Safety and Soundness Act and FHFA was not a party in *PHH.* FHFA and its Director, therefore, must continue to execute the duties the Safety and Soundness Act assigns them, including with respect to minority and women inclusion. Moreover, on February 16, 2017, the U.S. Court of Appeals for the D.C. Circuit vacated the ruling in *PHH* and ordered a rehearing. The argument that FHFA should delay an action because of the prospect that it will be challenged, therefore, is not persuasive. The same condition applies to all agencies and their actions. To postpone under the commenter's rationale would be an abdication of the FHFA Director's statutory responsibility. FHFA has chosen not to implement the recommendation.

B. Subpart B—FHFA Regulations on Minority and Women Outreach

A member of the public questioned why, pursuant to section 1116(f) of HERA, FHFA had yet to promulgate a self-directed minority outreach program rule. The commenter characterized the absence of a rule governing FHFA's ''obligations under the law'' as ''disingenuous'' because FHFA promulgated rules at 12 CFR part 1223 that governed oversight of the MWI programs of its regulated entities.

FHFA notes that it published its own MWOP final rule in the **Federal Register** on March 24, 2017.[10]

C. Responsibilities of Boards of Directors

The 2016 NPRM states that a regulated entity's OMWI is responsible for leading efforts to promote D&I, but that a regulated entity's board of directors is ultimately responsible for achieving the requirements of part 1223. The regulated entities commented that FHFA should specify that the board's responsibility is to oversee D&I programs, and that the board is not required to manage actively the resources allocated to the OMWI function.

In response, FHFA notes that the Prudential Management and Operations Standards established pursuant to 12 U.S.C. 4513b(a) and found in the Appendix to 12 CFR part 1236 includes the following broad description of board responsibilities:

> The board of directors is responsible for *overseeing* [emphasis added] management of the regulated entity, which includes ensuring that management includes personnel who are appropriately trained and competent to oversee the operation of the regulated entity as it relates to the functions and requirements addressed by each Standard, and that management implements the policies set forth by the board.

FHFA's regulations at 12 CFR part 1239 also address board responsibilities. While FHFA's regulations permit a board to delegate the execution of operational functions to officers and employees of the regulated entity, the ultimate responsibility for the entity's oversight is non-delegable. Therefore, a board's level of responsibility for satisfying the final rule is no different from its other oversight responsibilities. For that reason, FHFA declines to modify the Proposed Amendments.

D. Racially-Based Quotas

Commenters expressed concern that the Proposed Amendments would require the regulated entities to achieve quotas with respect to hiring and promoting employees, as well as awarding contracts to MWDOBs. One commenter asserted that most racially-based regulatory quotas are unconstitutional, unless ''the government'' narrowly tailors a regulation ''to address the inequality of past discrimination''—which the commenter asserted the Proposed Amendments failed to do. Conversely, another commenter specifically requested that FHFA implement targeted percentage goals to benefit minority-owned firms.

The proposed D&I strategic plan requirement, and its inclusion of goals and objectives is consistent with FHFA's other regulatory requirements for engaging in strategic planning. *See* 12 CFR 1239.31. The Proposed Amendments were designed by FHFA to emphasize the importance of measuring performance. Goals and quotas differ in critical respects: Goals are designed to achieve strategic organizational outcomes that contribute to attaining a long-term vision; quotas are non-negotiable, mandatory and specific, and may not be tethered to an organizational vision or mission. Goals are supported by programs, policies, and processes; quotas instead require that the organization's focus be on attaining a hard number. As FHFA explained in the preamble to the 2010 MWI rulemaking, defined goals allow an organization to foster D&I over time by benchmarking and evaluating data.[11] Quotas do not foster an inclusive corporate culture. Neither the existing MWI rule, the 2016 NPR, nor the final rule contemplates quotas.

E. Business Certifications

A member of the public commented that the racial categories FHFA identifies for reporting purposes are ''ripe with fraud and abuse'' because no authoritative resource exists to verify race, and self-reported data is ''unreliable.'' Similarly, the Banks expressed concerns about—(i) their ability to independently verify the accuracy of the demographic and diversity ownership status data they are required to include in their annual reports to FHFA, and (ii) the proposed requirement to provide information on the number and dollar amounts of contracts between their prime contractors (tier 1) and diverse subcontractors (tier 2).

FHFA notes that many state, federal, and municipal agencies, as well as non-profit organizations (*e.g.,* the National Bankers Association), have programs that validate and certify diverse ownership or control of businesses. The Federal Reserve also publishes a quarterly listing of minority-owned banks that participate in the minority bank deposit programs of the U.S. Treasury Department and the Federal Deposit Insurance Corporation (FDIC). The FDIC publishes a similar list. A regulated entity could rely on those lists

[9] *PHH Corp.* v. *Consumer Financial Protection Bureau,* United States Court of Appeals, D.C. Cir., Case No. 15–cv–01177.

[10] *See* 82 FR 14992 (March 24, 2017).

[11] *See* 75 FR 81397 (December 28, 2010).

to confirm the minority ownership status of any federally insured depository institution. The lists are available at: *https://www.federalreserve.gov/Releases/mob/* (Federal Reserve) and *https://www.fdic.gov/regulations/resources/minority/mdi.html* (FDIC).

As stated in the preamble to the 2010 MWI rulemaking, FHFA recognizes that, while FHFA prefers reliance on certifications from qualified, independent third parties, prohibiting self-certifications could impose an undue burden on small and/or new businesses. Therefore, the final rule continues to encourage third-party certifications, but also continues to allow for self-certification.

With respect to the regulated entities' administrative concerns, most regulated entities have systems in place to analyze contract data and information on diverse prime contractor (tier 1) ownership status and some also are able to provide the ownership designation of subcontractors (tier 2). In many instances, these systems may be used to verify and validate that the vendors' third-party certifications are current. Therefore, FHFA chose to retain the subcontractor (tier 2) reporting requirements.

F. Scope of Requirements

Commenters requested that FHFA clarify which categories of business were subject to D&I outreach requirements. The commenters recommended defining ''diversity spend'' to spell out what data should be captured for reporting purposes. FHFA declined that recommendation because any attempt to distill the concept of ''diversity spend'' down to an exhaustive list would frustrate the purpose of HERA 1116, which is intentionally open-ended (''to the maximum extent possible . . . . in all businesses and activities of the regulated entity at all levels'') to account for the wide range of opportunities on which the respective regulated entities might capitalize.

Others commented on challenges meeting the outreach and material clause requirements for vendors that prefer to use their own boilerplate contracts for goods and services. In response to the commenters' concerns about the administrative burden of the requirement for material contracts, the final rule increases the threshold for materiality from $10,000 to $25,000 (*See discussion infra*).

G. Request To Expand Scope of Outreach Requirements To Include the LGBT Community

Commenters requested that FHFA expand the scope of the contracting provisions of the MWI rule to include the LGBT community. The existing MWI rule captures the LGBT community in its EEO provisions, but this final rule does not change the scope of the 2016 NPRM's supplier diversity provisions because there is no statutory support for such a change.

Commenters also requested that the MWI rule be expanded to include veterans and veteran-owned businesses for supplier diversity purposes, affordable housing program grants and lending, and other initiatives.

The preamble to the 2016 NPRM affirmed that, even absent a specific statutory mandate, each regulated entity may expand beyond the requirements of section 1116 of HERA and the regulations at 12 CFR part 1223 to include veteran- and LGBT-owned businesses. FHFA, through this final rule, continues to encourage the regulated entities to include other aspects of D&I in their outreach programs.

H. Direct Spend

The proposed amendments encourage the regulated entities to expand contracting opportunities for minorities, women, individuals with disabilities, and MWDOBs through subcontracting arrangements. This would be achieved by a majority-owned prime contractor (tier 1) using a diverse subcontractor (tier 2) to supply goods and/or services that directly benefit the regulated entity. The regulated entities' annual reports would include information on the number and size of prime contracts under which the prime contractor (tier 1) extends work to MWDOBs (tier 2).

A few commenters requested that FHFA clarify whether the regulated entities would be authorized to report on both direct and ''indirect'' (tier 2) spending. Other commenters expressed concern over the proposed requirement to report on the total number and size of subcontractor (tier 2) transactions, noting that requests to obtain data from the primary contractors (tier 1), allocated by MWDOBs, could prove to be ''extremely difficult'' because the regulated entities have no mechanism by which to require primary contractors (tier 1) to collect this information from their subcontractors (tier 2) or to disclose such information.

While the comments above may appear unrelated, they both stem from questions about direct and indirect spend. ''Direct spend'' on subcontract (tier 2) can be defined as payments to a subcontractor (tier 2) that can be tracked to a specific contract or purchase order between a regulated entity and a primary contractor (tier 1). ''Indirect spend'' is a primary contractor's (tier 1) payment to a subcontractor (tier 2) that is not directly tied to any specific customer, *e.g.,* a primary contractor's (tier 1) payments to a subcontractor (tier 2) to maintain the primary contractor's place of business (*i.e.,* overhead costs). Indirect spend on subcontractors (tier 2), is not covered by the final rule, and should not be reported as ''diversity spend.''

In response to commenters' concerns about obtaining data from primary contractors, FHFA believes that some commenters did not understand that the proposed subcontractor (tier 2) reporting requirement is predicated upon the subcontract relating to the contractual arrangement between the regulated entity and the prime contractor (tier 1). FHFA's proposed definition of ''subcontractor (tier 2)'' clearly provides that the contract between the prime contractor (tier 1) and a supplier to the prime contractor (tier 1) must be to provide goods and/or services ''*for the benefit of the regulated entity.*'' In instances where a prime contractor (tier 1) has a business relationship with a subcontractor (tier 2) that mixes services that benefit a regulated entity with services that do not, there should be a process to identify what portion of payment allocated to a subcontractor (tier 2) directly relates to a benefit enjoyed by the regulated entity. This is an important component of a contract, particularly if the prime contractor's (tier 1) use of a diverse subcontractor(s) (tier 2) was a factor in the evaluation and awarding of the contract.

I. Public Disclosure of MWI Reports

Commenters requested that FHFA disclose the annual MWI reports to the public. The reports and data FHFA obtains from the regulated entities are related to examinations and examination, operation, or condition reports. FHFA considers the collected information to be non-public, and subject to non-disclosure laws and regulations, including FHFA's Availability of Non-Public Information rule,[12] the examination privilege, and Freedom of Information Act exemption (b)(8). However, FHFA will continue to permit each regulated entity to disclose publicly its own data and information about its D&I programs (*i.e.,* the data underlying FHFA supervisory

[12] 12 CFR psrt 1214.

information) at the regulated entity's discretion.

J. Religious Accommodations

The EEOC recommended that FHFA amend the MWI rule to require the regulated entities to develop policies and procedures that address reasonable accommodations for employees to observe their sincerely held religious beliefs. FHFA revised the rule, accordingly.

K. Filing Date for MWI Report

Commenters requested that FHFA change the filing deadline for the annual MWI report from March 1 to April 30 to give the regulated entities more time to satisfy additional reporting requirements and obtain approvals from the regulated entities' boards of directors. The commenters also noted that the current deadline competes with several other filing deadlines which constrain the resources of the regulated entities.

FHFA recognizes the resource constraints and changed the filing date to no later than March 31 of each year, beginning in 2018. A March 31 filing date ensures that FHFA will continue to receive the annual reports by no later than the end of the first quarter of the following year.

L. Effective Date of Final Rule

Commenters requested that FHFA delay the effective date of the final rule for one year to allow the regulated entities more time to make regulatory and technological changes.

FHFA believes that delaying the effective date of the final rule would also delay its positive effect. If necessary, each regulated entity can comply with the final rule by factoring the final rule requirements into an existing strategic planning process or by establishing a dedicated strategic planning effort to meet the new requirements.

III. Section-by-Section Analysis

Section 1223.1 Definitions

FHFA proposed to add, revise, or remove several definitions in § 1223.1 to clarify the existing and new regulatory requirements under part 1223.

Applicant

FHFA proposed adding the definition, ''Applicant'', to improve the consistency and comparability of applicant data the regulated entities are required to report to FHFA.

Commenters expressed concern about how to decide if an applicant is qualified and determine if an applicant has removed her- or himself from consideration.

FHFA's view is that best practices dictate that prospective employers already have a process in place for determining if applicants are qualified and eligible for hire; therefore, FHFA made no change to the definition.

D&I Strategic Planning

Commenters noted that the definition, ''D&I Strategic Planning'', unintentionally omitted a reference to businesses owned by minorities, women, and individuals with disabilities. FHFA revised the definition in the final rule, accordingly.

Disabled-Owned Business, Minority-Owned Business, and Women-Owned Business

The Proposed Amendments revised the definitions, ''Disabled-owned Business'', ''Minority-owned Business'', and ''Women-owned Business'', to clarify that ownership can be direct or indirect, with the expectation that the regulated entities would disregard the business structure of such an entity, provided it is legal and the majority of the ultimate ownership benefits are held by or accrue to disabled, minority, or women owners, respectively.

The revised definition, ''Disabled-owned Business'', contains three conditions for determining eligibility, the first of which addresses eligibility as a qualified service-disabled, veteran-owned small business concern as defined in 13 CFR 125.8 through 125.13. The second and third conditions address eligibility based on the percentage of ownership or control of the disabled owner or owners.

Commenters requested that FHFA clarify whether, in addition to satisfaction of the first condition, satisfaction of the second and third conditions are necessary to qualify as a ''Disabled-owned Business.'' FHFA notes that satisfaction of the first condition alone is sufficient to qualify. If a business does not meet the requirements of the first condition, then the remaining two conditions must be met.

A commenter requested that FHFA change the eligibility requirements in the proposed definitions, ''Disabled-owned Business'', ''Minority-owned Business'', and ''Women-owned Business'', from ''more than fifty percent (50%)'' to ''fifty-one percent (51%) or more'', which is the threshold used by the Small Business Administration and the FDIC to determine diverse business ownership, and the requirement for certification of diverse ownership by an independent third party. The regulated entity noted that since independent, third-party certification was one of its prerequisites for diverse vendors, it was already effectively implementing the fifty-one percent threshold.

FHFA acknowledges that, although industry practice generally uses fifty-one percent as the benchmark for establishing diverse ownership and control, section 1116(b) of HERA, incorporates by reference section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)), which defines minority-owned and women-owned businesses as those having more than fifty percent (50%) of the ownership or control held by one or more minority individuals and women, respectively. The final rule retains those definitions, which are broader, and as a result, create greater access to opportunities for MWDOBs.

Diversity Spend With Non-Diverse-Owned Businesses

FHFA proposed adding the definition, ''Diversity Spend with Non-diverse-owned Businesses'', to describe payments to a non-diverse-owned firm for professional services provided by a partner, member, or other equity owner who is a minority, woman, or individual with a disability.

One commenter recommended not adopting the proposed definition stating that this type of arrangement does not actually benefit the specific diverse equity owner. Another commenter requested that FHFA count all annual spend specifically allocable to services performed by a diverse employee of a non-diverse-owned business regardless of that person's ownership status. Conversely, another commenter recommended eliminating all references to the allocation of payments to a diverse owner due to potential challenges obtaining the information (*e.g.,* confidentiality agreements, diverse ownership verification).

FHFA proposed this definition to account for a contracting vehicle the regulated entities already have employed to provide opportunities for minorities, women, and individuals with disabilities. Although a departure from the previous focus on MWDOBs as prime contractors, this category of diversity spend recognizes the efforts non-diverse-owned businesses have made to promote D&I in their own organizations. Rather than penalize such companies for being non-diverse-owned, FHFA's definition seeks to encourage more D&I at those firms.

Minority

Commenters recommended revising the definition, ''Minority'', to include non-U.S. citizens. FHFA notes that the existing regulation requires the regulated entities to submit their EEO–1 Employer Information Report (EEO–1 Form) in conjunction with their annual MWI reports. The EEO–1 Form contains information pertaining to minority (defined as one of six categories) employees who are not exclusively citizens and, therefore, the data the regulated entities submit on their workforce demographics using these categories, already account for non-citizen, minority employees.

Minority-Serving Financial Institution

The 2016 NPRM would have added a new definition, ''Minority-serving financial institution'', that is similar to the FDIC's Policy Statement Regarding Minority Depository Institutions.[13] The Banks commented that the new definition would require the Banks to become ''experts in analyzing the challenges of nondepository minority-serving financial institutions.'' In light of the Banks' comments, FHFA clarified the scope of its reporting expectations (*discussed below*) and removed the definition of ''minority-serving financial institution.''

Prime Contractor (Tier 1)

Commenters requested that FHFA change the term ''Prime Contractor (tier 1)'' to ''Primary Contracting Entity'' or ''Primary Vendor'' asserting that ''Prime Contractor (tier 1)'' is used exclusively in the construction industry. Certain Banks also use ''tier 1'' and ''tier 2'' to categorize vendor risk and so requested that FHFA omit them from the definitions. FHFA disagrees with these assertions.

''Prime Contractor'' is widely used across government and the private sector to designate the main contractor that enters into a contract and performs the work to satisfy its obligations. Although used in construction, the term is not exclusive to that industry. Tiers are commonly used not only to designate levels of risk associated with risk management and exposure but also to reflect the commercial distance (*i.e.,* level of direct access and accountability) of a contractor (obligor) to its counterparty (obligee). For example, tier 1 supplier obligors provide their products and services directly to the obligee, while tier 2 (and lower) suppliers provide their products and services to the supplier at the next highest level in the chain.

Promotion

FHFA proposed adding the definition, ''Promotion'', to improve the consistency and comparability of reported data. One commenter requested that FHFA revise the definition to address different conditions under which promotions occur (not only for good performance), such as when an employee's responsibilities have been increased.

The proposed definition of promotion notes ''[A] promotion is typically associated with an increase in an employee's pay due to additional or enhanced job responsibilities.'' A plain reading of the proposed definition contemplates promotions beyond those merely for good performance.

Section 1223.2 Policy, Purpose, and Scope

FHFA proposed revisions to § 1223.2(c) to clarify that the rule requires policy development and applies to all contracts. FHFA received no comments on § 1223.2(c).

Section 1223.3 Limitations

FHFA proposed an increase to the material clause threshold from $10,000 to $25,000 to alleviate administrative burdens associated with routine purchases of lower-value goods (*e.g.,* materials and supplies for day-to-day operations). All applicable comments supported the proposed increase, but recommended that FHFA extend the threshold to apply to contracts for services as well as goods. FHFA declined that recommendation.

The preamble to the 2010 MWI rulemaking indicated that FHFA understood the practical difficulties in applying a rule to cover contracts for services, contracts for goods, and contracts for all other subjects, but that FHFA sought to strike a balance between managing those difficulties and honoring the all-encompassing scope of section 1116 by establishing a threshold for contracts for goods for more than $10,000. The final rule maintains that balance, while providing the regulated entities greater flexibility to administer small contracts for goods without having to report the associated data.

FHFA also proposed adding paragraphs (c) and (d) to existing § 1223.3 to require each regulated entity to submit to FHFA within 90 days after the effective date of the final rule, a list of the types of contracts it considers exempt under § 1223.3(b), and any thresholds, exceptions, and limitations it establishes for implementing § 1223.21(c)(2). Proposed § 1223.3(d) would then require a regulated entity to notify FHFA within 30 days after any additional changes to the list. Commenters recommended that FHFA eliminate the initial reporting and supplemental notification requirements and replace them with a requirement to include a list of any thresholds, exceptions, and limitations as part of the annual report.

FHFA responds by noting that the ability to identify and exempt certain types of contracts from the material clause and demographic data reporting requirements was not addressed or contemplated in section 1116 of HERA. As a result, FHFA must ensure consistency in the approach the regulated entities take to implement these requirements. The 90-day requirement is a one-time occurrence that will ensure a consistent understanding and implementation of the exemption flexibilities in light of the newly revised regulatory requirements under 12 CFR part 1223. The 30-day requirement also allows FHFA to assess quickly the exemption. Therefore, FHFA declines to eliminate the notification requirements in paragraphs (c) and (d) of § 1222.3.

Section 1223.20 Office of Minority and Women Inclusion

FHFA proposed revisions to paragraphs (b) and (c) of § 1223.20 to clarify that a regulated entity's board of directors—not the regulated entity's OMWI or its designee—is ultimately accountable for the D&I mandate. FHFA addressed the comments received in response to the proposed amendment earlier in the preamble, under the section titled, *Responsibilities of Boards of Directors.* FHFA also proposed amending the regulation to require the regulated entity to ensure that any officer designated to direct and oversee the D&I programs has the necessary knowledge, skills, competencies, and abilities (talent) to implement effectively the minimum standards and requirements of part 1223. FHFA acknowledges that the regulated entities have full discretion to determine the talent required to fulfill such requirements.

Section 1223.21 Promoting Diversity and Ensuring Inclusion in All Business and Activities

FHFA proposed amending § 1223.21(a) to add sexual orientation, gender identity, and status as a parent to the list of bases covered under each regulated entity's equal opportunity statement, as required by 12 U.S.C.

[13] FDIC Policy Statement Regarding Minority Depository Institutions, April 9, 2002, *https://www.fdic.gov/regulations/resources/minority/policy.html.*

1833e, and in conformance with E.O. 11478, as amended. FHFA received several related comments from private citizens, a trade association, the regulated entities, and the EEOC, most of which were supportive but some of which advocated broadening the scope of protected classes beyond those specifically required by federal law. The commenters also requested that FHFA clarify that the addition of the new protected classes does not create new or different affirmative requirements on the part of the regulated entity to proactively inquire as to a potential employment candidate or third-party vendor's qualification for, or inclusion in, one of the protected classes described in the equal employment notice. The commenters also requested that FHFA clarify that the publication of additional categories in a regulated entity's equal opportunity in employment and contracting notice does not create additional responsibilities of inquiry or reporting.

As previously noted, the regulated entities' responsibilities under § 1223.21(a) are to provide equal opportunity in employment, prohibit employment discrimination, and promote EEO through a continuing affirmative program. The addition of sexual orientation, gender identity, and status as a parent to the regulated entities' policies on equal opportunity is required by statute and, as a result, they do not have the discretion to choose which bases to implement, as some commenters requested. The regulated entities' D&I responsibilities extend specifically to minorities, women, and individuals with disabilities and they are not required to include additional proposed bases (*i.e.,* sexual orientation, gender identity, or status as a parent) in their outreach programs. Although FHFA has affirmed that each regulated entity may expand the scope of its D&I program to these three groups and beyond, there is no requirement to do so or to inquire proactively about qualifications for, or inclusion in, one of the new protected classes described in the equal employment notice.

FHFA also proposed revising § 1223.21(b)(3), which would require a regulated entity to develop processes to give consideration to diversity when reviewing and considering contract proposals and hiring service providers.

A commenter noted that the words ''service providers'' were omitted from the text of the proposed paragraph. The final rule addresses the omission. Another commenter requested that FHFA provide a clearer explanation of how minority-owned firms will be given consideration in contract proposals. In response, FHFA notes that the practices or processes for ''giving consideration'' to the diversity of the applicant will vary from one regulated entity to another and could include, for example, developing procedures that require the inclusion of diverse firms in the solicitation and bid process for every contract proposal it pursues. If diverse firms are not available, absent from the market, or do not have the necessary skills or qualifications, the regulated entity could implement an exception process to verify and validate that it engaged in market research to identify qualified diverse firms. Consideration also could be given to firms that plan to subcontract portions of its prime contractual obligations to diverse firms. Processes could involve assessing the impact (*i.e.,* financial, community) bids by diverse vendors would likely have on an economically disadvantaged area or evaluating a firm's diversity programs and practices.

Proposed § 1223.21(b)(4) requires each regulated entity to develop policies and procedures for addressing complaints of discrimination. The final rule retains the requirement.

FHFA proposed revising § 1223.21(b)(8), which would require each regulated entity to establish a process for developing a D&I strategic plan that proactively focuses on promoting the advancement of D&I. Paragraphs (d) and (e) would address when the plan must be adopted and how often it must be reviewed, who should adopt strategies for promoting D&I, and what the plan should include (*i.e.,* vision/mission statement, measurable goals and objectives, and requirement to create action plans.)

Commenters recommended that FHFA eliminate the option to develop a stand-alone D&I strategic plan, noting that a separate plan could be perceived as an afterthought, thereby diminishing it within the regulated entity's overriding structure. The commenter noted that a clear, integrated plan would help the regulated entities grow and advance an executable D&I culture.

Although the commenters made important points about the value of integrating D&I into the existing strategic planning process, FHFA has chosen not to eliminate the option to develop a stand-alone plan because the option will provide the regulated entities flexibility in initiating the strategic D&I planning process. FHFA also believes that most regulated entities will eventually integrate D&I into their comprehensive strategic planning process, after they have developed their initial plans.

The final rule revises the wording of proposed § 1223.21(b)(8) to clarify that it addresses a requirement to develop policies and procedures and not the requirement to develop a strategic plan. FHFA also revised § 1223.21(d) to clarify when the board of directors of each regulated entity is required to adopt its first D&I strategic plan (by no later than six months after the date this Final Rule is published in the **Federal Register**).

Section 1223.23 Annual Reports—Format and Contents

FHFA proposed several revisions to § 1223.23, which provides the regulated entities guidance for preparing their annual MWI reports. For example, FHFA proposed to amend § 1223.23(b)(9), which would require the regulated entities to report the number of minorities, women, and individuals with disabilities who are involved in management.

Commenters noted that the proposed requirement to report the minority, gender, and disability classification data of individuals responsible for ''supervising employees and/or managing the functions of departments'' was ambiguous. They noted that the concept of ''managing'' a function can be construed in different ways and varies from regulated entity to regulated entity. The commenters recommended that FHFA limit the scope of the metric to the number of employees supervising other employees. FHFA opted to retain the current definition, which is consistent with the EEO–1 Form category ''Officials and Managers''—those who supervise people and/or develop/manage policies, strategy, and programs.

FHFA also proposed an amendment to § 1223.23(b)(9)(ii) that would require the regulated entities to describe the strategies, initiatives, and activities they executed during the preceding year to promote diverse individuals to management roles. In light of several related comments, FHFA notes that the proposed requirement does not ''signal'' FHFA's expectation that a regulated entity must promote a diverse individual(s) without merit or to the exclusion of others under consideration for a promotion, nor does it mandate that the regulated entity report that diverse individuals are promoted to supervisory roles each year.

Proposed § 1223.23(b)(12)(i) requires the regulated entities to include within their annual reports a provision addressing their strategies and initiatives to advance diversity and inclusion. As noted previously with respect to the proposed definition of

''minority-serving financial institution,'' FHFA revised § 1223.23(b)(12)(i) in light of commenters' concerns regarding the required assessments of certain aspects of the business operations of other institutions and the challenges those institutions may face in conducting their business operations. The revised § 1223.23(b)(12)(ii) clarifies that a regulated entity should assess whether access issues of its MWDOB counterparties' borrowers and other customers may affect the MWDOBs' level of activity with the regulated entity. Section 1223.23(b)(12)(i) has been redrafted to reference a regulated entity communicating with MWDOBs with which it does business to help identify opportunities to improve the MWDOBs' business with the regulated entity by enhancing MWDOB customer access.[14] FHFA emphasizes that the focus of the amendment is on reporting efforts, and not a command that the regulated entities select MWDOBs. The objective of 12 CFR part 1223 is to ensure that the regulated entities are implementing programs that provide opportunities for minorities, women, individuals with disabilities to compete for jobs, contracts, and business, and to have access to opportunities to provide services for the regulated entities. The use of the word ''selecting'' as a metric for evaluating financial transactions will help the regulated entity and FHFA better understand the effectiveness of the strategic initiatives taken to promote D&I. FHFA emphasizes that the diversity considerations addressed in the final regulation do not restrict a regulated entity's ability to select financial transaction participants and contractual counterparties.

For the reasons described above, FHFA has folded the proposed § 1223.23(b)(12)(iii) references to affordable housing and community investment into § 1223.23(b)(12)(i), which is focused on outreach to MWDOB counterparties, though regulated entities may also report on other areas (*e.g.,* the composition of Advisory Councils).

FHFA proposed amendments to § 1223.23(b)(16) and (17) that would require each regulated entity to report the number and dollar amounts of prime contracts (tier 1) and subcontracts (tier 2) that prime contractors had with minorities, women, individuals with disabilities, and MWDOBs. Comments on these paragraphs are addressed under the heading, *Direct Spend.*

[14] Regulated entities may also find it useful, for this purpose, to conduct broader outreach with market participants and organizations to learn more about minority and women borrowers' issues with access to credit.

IV. Consideration of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act, as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. In preparing this final rule, the Director has considered the differences between the Banks and the Enterprises as they relate to the above factors and has determined that the final rule would not adversely affect the Banks taking into account all of the above factors.

V. Regulatory Impacts

Paperwork Reduction Act

The final regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act and certifies that the final rule is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is only applicable to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1223

Disability, Disabled-owned businesses, Discrimination, Diversity, Equal employment opportunity, Government contracts, Minority businesses, Regulated entities, Women-owned businesses.

Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4526, FHFA hereby amends part 1223 of title 12 of the Code of Federal Regulations as follows:

PART 1223—MINORITY AND WOMEN INCLUSION

■ 1. The authority citation for part 1223 continues to read as follows:

Authority: 12 U.S.C. 4520 and 4526; 12 U.S.C. 1833e; E.O. 11478.

■ 2. Amend § 1223.1 as follows:
■ a. Adding a definition for ''Applicant'' in alphabetical order;
■ b. Removing the definition of ''Director'';
■ c. Revising the definition of ''Disabled-owned business'';
■ d. Adding definitions for ''D&I strategic planning'' and ''Diversity spend with non-diverse-owned businesses'' in alphabetical order;
■ e. Removing the definition of ''FHFA'';
■ f. Revising the definition of ''Minority-owned business'';
■ g. Removing the definition of ''Office of Finance'';
■ h. Adding definitions for ''Prime contractor (tier 1)'' and ''Promotion'' in alphabetical order;
■ i. Removing the definition of ''Regulated entity'';
■ j. Adding a definition for ''Subcontractor (tier 2)'' in alphabetical order; and
■ k. Revising the definition of ''Women-owned business''.

The revisions and additions read as follows:

§ 1223.1 Definitions.

Applicant means an individual who submits an expression of interest in employment in conjunction with all of the following:

(1) The regulated entity acted to fill a particular position;

(2) The individual followed the regulated entity's standard process for submitting an application;

(3) The individual's expression of interest indicates that the individual possesses the basic qualifications for the position; and

(4) The individual has not removed him or herself from consideration or otherwise indicated that he or she is no longer interested in the position.

* * * * *

Disabled-owned business means a business, and includes, but is not limited to, financial institutions, firms engaged in mortgage banking, investment banking, financial services, asset management, investment consultants or advisors, underwriters, accountants, brokers, broker-dealers, and providers of legal services—

(1) Qualified as a Service-Disabled Veteran-Owned Small Business Concern as defined in 13 CFR 125.8 through 125.13; or

(2) More than fifty percent (50%) of the ownership or control of which is held, directly or indirectly, by one or more persons with a disability; and

(3) More than fifty percent (50%) of the net profit or loss of which accrues to one or more persons with a disability.

D&I strategic planning is the process of analyzing the business and activities of a regulated entity to develop strategies for promoting diversity and ensuring the inclusion of minorities, women, individuals with disabilities, and MWDOBs in all activities and at every level of the organization, including management, employment, and contracting. A D&I strategic plan serves as the primary means to communicate the board of directors' long-term D&I vision for the organization, to establish measurable goals and objectives for achieving the vision, and to ensure accountability for achieving those goals and objectives.

Diversity spend with non-diverse-owned businesses means the dollar amount(s) paid by a regulated entity to a prime contractor that is not a minority-, women-, or disabled-owned business for professional services (*i.e.,* the amount paid for work performed, as may be adjusted, in connection with providing legal, accounting, or other professional or consulting services) provided by or allocated to a partner, member, or other equity owner who is a minority, woman, or an individual with a disability.

* * * * *

Minority-owned business means a business, and includes, but is not limited to, financial institutions, firms engaged in mortgage banking, investment banking, financial services, and asset management, investment consultants or advisors, underwriters, accountants, brokers, broker-dealers, and providers of legal services—

(1) More than fifty percent (50%) of the ownership or control of which is held, directly or indirectly, by one or more minority individuals; and

(2) More than fifty percent (50%) of the net profit or loss of which accrues to one or more minority individuals.

Prime contractor (tier 1) means a supplier that enters into a contract with a regulated entity to provide goods and/or services directly to that regulated entity.

Promotion means the advancement of an employee within a regulated entity and may be the result of an employee's proactive pursuit of a higher job ranking or a reward for good performance. A promotion is typically associated with an increase in an employee's pay due to additional or enhanced job responsibilities.

* * * * *

Subcontractor (tier 2) means a supplier that enters into a contract with a prime contractor (tier 1) of a regulated entity to provide goods and/or services to that prime contractor (tier 1) for the benefit of the regulated entity.

Women-owned business means a business and includes, but is not limited to, financial institutions, firms engaged in mortgage banking, investment banking, financial services, and asset management, investment consultants or advisors, underwriters, accountants, brokers, broker-dealers, and providers of legal services—

(1) More than fifty percent (50%) of the ownership or control of which is held, directly or indirectly, by one or more women; and

(2) More than fifty percent (50%) of the net profit or loss of which accrues to one or more women.

■ 3. Amend § 1223.2 as follows:

■ a. Remove from paragraphs (a) and (b) the phrase ''and the Office of Finance'';

■ b. Add in paragraph (b) a comma immediately following the phrase ''to the maximum extent possible''; and

■ c. Revise paragraph (c) to read as follows:

§ 1223.2 Policy, purpose, and scope.

* * * * *

(c) *Scope.* This part applies to each regulated entity's development, implementation, and adherence to diversity, inclusion, and non-discrimination policies, practices, and principles, including opportunities to award contracts for goods and/or services.

■ 4. Amend § 1223.3 as follows:

■ a. Remove the phrase in paragraph (a) ''or the Office of Finance''; and

■ b. Revise paragraph (b) and add new paragraphs (c) and (d) to read as follows:

§ 1223.3 Limitations.

* * * * *

(b) The contract clause required by § 1223.21(b)(6) and the itemized data reporting on numbers of contracts and amounts involved required under §§ 1223.22 and 1223.23(b)(13) through (22) apply only to contracts for services in any amount and to contracts for goods that equal or exceed $25,000 in annual value, whether in a single contract, multiple contracts, a series of contracts or renewals of contracts, with a single vendor.

(c) Within ninety (90) days after August 24, 2017 each regulated entity shall submit to FHFA a list of the types of contracts it considers exempt under § 1223.3(b) and any thresholds, exceptions, and limitations the regulated entity establishes for the implementation of § 1223.21(c)(2). The submission shall address the criteria identified in § 1223.21(b)(9).

(d) Each regulated entity shall notify FHFA within thirty (30) days after any change in the types of contracts it considers exempt under § 1223.3(b) or any change in the thresholds, exceptions, and limitations the regulated entity establishes for the implementation of § 1223.21(c)(2).

Subpart C—Minority and Women Inclusion and Diversity at Regulated Entities

■ 5. Revise the heading of Subpart C to read as set forth above.

■ 6. Amend § 1223.20 as follows:

■ a. Remove the phrases ''and the Office of Finance'' and ''or the Office of Finance'' wherever they appear in paragraph (a); and

■ b. Revise paragraphs (b) and (c) to read as follows:

§ 1223.20 Office of Minority and Women Inclusion.

* * * * *

(b) *Adequate resources.* The board of directors of each regulated entity will ensure that the Office of Minority and Women Inclusion, or office designated to lead the regulated entity in performing the responsibilities of this part, is provided relevant resources including, but not limited to, human, technological, and financial resources sufficient to fulfill the requirements of this part. The regulated entity will also ensure that any officer(s) designated to direct and oversee its D&I programs has the necessary knowledge, skills, competencies, and abilities to effectively implement the minimum standards and requirements found in this part.

(c) *Responsibilities.* Each Office of Minority and Women Inclusion, or the office designated to perform the responsibilities of this part, is responsible for leading the regulated entity's board-approved strategies, for fulfilling the requirements of this part, 12 U.S.C. 1833e(b) and 4520, and such standards and requirements as the Director may issue hereunder.

■ 7. Amend § 1223.21 as follows:

■ a. Revise the section heading;

■ b. Remove the phrases ''and the Office of Finance'', ''and Office of Finance'', ''or the Office of Finance'', and ''and the Office of Finance's'' wherever they appear;

■ c. Revise the first sentence of paragraph (a);
■ d. Revise the last sentence of paragraph (b) introductory text;
■ e. Revise paragraph (b)(2);
■ f. Redesignate paragraphs (b)(6) through (9) as paragraphs (b)(9) through (12);
■ g. Redesignate paragraphs (b)(3), (4), and (5) as paragraphs (b)(4), (5), and (7), respectively;
■ h. Add new paragraphs (b)(3), (6), and (8);
■ i. Revise newly redesignated paragraphs (b)(4), (5), (10), and (11); and
■ j. Add paragraphs (d) and (e).

The revisions and additions read as follows:

§ 1223.21 Promoting diversity and ensuring inclusion in all business and activities.

(a) *Equal opportunity notice.* Each regulated entity shall publish a statement, endorsed by its Chief Executive Officer and approved by its Board of Directors, confirming its commitment to the principles of equal opportunity in employment and in contracting, at a minimum, regardless of race, color, religion, sex, national origin, disability status, genetic information, age, sexual orientation, gender identity, or status as a parent. * * *

(b) * * * The policies and procedures of each regulated entity, at a minimum, shall:

* * * * *

(2) Describe its practices and principles for prohibiting discrimination in employment and contracting;

(3) Describe its processes for giving consideration to MWDOBs when reviewing and evaluating contract proposals and hiring service providers as required under § 1223.2(c);

(4) Establish a process for receiving and attempting to resolve complaints of discrimination in employment and in contracting. Publication will include, at a minimum, making the procedure conspicuously accessible to employees and applicants through print, electronic, or alternative media formats, as necessary, and through the regulated entity's Web site;

(5) Establish a process for accepting, reviewing, and granting or denying requests for reasonable accommodations of disabilities from employees or applicants for employment;

(6) Establish a process for accepting, reviewing, and granting or denying requests for reasonable accommodations for religious beliefs or practices from employees or applicants for employment;

* * * * *

(8) Establish a process for developing a stand-alone D&I strategic plan or incorporating into its existing strategic plan a D&I plan that proactively focuses on promoting the advancement of D&I. The stand-alone D&I strategic plan and the incorporated D&I plan are hereinafter referred to as the D&I strategic plan;

* * * * *

(10) Identify the types of contracts the regulated entity considers exempt under § 1223.3(b) and any thresholds, exceptions, and limitations the regulated entity establishes for implementing paragraph (c)(2) of this section. The policies and procedures must describe the following:

(i) The rationale and need for the thresholds, exceptions, or limitations;

(ii) The criteria used to implement the thresholds, exceptions, or limitations; and

(iii) Any negative or adverse impact the implementation of the thresholds, exceptions, or limitations would likely have on contracting opportunities for minorities, women, individuals with disabilities, and MWDOBs;

(11) Be published and made accessible to employees, applicants for employment, contractors, potential contractors, and members of the public through print, electronic, or alternative media formats, as necessary, and through the regulated entity's Web site; and

* * * * *

(d) *D&I strategic planning.* By no later than January 25, 2018 the board of directors of each regulated entity shall adopt a D&I strategic plan for promoting D&I of minorities, women, individuals with disabilities, and MWDOBs. The board of directors of each regulated entity shall review the D&I strategic plan at least annually and shall readopt the plan, including any interim amendments, at least every three years.

(e) *Contents of the D&I strategic plan.* The D&I strategic plan shall include the following:

(1) A vision and/or mission statement that addresses the importance of promoting diversity and ensuring the inclusion of minorities, women, and individuals with disabilities in order to fulfill § 1223.2;

(2) Measurable strategic goals and objectives for accomplishing the agreed-upon priorities and intended outcomes developed to advance diversity and ensure the inclusion of minorities, women, and individuals with disabilities at the regulated entity in accordance with § 1223.2; and

(3) A requirement to create and implement action plans to achieve the strategic goals and objectives and management reporting requirements for monitoring the implementation of those goals and objectives.

■ 8. Amend § 1223.22 as follows:
■ a. Revise the section heading and paragraph (a);
■ b. Remove the phrases ''and the Office of Finance'', and ''or the Office of Finance'' wherever they appear in paragraphs (b) and (d); and
■ c. Revise paragraph (c).

The revisions read as follows:

§ 1223.22 Regulated entity reports.

(a) *General.* Each regulated entity, through its Office of Minority and Women Inclusion or other office designated to perform the responsibilities of this part, shall report in writing, in such format as the Director may require, to the Director describing its efforts to promote diversity and ensure the inclusion and utilization of minorities, women, individuals with disabilities, and MWDOBs at all levels, in management and employment, in all business and activities, and in all contracts for services and those contracts for goods above the material clause threshold in § 1223.3(b) and the results of such efforts.

* * * * *

(c) *Frequency of reports.* Each regulated entity shall submit an annual report on or before March 31 of each year, reporting on the period of January 1 through December 31 of the preceding year, and such other reports as the Director may require. If the date for submission falls on a Saturday, Sunday, or Federal holiday, the report is due no later than the next business day that is not a Saturday, Sunday, or Federal holiday.

* * * * *

■ 9. Amend § 1223.23 as follows:
■ a. Remove the phrases ''and the Office of Finance'', ''or the Office of Finance'', and ''or the Office of Finance's'' from all paragraphs wherever they appear, with the exception of paragraphs (b)(9) and (10).
■ b. Revise paragraph (b) introductory text;
■ c. In paragraphs (b)(3) and (7), remove the phrase ''individuals applying'' and adding in its place ''applicants'';
■ d. Redesignate paragraphs (b)(9), (10), (11), (12), (13), and (b)(14) through (20) as paragraphs (b)(10), (11), (13), (14), (15), and (b)(19) through (25), respectively;
■ e. Add new paragraphs (b)(9), (12), (16), (17), and (18); and
■ f. Revise newly redesignated paragraphs (b)(14), (15), (19), and (23).

The revisions and additions read as follows:

§ 1223.23 Annual reports—format and content.

* * * * *

(b) *Contents.* The annual report shall contain the information provided in the regulated entity's annual summary pursuant to § 1223.22(d) and shall include:

* * * * *

(9) Data showing for the reporting year by minority, gender, and disability classification—

(i) The number of individuals responsible for supervising employees and/or managing the functions or departments of the regulated entity; and

(ii) A description of the strategies, initiatives, and activities executed during the preceding year to promote diverse individuals to supervisory and management roles;

* * * * *

(12) A provision addressing the strategies, initiatives, and activities that the regulated entity has undertaken during the prior year to:

(i) Communicate with minority serving organizations to help identify ways in which it might be able to improve MWDOB business with the regulated entity by enhancing MWDOB customer access, including in affordable housing and community investment programs;

(ii) Evaluate the regulated entity's processes for identifying, considering, and selecting MWDOBs to participate in financial transactions, which evaluation shall include an assessment of the regulated entity's internal policies and practices that may have presented unique challenges to MWDOBs' participation in financial transactions of the regulated entity.

* * * * *

(14) Cumulative data separately showing the total number of contracts in place at the beginning of the reporting year as well as those entered into during the reporting year;

(15) Cumulative data separately showing the total amount paid for contracts in place at the beginning of the reporting year as well as those entered into during the reporting year;

(16) Cumulative data separately showing the total number of contracts entered into during the reporting year that were—

(i) Considered exempt under § 1223.3(b);

(ii) Prime contracts (tier 1) entered into with minorities, women, individuals with disabilities, or MWDOBs;

(iii) Subcontractor (tier 2) contracts that prime contractors (tier 1) entered into with minorities, women, individuals with disabilities, or MWDOBs;

(17) Cumulative data separately showing the total amount paid for contracts entered into during the reporting year that were—

(i) Considered exempt under § 1223.3(b);

(ii) To prime contractors (tier 1) that are minorities, women, individuals with disabilities, or MWDOBs in place at the beginning of the reporting year as well as those entered into during the reporting year;

(iii) To subcontractors (tier 2) that are minorities, women, individuals with disabilities, or MWDOBs in place at the beginning of the reporting year;

(18) Cumulative data separately showing the total diversity spend with non-diverse-owned businesses during the reporting year;

(19) The annual total of amounts paid to prime contractors (tier 1) and subcontractors (tier 2) and the percentage of which was paid separately through prime contracts and subcontracts to minorities, women, individuals with disabilities, or MWDOBs during the reporting year;

* * * * *

(23) A comparison of the data reported under paragraphs (b)(13) through (19) of this section with the same information reported for the previous year;

* * * * *

§ 1223.24 [Amended]

■ 10. Amend § 1223.24 by removing the phrase ''or the Office of Finance's''.

■ 11. Add § 1223.25 to subpart C to read as follows:

§ 1223.25 Office of Finance.

All sections of this part and the standards issued under it shall apply to the Office of Finance, as defined in § 1201.1 of this chapter, in the same manner in which it applies to the regulated entities, unless the Office of Finance is otherwise specifically addressed or excluded.

Dated: July 12, 2017.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2017–15075 Filed 7–24–17; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 63, 121, 125, 135, 147, and 170

[Docket No. FAA–2017–0733; Amdt. Nos. 1–71, 63–39, 121–379, 125–67, 135–137, 147–8, 170–4]

RIN 2120–AL10

Removal of References to Obsolete Navigation Systems; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is removing references to the obsolete navigation systems Loran, Omega and Consol that currently appear in FAA regulations.

DATES: Effective July 25, 2017.

FOR FURTHER INFORMATION CONTACT: Kevin C. Kelley, Flight Technologies and Procedures Division, Flight Standards Service, 470 L'Enfant Plaza SW., Washington, DC 20591; telephone: 202–267–8854; email: *kevin.c.kelley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption Without Prior Notice

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) 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.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. Further, section 553(d)(3) of the APA requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

This technical amendment removes obsolete references in title 14 Code of Federal Regulations (CFR) parts 1, 63, 121, 125, 135, 147, and 170. Loran, Consol, and Omega ground stations have ceased operations, which makes these avionics receivers obsolete and useless. Continued mention of these obsolete navigation aids in title 14 of the CFR serves no purpose, and could only confuse the public. Any additional delay in correcting the regulations would be unnecessary because the

changes affect terms referencing navigation aids that ceased operations over 6 years ago and as such, are not in use. Further, these corrections will not impose any additional restrictions on the persons affected by these regulations because the amendments merely align the CFR with the current state of affairs regarding operational navigation aids.

Based on the foregoing, public comment and a 30-day effective date would be unnecessary and thus, the FAA finds good cause to forgo public comment and to make the amendment effective in less than 30 days.

Technical Amendment

Loran, Consol, and Omega ground stations ceased operations over six years ago and are no longer in use. *See* 75 FR 22674 (April 29, 2010); 75 FR 42819 (July 22, 2010); 73 FR 26465 (May 9, 2008); 73 FR 46345 (August 8, 2008) and Amendment 71 to ICAO Annex 10, Volume 1, *Aeronautical Telecommunications* (adopted 12 March 1996). Therefore, with this technical amendment, the FAA is removing all references to these obsolete navigation systems from title 14 of the CFR.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 63

Aircraft, Airman, Aviation Safety, Navigation (air).

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Safety.

14 CFR Part 125

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

14 CFR Part 147

Aircraft, Airmen, Schools.

14 CFR Part 170

Air traffic control, Airports.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

■ 2. Amend § 1.1 by revising the definition of ''Long-range navigation system (LRNS)'' to read as follows:

§ 1.1 General definitions.

* * * * *

Long-range navigation system (LRNS). An electronic navigation unit that is approved for use under instrument flight rules as a primary means of navigation, and has at least one source of navigational input, such as inertial navigation system or global positioning system.

* * * * *

§ 1.2 [Amended]

■ 3. Amend § 1.2 by removing the entry ''CONSOL or CONSOLAN''.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 4. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 5. Amend appendix A to part 63 as follows:

■ a. Remove and reserve paragraphs (e)(26), (27), and (28); and

■ b. Revise paragraphs (e)(37) and (44). The revisions read as follows:

Appendix A to Part 63—Test Requirements for Flight Navigator Certificate

* * * * *

(e) * * *

(37) Take celestial fixes at hourly intervals when conditions permit. The accuracy of these fixes shall be checked by means of a radio or visual fix whenever practicable. After allowing for the probable error of a radio or visual fix, a celestial fix under favorable conditions should plot within 10 miles of the actual position.

* * * * *

(44) Work with sufficient speed to determine the aircraft's position hourly by celestial means and also make all other observations and records pertinent to the navigation. The applicant should be able to take the observation, compute, and plot a celestial LOP within a time limit of 8 minutes; observe the absolute and pressure altimeters and compute the drift or lateral displacement within a time limit of 3 minutes.

* * * * *

■ 6. In appendix B to part 63, the table in paragraph (a)(2)(iii) is amended by revising the entry for ''Radio and long-range navigational aids'' to read as follows:

Appendix B to Part 63—Flight Navigator Training Course Requirements

(a) * * *

(2) * * *

(iii) * * *

Subject	Classroom hours
* * * * *	
Radio and long-range navigational aids	35
To include:	
Principles of radio transmission and reception	
Radio aids to navigation	
Government publications	
Airborne D/F equipment	
Errors of radio bearings	
Quadrantal correction	
Plotting radio bearings	
ICAO Q code for direction finding	
* * * * *	

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 7. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95, 126 Stat 62 (49 U.S.C. 44732 note).

Appendix G to Part 121 [Amended]

■ 8. Amend appendix G to part 121 by removing the words ''Loran, Consol,'' from paragraph 4.(c).

Appendix M to Part 121 [Amended]

■ 9. Amend the table in appendix M to part 1211 by revising entry 60 to read as follows:

Appendix M to Part 121—Airplane Flight Recorder Specifications

* * * * *

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
*	*	*	*	*	*
60. Primary Navigation System Reference.	Discrete GPS, INS, VOR/DME, MLS, Localizer Glideslope.	.....	4	.....	A suitable combination of discretes to determine the Primary Navigation System reference.
*	*	*	*	*	*

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

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

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

Appendix E to Part 125 [Amended]

■ 11. Amend the table in appendix E to part 125 by revising entry 60 to read as follows:

Appendix E to Part 125—Airplane Flight Recorder Specifications

* * * * *

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
*	*	*	*	*	*
60. Primary Navigation System Reference.	Discrete GPS, INS, VOR/DME, MLS, Localizer Glideslope.	.....	4	.....	A suitable combination of discretes to determine the Primary Navigation System reference.
*	*	*	*	*	*

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 13. Amend the table in appendix F to part 135 by revising entry 60 to read as follows:

Appendix F to Part 135—Airplane Flight Recorder Specifications

* * * * *

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
*	*	*	*	*	*
60. Primary Navigation System Reference.	Discrete GPS, INS, VOR/DME, MLS, Localizer Glideslope.	.....	4	.....	A suitable combination of discretes to determine the Primary Navigation System reference.
*	*	*	*	*	*

* * * * *

PART 147—AVIATION MAINTENANCE TECHNICIAN SCHOOLS

■ 14. The authority citation for part 147 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707–44709.

■ 15. Amend the second table in appendix C to part 147 by revising entry 39 to read as follows:

Appendix C to Part 147—Airframe Curriculum Subjects

* * * * *

Teaching level	
* * * * * * *	
(1)	39. Inspect, check, and service aircraft electronic communication and navigation systems, including VHF passenger address interphones and static discharge devices, aircraft VOR, ILS, Radar beacon transponders, flight management computers, and GPWS.
* * * * * * *	

PART 170—ESTABLISHMENT AND DISCONTINUANCE CRITERIA FOR AIR TRAFFIC CONTROL SERVICES AND NAVIGATIONAL FACILITIES

■ 16. The authority citation for part 170 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103–40107, 40113, 44502, 44701–44702, 44708–44709, 44719, 44721–44722, 46308.

§ 170.3 [Amended]

■ 17. Amend § 170.3 by removing the definition of ''LORAN–C''.

Subpart C [Removed and Reserved]

■ 18. Remove and Reserve subpart C.

Issued under the authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC on July 18, 2017.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2017–15517 Filed 7–24–17; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2017–0021]

RIN 0960–AI06

Extension of Sunset Date for Attorney Advisor Program

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending for six months our rule authorizing attorney advisors to conduct certain prehearing proceedings and to issue fully favorable decisions. The current rule is scheduled to expire on August 4, 2017. In this final rule, we are extending the sunset date to February 5, 2018. We are making no other substantive changes.

DATES: This final rule is effective July 25, 2017.

FOR FURTHER INFORMATION CONTACT: Patrick McGuire, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041–3260, 703–605–7100 for information about this final rule. For information on eligibility or filing for benefits, call our national toll-free number, 800–772–1213 or TTY 800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background of the Attorney Advisor Program

On August 9, 2007, we issued an interim final rule permitting some attorney advisors to conduct certain prehearing proceedings and issue fully favorable decisions when the documentary record warrants doing so. 72 FR 44763. We instituted this practice to provide more timely service to the increasing number of applicants for Social Security disability benefits and Supplemental Security Income payments based on disability. We considered the public comments we received on the interim final rule, and on March 3, 2008, we issued a final rule without change. 73 FR 11349. Under this rule, some attorney advisors may develop claims and, in appropriate cases, issue fully favorable decisions before a hearing.

We originally intended the attorney advisor program to be a temporary modification to our procedures. Therefore, we included in §§ 404.942(g) and 416.1442(g) of the interim final rule a provision that the program would end on August 10, 2009, unless we decided to either terminate the rule earlier or extend it beyond that date by publication of a final rule in the **Federal Register.** Since that time, we have periodically extended the sunset date (see 74 FR 33327 extending to August 10, 2011; 76 FR 18383 extending to August 9, 2013; and 78 FR 45459 extending to August 7, 2015). As we noted above, the current sunset date for the program is August 4, 2017. 80 FR 31990.

Explanation of Extension

We published the final rule to adopt without change the interim final rule that we published on August 9, 2007. We stated our intent to monitor the program closely and to modify it if it did not meet our expectations. 73 FR 11349.

We explained in the 2008 final rule that the number of requests for hearings had increased significantly in recent years. From 2008 to the present, the number of pending hearing requests has continued to remain at a high level, and we anticipate that we will continue to receive several hundred thousand hearing requests in each of the next two fiscal years.[1] The attorney advisor program has assisted our efforts to address the high number of pending hearing requests, so we are extending the program at this time.

To preserve the maximum degree of flexibility we need to manage our hearings-level workloads effectively, we have decided to extend the attorney advisor rule for six months until February 5, 2018. As before, we reserve the authority to end the program earlier, to extend it by publishing a final rule in the **Federal Register,** or to discontinue it altogether.

Regulatory Procedures

Justification for Issuing Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that good cause exists for dispensing with the notice and public comment procedures for this rule. 5 U.S.C. 553(b)(B). Good cause exists because this final rule only extends the sunset date of an existing rule. It makes no substantive changes to the rule. The current regulations expressly provide that we may extend or terminate this rule. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this rule as a final rule.

[1] Our budget estimates for fiscal year 2018 (available at: *https://www.ssa.gov/budget/FY18Files/2018BST.pdf*) indicate that we expect to receive approximately 632,000 hearing requests in fiscal year 2017, and 645,000 in fiscal year 2018.

In addition, because we are not making any substantive changes to the existing rule, we find that there is good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d)(3). To ensure that we have uninterrupted authority to use attorney advisors to address the number of pending cases at the hearing level, we find that it is in the public interest to make this final rule effective on the date of publication.

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, survivors and disability insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Nancy A. Berryhill,

Acting Commissioner of Social Security.

For the reasons stated in the preamble, we are amending subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. In § 404.942, revise paragraph (g) to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on February 5, 2018, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

■ 3. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. In § 416.1442, revise paragraph (g) to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(g) *Sunset provision.* The provisions of this section will no longer be effective on February 5, 2018, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register.**

[FR Doc. 2017–15493 Filed 7–24–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 11 and 101

[Docket No. FDA–2011–F–0172]

RIN 0910–ZA48

Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Comment Period; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; correction.

SUMMARY: The Food and Drug Administration is correcting a document entitled ''Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Comment Period'' that appeared in the **Federal Register** of July 3, 2017. The document extended the comment period for the interim final rule that appeared in the **Federal Register** of May 4, 2017. The document was published with an incorrect RIN number. This document corrects that error.

DATES: Effective July 25, 2017.

FOR FURTHER INFORMATION CONTACT: Lisa Granger, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3330, Silver Spring, MD 20993–0002, 301–796–9115.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Monday, July 3, 2017, in FR Doc. 2017–13889, on page 30730, the following correction is made:

1. On page 30730, in the third column, in the headings section at the beginning of the document, the RIN number is corrected to read ''RIN 0910–ZA48''.

Dated: July 19, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–15538 Filed 7–24–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 17

[Docket No. FDA–2017–N–0011]

Civil Money Penalty Definitions; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA or Agency) is amending a civil money penalty regulation to correct a statutory reference to align the regulations with the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and to ensure accuracy and clarity in the Agency's regulations.

DATES: This rule is effective July 25, 2017.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4248, Silver Spring, MD 20993–0002, 301–796–4830.

SUPPLEMENTARY INFORMATION: FDA is amending its regulation at 21 CFR 17.3 to correct a statutory reference to reflect the current citation. FDA is revising § 17.3(a)(1) through (4) by replacing section ''333(g)'' with section ''333(f).'' On July 27, 1995, FDA published a final rule establishing hearing procedures for use when FDA proposes the imposition of administrative civil money penalties (60 FR 38612 at 38626). The document was published with a citation to 21 U.S.C. 333(g) (303(g) of the FD&C Act) that subsequently was changed to 21 U.S.C. 333(f) (303(f) of the FD&C Act) by section 226(b)(1) of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85).

Publication of this document constitutes final action on the change under the Administrative Procedure Act (5 U.S.C. 553). This technical amendment is nonsubstantive and merely updates and corrects a statutory reference in the Code of Federal Regulations (CFR) that is no longer current. FDA therefore, for good cause, has determined that notice and public comment are unnecessary under 5 U.S.C. 553(b)(3)(B). Further, this rule places no burden on affected parties for which such parties would need a reasonable time to prepare for the effective date of the rule. Accordingly, FDA, for good cause, has determined this technical amendment to be exempt under 5 U.S.C. 553(d)(3) and that the rule can become effective upon publication.

FDA has determined under 21 CFR 25.30(i) that this final rule 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. In addition, FDA has determined that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20) is not required.

List of Subjects in 21 CFR Part 17

Administrative practice and procedure, Penalties.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 17 is amended as follows:

PART 17—CIVIL MONEY PENALTIES HEARINGS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 21 U.S.C. 331, 333, 337, 351, 352, 355, 360, 360c, 360f, 360i, 360j, 371; 42 U.S.C. 262, 263b, 300aa–28; 5 U.S.C. 554, 555, 556, 557.

■ 2. In § 17.3, paragraph (a) is revised to read as follows:

§ 17.3 Definitions.

* * * * *

(a) For specific acts giving rise to civil money penalty actions brought under 21 U.S.C. 333(f)(1):

(1) *Significant departure,* for the purpose of interpreting 21 U.S.C. 333(f)(1)(B)(i), means a departure from requirements that is either a single major incident or a series of incidents that collectively are consequential.

(2) *Knowing departure,* for the purposes of interpreting 21 U.S.C. 333(f)(1)(B)(i), means a departure from a requirement taken:

(i) With actual knowledge that the action is such a departure; or

(ii) In deliberate ignorance of a requirement; or

(ii) In reckless disregard of a requirement.

(3) *Minor violations,* for the purposes of interpreting 21 U.S.C. 333(f)(1)(B)(ii), means departures from requirements that do not rise to a level of a single major incident or a series of incidents that are collectively consequential.

(4) *Defective,* for the purposes of interpreting 21 U.S.C. 333(f)(1)(B)(iii), includes any defect in performance, manufacture, construction, components, materials, specifications, design, installation, maintenance, or service of a device, or any defect in mechanical, physical, or chemical properties of a device.

* * * * *

Dated: July 18, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–15532 Filed 7–24–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF INTERIOR

National Indian Gaming Commission

25 CFR Part 515

RIN 3141–AA65

Privacy Act Procedures; Corrections

AGENCY: National Indian Gaming Commission, Department of Interior.

ACTION: Correcting amendments.

SUMMARY: On January 24, 2017, the National Indian Gaming Commission (NIGC) revised its Privacy Act regulations. That document included incorrect information regarding the NIGC's address and contained conflicting timelines for resolving appeals. This document corrects the final regulations.

DATES: Effective July 25, 2017 and applicable beginning January 24, 2017.

FOR FURTHER INFORMATION CONTACT: Andrew Mendoza, Staff Attorney, (202) 632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law October 17, 1988. The Act established the NIGC and set out a comprehensive framework for the regulation of gaming on Indian lands. The purposes of the Act include: Providing a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; ensuring that the Indian tribe is the primary beneficiary of the gaming operation; and declaring that the establishment of independent federal regulatory authority for gaming on Indian lands, the establishment of federal standards for gaming on Indian lands, and the establishment of a National Indian

Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2702.

II. Corrections

25 CFR Part 515—Privacy Act Procedures

This document makes several correcting amendments to the Commission's Privacy Act procedures. First, this document amends 25 CFR 515.7(c) to reflect that the correct timeframe for the Privacy Act Appeals Officer to respond to an appeal is 20 working days rather than 30 working days. In 25 CFR 515.7(c) sentence one, the regulation correctly refers to the twenty-working day period established in the Commission's final rule. Then, in sentence two, the regulation incorrectly refers to the same time period as a thirty working-day period. The Commission addressed this change in its preamble to the final rule and explained that this time period was being changed to reflect the twenty working-day time period established within the Freedom of Information Act. The second reference to this time period was overlooked in the previous publication. This document also amends 25 CFR 515.3 to update the Commission's physical address. This document also corrects a grammatical error in 25 CFR 515.7(c). Finally, it amends a cross-reference contained in 25 CFR 515.10.

III. Certain Findings

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comments are impractical, unnecessary, or contrary to the public interest. Because the revisions here are technical in nature and are not substantive, the NIGC is publishing a technical amendment.

IV. Regulatory Matters

Executive Order 13175

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published on July 15, 2013. Due to the ministerial nature of the action being taken here, consultation is not required under the NIGC's Consultation Policy.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Indian tribes are not considered to be small entities for purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not result in an annual effect on the economy of $100 million per year or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission determined the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform Act

In accordance with Executive Order 12988, the Commission determined the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act

The Commission determined this rule does not constitute a major federal action significantly affecting the quality of the human environment and that a detailed statement is not required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) is required.

List of Subjects in 25 CFR Part 515

Administrative practice and procedure, Privacy, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the NIGC amends 25 CFR part 515 as follows:

PART 515—PRIVACY ACT PROCEDURES

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Amend § 515.3 by revising the third sentence of paragraph (a) to read as follows:

§ 517.3 Request for access to records.

(a) * * * The request may be made in person at 90 K Street NE., Suite 200, Washington, DC 20002 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Monday through Friday, in writing at NIGC Attn: Privacy Act Office, 1849 C Street NW., Mail Stop #1621, Washington, DC 20240, or via electronic mail addressed to *PARequests@nigc.gov.*

* * * * *

■ 3. Amend § 515.7 by revising the second and sixth sentences of paragraph (c) to read as follows:

§ 515.7 Appeals of initial adverse agency determination.

* * * * *

(c) * * * For good cause shown, however, the Privacy Act Appeals Officer may extend the 20 day working period. * * * The response to the appeal shall also advise of the right to institute a civil action in a federal district court for judicial review of the decision.

* * * * *

■ 4. Amend § 515.10 by revising the first sentence to read as follows:

§ 515.10 Fees.

The Commission shall charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under § 517.9 of this chapter. * * *

Dated: July 14, 2017.

Jonodev O. Chaudhuri,

Chairman.

Kathryn Isom-Clause,

Vice Chair.

E. Sequoyah Simermeyer,

Commissioner.

[FR Doc. 2017–15499 Filed 7–24–17; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0686]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across the Sacramento River, mile 59.0 at Sacramento, CA. The deviation is necessary to allow the community to participate in the Color Run. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 7:30 a.m. to 11:30 a.m. on August 5, 2017.

ADDRESSES: The docket for this deviation, [USCG–2017–0686], is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516; email *Carl.T.Hausner@uscg.mil*.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, over the Sacramento River, at Sacramento, CA. The drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7:30 a.m. to 11:30 a.m. on August 5, 2017, to allow the community to participate in the Color Run. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway, through our Local and Broadcast Notices to Mariners, of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 20, 2017.

Carl T. Hausner,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2017–15586 Filed 7–24–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0674]

Drawbridge Operation Regulation; Hackensack River, Little Snake Hill, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Amtrak Portal Bridge across the Hackensack River, mile 5.0, at Little Snake Hill, New Jersey. This temporary deviation is necessary to allow the bridge to remain in the closed-to-navigation position to facilitate the replacement of miter rails and timbers of the bridge.

DATES: This deviation is effective from 10 p.m. on September 8, 2017 to 5 a.m. on October 1, 2017.

ADDRESSES: The docket for this deviation, USCG–2017–0674 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4336, email *Judy.K.Leung-Yee@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Railroad Passenger Corporation (Amtrak), the owner of the bridge, requested a temporary deviation from the normal operating schedule to facilitate the replacement of miter rails and timbers of the bridge. The Amtrak Portal Bridge across the Hackensack River, mile 5.0, has a vertical clearance in the closed position of 23 feet at mean high water and 28 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.723(e).

Under this temporary deviation, the Amtrak Portal Bridge shall remain in the closed position between 10 p.m. Friday and 5 a.m. Sunday as follows: September 8–10, 15–17, 22–24; September 29–October 1, 2017.

The waterway is transited by commercial and recreational traffic. The Coast Guard notified known companies of the commercial vessels that transit the area, including the Sandy Hook Pilots and the local tug/tow committee; there were no objections to this temporary deviation. Vessels able to pass under the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

The Coast Guard will inform the users of the waterways through our Local Notice and Broadcast to Mariners of the change in operating schedule for the bridge so that vessel operations can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 20, 2017.

Christopher J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2017–15557 Filed 7–24–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0548]

Safety Zones; D-Day Conneaut Air Show, Conneaut, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the D-Day Conneaut Air Show, on Lake Erie from 2 p.m.

through 5 p.m. on Friday, August 18, 2017 and from 2 p.m. through 5 p.m. on Saturday, August 19, 2017. This action is necessary to provide for the safety of life and property on navigable waters during this event. During the enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulation in 33 CFR 165.939(a)(32) will be enforced from 2 p.m. through 5 p.m. on Friday, August 18, 2017 and from 2 p.m. through 5 p.m. on Saturday, August 19, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LT Ryan Junod, Coast Guard; telephone 216–937–0124, email *ryan.s.junod@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; D-Day Conneaut Air Show, Conneaut, OH, Lake Erie, Conneaut, OH listed in 33 CFR 165. 939(a)(32) for the following event:

D-Day Conneaut Air Show, Lake Erie, Conneaut, OH; The safety zone listed in 33 CFR 165.939(a)(32) will be enforced from 2 p.m. through 5 p.m. on August 18, 2017 and August 19, 2017. The safety zone will encompass all waters of Conneaut Township Park, Lake Erie, Conneaut, OH within an area starting at 41°57.71′ N., 080°34.18′ W., to 41°58.36′ N., 080°34.17′ W., then to 41°58.53′ N., 080°33.55′ W., to 41°58.03′ N., 080°33.72′ W., and returning to the point of origin (NAD 83). This action is necessary to provide for the safety of life and property on navigable waters during this event. Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Those seeking permission to enter one of these safety zones may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter this safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.939(a)(32) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners and Local Notice to Mariners. If the Captain of the Port Buffalo determines that this safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: July 18, 2017.

Joseph S. Dufresne,

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

[FR Doc. 2017–15505 Filed 7–24–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0676]

Safety Zone; Annual Event in the Captain of the Port Buffalo Zone—Celebrate Erie Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Celebrate Erie Fireworks, Presque Isle Bay, Erie, PA from 9:30 p.m. to 10:30 p.m. on Sunday, August 20, 2017 with a rain date of Monday, August 21, 2017. This action is necessary and intended for the safety of life and property on navigable waters during this event. During the enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulation in 33 CFR 165.939(a)(20) will be enforced on August 20, 2017, with a rain date of August 21, 2017, from 9:30 p.m. to 10:30 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Michael Collet, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd. Buffalo, NY 14203; telephone 716–843–9322, email *SectorBuffaloMarineSafety@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Annual Event in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939(a)(20) for the following event:

(1) *Celebrate Erie Fireworks, Erie, PA;* The safety zone listed in 33 CFR 165.939(a)(20) will be enforced on August 20, 2017, with a rain date of August 21, 2017, from 9:30 p.m. to 10:30 p.m. within an 800 foot radius of land position 42°08′19″ N., 080°5′29″ W. (NAD83).

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that the safety zone need not be enforced for the full duration stated in this notice he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: July 19, 2017.

Joseph S. Dufresne,

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

[FR Doc. 2017–15506 Filed 7–24–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0619]

RIN 1625–AA00

Safety Zone; Selfridge Air Show, Clinton River, Harrison Township, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Clinton River in the vicinity of Harrison Township, MI. This zone is intended to restrict and control movement of vessels in a portion of the Clinton River. This zone is necessary to protect spectators and vessels from potential hazards associated with the Selfridge Air Show.

DATES: This temporary final rule is effective from 3:30 p.m. August 18, 2017 through 4:30 p.m. on August 20, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0619 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9564, or email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard did not receive the final details of this air show until there was insufficient time remaining before the event to publish an NPRM. Delaying this action to allow for public comment would be impracticable and contrary to the public interest since immediate action is needed to ensure that the zone is in effect to protect participants and public from potential dangers during this event.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to public interest because immediate action is needed to protect persons and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Detroit (COTP) has determined that an aircraft aerial display proximate to a gathering of watercraft poses a significant risk to public safety and property. Such hazards include potential aircraft malfunctions, loud noise levels, and waterway distractions. Therefore, the COTP is establishing a safety zone around the event location to help minimize risks to safety of life and property during this event.

IV. Discussion of the Rule

This rule establishes a safety zone from 3:30 p.m. on August 18, 2017, through 4:30 p.m. on August 20, 2017. The safety zone will encompass all navigable waters of the Clinton River between the following two lines extending from bank to bank: the first line is drawn directly across the channel at position 42°35.809′ N., 082°50.083′ W. (NAD 83); the second line, to the east, is drawn directly across the channel at position 42°35.863′ N., 082°49.919′ W. (NAD 83). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will not be able to safely transit around this safety zone which will impact a small designated area of the Clinton River from 3:30 p.m. on August 18, 2017 through 4:30 p.m. on August 20, 2017. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting an hour per day that will prohibit entry within the .2 mile by .1 mile portion of the air show site. It is categorically excluded under section 2.B.2, figure 2–1, paragraph 34(g) of the Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0619 to read as follows:

§ 165.T09–0619 Safety Zone; Selfridge Air Show; Harrison Township, MI.

(a) *Location.* The safety zone will encompass all navigable waters of the Clinton River between the following two lines extending from bank to bank: the first line is drawn directly across the channel at position 42°35.809′ N., 082°50.083′ W. (NAD 83); the second line, to the east, is drawn directly across the channel at position 42°35.863′ N., 082°49.919′ W. (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) of this section will be enforced from 3:30 p.m. through 4:30 p.m. each day from August 18, 2017 through August 20, 2017.

(c) *Regulations.* (1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit, or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to enter or operate within the safety zone. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313–568–9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port Detroit or his on-scene representative.

Dated: July 20, 2017.

Jeffrey W. Novak,

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

[FR Doc. 2017–15596 Filed 7–24–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0501]

Safety Zones; Head of the Cuyahoga Regatta, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Head of the Cuyahoga regatta, on the Cuyahoga River from 6:45 a.m. through 4:15 p.m. on Saturday, September 16, 2017. This action is necessary to provide for the safety of life and property on navigable waters during this event. During the enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulation in 33 CFR 165.T09–0082 will be enforced from 6:45 a.m. through 4:15 p.m. on Saturday, September 16, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LT Ryan Junod, Coast Guard; telephone 216–937–0124, email *ryan.s.junod@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Cleveland Dragon Boat Festival and Head of the Cuyahoga, Cuyahoga River,

Cleveland, OH listed in 33 CFR 165.T09–0082 for the following event:

Head of the Cuyahoga, Cuyahoga River, Cleveland, OH; The safety zone listed in 33 CFR 165.T09–0082 will be enforced from 6:45 a.m. through 4:15 p.m. on September 16, 2017. The safety zone will encompass all waters of the Cuyahoga River, Cleveland, OH between a line drawn perpendicular to the river banks from position 41°29′55″ N., 081°42′23″ W. (NAD 83) just past the Detroit-Superior Viaduct bridge at MM 1.42 of the Cuyahoga River south to a line drawn perpendicular to the river banks at position 41°28′32″ N., 081°40′16″ W. (NAD 83) just south of the Interstate 490 bridge at MM 4.79 of the Cuyahoga River. This action is necessary to provide for the safety of life and property on navigable waters during this event. Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Those seeking permission to enter one of these safety zones may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter this safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.T09–0082 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners and Local Notice to Mariners. If the Captain of the Port Buffalo determines that this safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: July 18, 2017.

Joseph S. Dufresne,

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

[FR Doc. 2017–15504 Filed 7–24–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP06

Ensuring a Safe Environment for Community Residential Care Residents

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with changes, a proposed rule governing the approval of a community residential care facility (CRC). The final rule prohibits a CRC from employing an individual who has been convicted in a court of law of certain listed crimes within 7 years of conviction, or has had a finding within 6 months entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property. The CRC is required to conduct an individual assessment of suitability for employment for any conviction or finding outside either the 7 year or 6 month parameters. The CRCs is also required to develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property. The CRC must report and investigate any allegations of abuse or mistreatment. The CRC must also screen individuals who are not CRC residents, but have direct access to a veteran living in a CRC. In addition, we are amending the rule regarding the maximum number of beds allowed in a resident's bedroom. VA published the proposed rule on November 12, 2015, and we received four public comments. We also received correspondence from a federal agency with recommendations. This final rule responds to public comments and feedback from that federal agency.

DATES: This rule is effective on August 24, 2017.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Allman, Chief Consultant, Geriatrics and Extended Care Services (10P4G), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461–6750. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is authorized under 38 U.S.C. 1730 to assist veterans by referring them for placement, and aiding veterans in obtaining placement, in a community residential care facility (CRC). A CRC is a form of enriched housing that provides health care supervision to eligible veterans who do not need hospital or nursing home care, but who, because of medical, psychiatric and/or psychosocial limitations as determined through a statement of needed care, are unable to live independently and have no suitable family or significant others to provide the needed supervision and supportive care. VA maintains a list of approved CRCs. The cost of community residential care is financed by the veteran's own resources. A veteran may elect to reside in any CRC he or she wants; however, VA will only recommend CRCs that apply for approval and meet VA's standards. Once approved, the CRC is placed on VA's referral list and VA refers veterans for whom CRC care is an option to the VA-approved CRCs when those veterans are determining where they would like to live. VA published regulations governing CRCs at title 38 Code of Federal Regulations (CFR), §§ 17.61–17.72. Standards for approval of CRCs are found at § 17.63. On November 12, 2015, VA published a proposed rule that would amend these standards. 80 FR 69909. Under the proposed rule, a CRC would be prohibited from employing an individual who has been convicted in a court of law of certain listed crimes, or has had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property. VA also proposed to require CRCs to develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property. The proposed rule would have also required CRCs to report and investigate any allegations of mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property. In addition, the proposed rule would require the CRC to screen individuals who are not CRC residents, but have direct access to a veteran living in a CRC. The proposed revisions would improve the safety and help prevent the neglect or abuse of veteran residents in CRCs. In addition, we proposed to amend the rule regarding the maximum number of beds allowed in a resident's bedroom.

The comment period for this proposed rule closed on January 11, 2016. We received four public comments which generally supported the proposed rule, but recommended several changes. In addition, we received a letter from the U.S. Equal Employment Opportunity Commission

(EEOC) suggesting amendments to the proposed rule to avoid potential conflicts with Title VII of the of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), as amended (Title VII). Upon review, VA has determined that it will adopt the proposed rule as final, with changes that are discussed below. These changes are related to elements added to the proposed rule, and some paragraphs that were in the proposed rule have been redesignated as a result. We have grouped the comments and responses into discrete subject areas.

State-Related Issues

One commenter raised several issues related to actions states may be required to take as a result of the proposed rule. As we discuss in greater detail below, this rulemaking imposes no requirements on states.

The commenter stated that many states will likely face challenges in implementing the new rule, and that VA should allow states flexibility in the specific details of their program and implementation time. The commenter also stated that some states may not include CRCs as ''covered facilities'' and state laws would have to be amended. In addition, the commenter noted that states do not define ''employee'' the same for purposes of requiring background checks. Given the issues of passing enabling state legislation, obtaining approval in states with rigorous information technology (IT) project reviews, and developing IT system interfaces with external partners, the commenter suggested that VA specify a timeframe for implementing the background check component of this rule. In addition, the commenter stated that the VA rule should designate a state agency to coordinate and make employment eligibility determinations for all CRCs in that state. The commenter noted that a state agency may receive rap-back notification of arrests from state law enforcement departments, and that arrest information may not be passed on to employers in some cases. However, state determination analysts could monitor and resolve the eligibility status of the subject applicant or employee. The commenter listed several efficiencies that would be achieved by adopting this process.

The common thread in this series of comments is the potential impact this rulemaking will have on states. However, states are not mandated to pass any legislation, publish regulations, initiate any IT projects, or take any other action related to this rulemaking. Nor is this rulemaking such that VA would consider obligating a state to expend resources to coordinate and make employment eligibility determinations for all approved CRCs in the state. The section of part 17 that is being amended addresses standards that a CRC must meet to be listed by VA as an approved CRC, and all regulatory requirements are directed to the CRC operator, which is typically not a state entity. The rulemaking prohibits the CRC from employing an individual who has been convicted by a court of law of abusing, neglecting, or mistreating individuals within 7 years, or an individual who has had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property within 6 months. As we noted when we proposed this rule, many states have programs in place that the CRC can use to assist in complying with this requirement (80 FR 69909, 69910 (November 12, 2015)). In those states where no program is in place, we are not requiring the states to take any legislative or programmatic action. The CRC must identify an alternative means to meet the regulatory requirement. We make no changes based on these comments.

Standards for Criminal History Checks

One commenter stated that VA should require comprehensive background checks, including fingerprint-based criminal history checks and both state and Federal Bureau of Investigation (FBI) criminal history checks. The commenter also suggested that VA should require electronic fingerprinting to increase efficiency of that comprehensive criminal history check.

We agree that a criminal history check based on fingerprints is the gold standard, and that electronic fingerprinting increases the efficiency of a comprehensive criminal history check. However, it is unclear to VA whether fingerprinting services, and a criminal history check based on those fingerprints, can be requested or easily obtained by all approved CRCs in all states or localities; and, if so, the costs that would be incurred by a CRC related to such services. It is also unclear whether requiring fingerprints in this case would result in an outcome different than that contemplated under this rulemaking. VA will continue to review this issue, and may propose changes in the future based on additional data. We make no changes at this time based on this comment.

One commenter stated that VA should consider instituting a rap-back requirement and a validity period for criminal history checks. Rap-back is the process for notifications and review in the event that a previously cleared direct access worker is then subsequently arrested or convicted of a crime. The commenter asserted that in a 12-month period, one state participating in the Centers for Medicare and Medicaid Services' National Background Check Program received 9,500 criminal history notifications from state law enforcement agencies for ''cleared'' long term care employees. Based on these notifications, 1,260 (13 percent) resulted in employees being determined ineligible for continued employment in direct access positions VA considered both issues when developing this rulemaking. Rap-back requires a system that remains in place and continuously monitors any change in status of an individual for which a criminal history check has been completed. The system would also have to include a mechanism for communicating to the CRC any change in status. To our knowledge, this type of system is not readily available to all CRC operators. One example of an existing rap-back initiative is operated by the FBI as part of its Next Generation Identification program. The FBI's rap-back service is available only to authorized state or federal agencies. Also, VA has insufficient information to determine whether a rap-back system would result in an outcome different than that contemplated under this rulemaking. VA will continue to review this issue, and may propose changes in the future based on additional data. We make no changes at this time based on this comment. Regarding the issue of imposing a validity period for criminal history checks, under § 17.63 a CRC is required to maintain compliance with regulatory standards in order to continue to be listed by VA as an approved facility. The approving official inspects each CRC at least annually, and ensuring that CRC staff is qualified to be employed in the CRC is one element of that inspection. Given this requirement, VA believes that establishing a validity period for criminal history checks is unnecessary. We make no changes based on this comment.

One commenter stated that VA should consider expanding the list of registries reviewed as part of the background check process. The commenter suggested that, at a minimum, the background check should include searches of the in-state nurse aide registry and any out-of-state nurse aide registry as appropriate; professional licensing registries; the U.S. Department of Health and Human Services List of

Excluded Individuals/Entities; state child abuse and adult abuse registries; and, state and national sex offender registries.

Under § 17.63(j)(3)(i)(A)(*2*) of the proposed rule, we stated that a CRC provider must not employ an individual who has had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property. While we noted examples of applicable State registries in our discussion of this paragraph (80 FR 69909, 69910 (November 12, 2015)), the rule does not specify the number or types of State registries that should be reviewed. The issue of which State registry is ''applicable'' is wholly dependent on the occupation of the individual seeking or holding the job, or the requirements of the job. We make no changes based on this comment.

One commenter stated that VA should seek technical assistance from an experienced organization that has worked across many states implementing background check programs. The issue of seeking technical assistance from an outside organization is beyond the scope of this rulemaking. We make no changes based on this comment.

Bar for Certain Crimes, Definition of ''Convicted of a Criminal Offense,'' and Title VII Concerns

In addition to public comments, VA received a letter from EEOC recommending that VA consider revising the proposed rule to avoid potential conflict with Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*). EEOC recommended that VA consider revising the provisions regarding the prohibition on CRCs employing individuals with conviction records or negative State registry or licensing authority findings; the definition of '' 'convicted' of a criminal offense''; and the types of State registry findings that may result in exclusion from employment with CRCs, to avoid potential conflicts with Title VII. It stated that VA's careful consideration of the scope of its criminal conduct ban is important because, while Title VII does not preempt federally imposed criminal restrictions, such conflicts should be kept to a minimum.

In proposed § 17.63(j)(3)(i)(A), we stated that CRCs would be prohibited from employing individuals who have been convicted by a court of law of abuse, neglect, or mistreatment of individuals; and would be prohibited from employing individuals who have had a finding regarding abuse, neglect, mistreatment of individuals, or misappropriation of property entered into an applicable State registry or with an applicable licensing authority. EEOC noted that the proposed rule does not appear to impose any time limits on the convictions or State registry or licensing authority findings that may exclude CRC applicants from consideration. In addition, it stated that the prohibition is very broad, applying to a range of offenses over an unspecified time period, with no exceptions or consideration of potentially extenuating factors or circumstances. As an example, EEOC stated that if an individual was convicted of stealing candy as a minor this could be considered misappropriation of property under the proposed rule. However, this type of crime would not be job related and exclusion from employment would be inconsistent with business necessity, and would be discriminatory if it is shown to have a disparate impact. EEOC also stated that the proposed rule would not allow for consideration of rehabilitation efforts, a long and positive work history and references positively attesting to an individual's work ethic and integrity.

In addition, EEOC recommended that VA consider narrowing the definition of conviction of a criminal offense to exclude expunged convictions and participation in first offender, deferred adjudication, or other arrangements or programs in which a judgment of conviction has not been made. EEOC noted that, consistent with its guidelines, a CRC could consider the conduct and circumstances that resulted in the expungement or the individual's participation in such programs when making employment decisions.

Further, EEOC recommended that VA narrow the prohibition of employment based on State registry findings to findings that resulted in convictions, or, at the very least, prosecution. EEOC stated that, as currently written, individuals with applicable State registry findings are excluded from employment with CRCs, even if they have not been prosecuted for or found guilty of any crime. These individuals may pose no greater threat to a CRC resident than applicants without such State registry findings. Consequently, such exclusions may not be job related and consistent with business necessity.

We generally agree. In 2012, EEOC issued ''Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964.'' One purpose of that guidance is to assist EEOC in coordinating ''with other federal departments and agencies with the goal of maximizing federal regulatory consistency with respect to the use of criminal history information in employment decisions.'' Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin. The guidance addresses both disparate treatment (where an employer treats criminal history information differently for different applicants or employees based on race or national origin) and disparate impact (a neutral policy, such as excluding applicants from employment based on certain criminal conduct, that disproportionately impacts some individuals based on race or national origin, where the exclusion is not job related and consistent with business necessity).

An arrest, or mere allegation of misconduct, does not establish that criminal conduct has occurred. A criminal conviction, on the other hand, serves as legally sufficient evidence that a person engaged in particular conduct. In certain circumstances, however, there may be reasons for an employer not to rely on the conviction record alone when making an employment decision.

As an initial matter, we note that various federal or state laws effectively bar employment in certain positions if an individual is convicted of certain crimes. For instance, at the federal level, 18 U.S.C. 2381 bans from future federal employment an individual who has been convicted of treason. Similar types of bans are found in state law. The majority of states have laws or regulations governing hiring of individuals applying for positions in long term care, residential care, adult day care, nursing homes, and similar types of care provided to elderly or at risk individuals. Many states establish a permanent bar on employment in one or more of these service sectors for convictions of certain serious crimes, and a ban for a defined number of years for convictions of other types of crimes. The specific criminal offenses listed in the statutes and regulations vary by state, as does the length of the bar on employment following conviction. One example is South Carolina Regulation 61–84, Standards for Licensing Community Residential Care Facilities, which provides that staff members, direct care volunteers, and private sitters of a licensed community residential care facility shall not have a prior conviction or pled no contest (nolo-contendere) to abuse, neglect, or exploitation of a child or a vulnerable adult as defined in state law. Another example is District of Columbia Code 44–552 which prohibits a long term care facility from employing or contracting

with an unlicensed health care worker who has been convicted within 7 years of any of several enumerated offenses. Several states have opted for a similar approach.

The proposed rule listed classes of crimes that an individual could be convicted of, rather than specific crimes defined in law. Based on comments received, VA believes this formulation could lead to uncertainty and confusion. In addition, the proposed rule would impose a permanent bar on employment in a CRC for a conviction. VA has determined that a more nuanced approach is appropriate, and that the rule should align more closely with established state requirements. To address EEOC's concerns, VA will make several changes to the rule. First, we will more clearly define the types of criminal activity that could be disqualifying. VA's primary concern is to ensure that a veteran residing in a CRC is not subjected to abuse, neglect, mistreatment, or misappropriation of property. To that end, VA will state that a CRC may not employ an individual who has been convicted of any of the following offenses or their equivalent in a state or territory: Murder, attempted murder, or manslaughter; arson; assault, battery, assault and battery, assault with a dangerous weapon, mayhem or threats to do bodily harm; burglary; robbery; kidnapping; theft, fraud, forgery, extortion or blackmail; illegal use or possession of a firearm; rape, sexual assault, sexual battery, or sexual abuse; child or elder abuse or cruelty to children or elders; or unlawful distribution or possession with intent to distribute a controlled substance. VA believes that this list of criminal offenses is sufficiently narrow and well-defined in law to target only those types of crimes that are of concern to VA. Rather than imposing a lifetime ban for a conviction of an enumerated crime, we will require a 7 year ban. This is in line with several state statutes related to similar types of employment, and VA believes it is consistent with our objectives, and supports our goal of ensuring a safe environment for CRC residents. Employees, contractors and volunteers working in VA-operated facilities, such as community living centers or nursing homes, must undergo a background screening as required by Office of Personnel Management (OPM) regulations at 5 CFR parts 731 and 736. Veterans residing in these VA-operated facilities can be confident that VA staff members, contractors, and volunteers have been screened for previous criminal convictions. One purpose of this rulemaking is to provide the same or similar level of assurance to veterans residing in approved CRCs.

A finding in a State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property is not equivalent to conviction of a crime, and we do not believe that a 7 year ban on employment based on a State registry or licensing authority is appropriate. However, we do not believe that an adverse finding in a relevant State registry or with an applicable licensing authority should be ignored, because even in the absence of a conviction the allegation of wrongdoing is by an individual or entity authorized to provide such information, and such information is subject to some level of investigation before it is approved for inclusion. We believe imposing a 6 month ban on employment in an approved CRC is appropriate, as this recognizes the adverse finding while also recognizing that there may be a follow-up investigation of the alleged incident during the 6 months following an adverse finding.

Where the conviction by a court of law of a crime enumerated in this rule occurred greater than 7 years in the past, or a finding was entered into a State registry or with the applicable licensing authority more than 6 months in the past, the CRC must perform an individual assessment of the applicant or employee to determine suitability for employment. The individual assessment must include consideration of the following factors: The nature of the job held or sought; the nature and gravity of the offense or offenses; the time that has passed since the conviction and/or completion of the sentence; the facts or circumstances surrounding the offense or conduct; the number of offenses for which the individual was convicted; the employee or applicant's age at the time of conviction, or release from prison; the nexus between the criminal conduct of the person and the job duties of the position; evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct; the length and consistency of employment history before and after the offense or conduct; rehabilitation efforts, including education or training; and, employment or character references and any other information regarding fitness for the particular position.

The factors listed above are derived from leading court decisions on what should be included in an individual assessment for Title VII purposes. To ensure that post-conviction suitability for employment is properly assessed for individuals who are 7 years post-conviction, VA believes these factors should be utilized by CRC operators.

A conviction of a relevant offense alone greater than 7 years in the past is not a bar to employment; and the listed factors will be considered by the CRC in determining eligibility for employment. VA believes that requiring the CRC to take these listed factors into consideration when conducting an individual assessment of an applicant's or employee's prior conviction for a crime strikes the proper balance between VA's goal of providing a safe environment for veterans residing in a CRC, due process for the applicant or employee, and the need for the CRC operator to ensure the hiring of a suitable individual.

In addition, we are amending the definition of conviction of a criminal offense to exclude an expunged conviction, as an expunged conviction is considered in law to have never occurred.

We do not agree with EEOC that the definition of conviction of a criminal offense should be amended to exclude participation in first offender deferred adjudication, or other arrangements or programs in which a judgment of conviction has not been made. Several federal statutes include these, or similar, types of deferred adjudications in the definition of ''conviction.'' Examples include an immigration statute, 8 U.S.C. 1101(a)(48)(A), and a statute excluding certain individuals and entities from participation in Medicare and State health care programs, 42 U.S.C. 1320a–7(i). Case law reflects that resolution of the issue of whether any particular deferred adjudication qualifies as a conviction under these statutes is wholly dependent on the facts of the case and the relevant underlying state or federal law (see, *e.g., Crespo* v. *Holder,* 631 F.3d 130 (4th Cir. 2011) and *Travers* v. *Shalala,* 20 F.3d 993 (9th Cir. 1994)). Rather than disregarding deferred adjudication in its entirety, VA has determined that a better approach is to require the CRC operator to consider a deferred adjudication on a case by case basis, conducting an individual assessment utilizing the factors listed above to determine eligibility for employment. VA believes that the individual assessment will address the concerns raised by EEOC, and the rule is amended accordingly.

Appeals

A commenter recommended the inclusion of an appeals process in those instances where an individual is denied employment because of the results of a criminal history check. While it is true

that VA will review staffing as part of the inspection and approval process, employment decisions are made solely by the CRC. The CRC, in turn, is a business operating under the auspices of the state, county, or locality. Individuals seeking to contest employment decisions may have other recourse under state law, and sometimes under federal law. Any rulemaking by VA on the issue of appeals could have the effect of limiting an individual's right to challenge a CRC's decision under state law, in essence preempting relevant state law. VA believes that a better approach is to preserve those rights. We make no changes based on this comment.

Reporting and Investigating Alleged Mistreatment, Neglect, Abuse, and Misappropriation of Resident's Property

One commenter supported VA requiring a CRC to report alleged mistreatment, neglect, abuse, and misappropriation of resident's property to the approving official within twenty-four hours of when the provider becomes aware, and the results of any investigation within five working days. However, the commenter recommended that these reports also be shared with the appropriate state agency. Another commenter stated that VA should clarify under what circumstance, how, and when external authorities are engaged.

We agree. In some instances, approved CRCs are licensed by the state, and therefore must comply with any state requirements for reporting alleged mistreatment, neglect, abuse, and misappropriation of residents' property to the appropriate state agency. However, a CRC that is not required to obtain a license to operate may not have the same reporting requirement. We are amending the rule to require the CRC to immediately report, which means no more than 24 hours after the provider becomes aware of the alleged violation, all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property to the approving official and to other officials in accordance with state law.

One commenter stated that reports of abuse or neglect should include the name of the alleged victim, and contact person (such as a family member). In addition, the commenter stated that any identified caregiver or legal representative should be notified of the allegation, and the record should reflect resolution of the investigation. Further, the CRC should be required to provide copies of the written policy and procedure to residents, caregivers, and representatives.

In proposed § 17.63(j)(3)(i)(B) we stated that the CRC must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported to the approving official immediately, which means no more than 24 hours after the provider becomes aware of the alleged violation. The report, at a minimum, must include: The facility name, address, telephone number, and owner; the date and time of the alleged violation; a summary of the alleged violation; the name of any public or private officials or VHA program offices that have been notified of the alleged violations, if any; whether additional investigation is necessary to provide VHA with more information about the alleged violation; and contact information for a person who can provide additional details at the community residential care provider, including a name, position, location, and phone number. We agree that the name of the alleged victim, contact information for the resident's next of kin or other designated family member, agent, personal representative, or fiduciary should be included in the report. We also agree that any identified caregiver or legal representative should be notified of the allegation, and we will amend the rule accordingly. The commenter noted that the record should reflect resolution of the investigation. To clarify the CRC's responsibility to report any corrective action taken as a result of the investigation, we amend the rule to require the CRC to report to the approving official, and other officials as required under all other applicable law, both the results of the investigation as well as any corrective action taken by the CRC as a result of such investigation.

One commenter supported the requirement that the CRC develop and implement written policies and procedures prohibiting mistreatment, abuse and neglect of residents, and misappropriation of resident property. However, the commenter urged VA to include the requirement that the written policies and procedures include specific protections for veterans who identify as lesbian, gay, bisexual and transgender (LGBT). The commenter noted recent studies that estimated that the population of LGBT older adults will double by 2030, and the majority of LGBT aging adults fear they will experience discrimination in long term care organizations.

In § 17.63(j)(3) we state that the CRC provider must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property. In our discussion of this paragraph, we stated that VA intends to develop sample policies and boilerplate that could be adapted by a CRC to meet the facility's individual requirements. The policies and procedures implemented by the CRC must provide for a safe environment for all veterans residing in the facility. While the content of any policy developed and implemented under § 17.63(j)(3) is beyond the scope of this rulemaking, VA will work to ensure that any policy provided to CRCs will include elements intended to provide a safe environment for all veteran residents, and, therefore, make no changes based on this comment.

Medical Foster Homes

One commenter stated that VA should provide explicit guidance on how abuse is detected and reported in smaller CRCs, such as Medical Foster Homes. The commenter asserted that such behavior can be easier to observe and report in larger facilities, where any problem can be reported to the facility operator. However, in smaller facilities, a resident may have to rely on a single caregiver who may be able to hide the abuse, or the abuser may be the homeowner or service provider. On a related issue, the commenter supported removing an accused employee from resident care duties during an investigation, but urged VA to provide specific guidance on how this provision would apply to a small CRC where a live-in owner of the CRC is suspected of abuse or neglect.

A Medical Foster Home is a type of CRC for care of disabled veterans with the more medically complex conditions, and is generally distinguished from other CRCs by the following factors: The home is owned or rented by the caregiver; the caregiver lives in the Medical Foster Home and provides personal care and supervision; there are no more than three residents receiving care in the Medical Foster Home, including both veterans and non-veterans; and the veteran residents are enrolled in a VA home based care or spinal cord injury program. As the commenter noted, a Medical Foster Home is smaller than other types of CRCs, and detecting/reporting abuse or neglect in that environment does present special challenges. The specific content of any guidance provided to a resident or operator of Medical Foster Homes is beyond the scope of this rulemaking. However, VA is aware of the issue and plans to address it through

developing policy, which will include elements intended to provide a safe environment for all veteran residents. We make no changes based on this comment.

Consent to Disclosure of Resident Records

One commenter recommended that the regulation be amended to allow a designated individual other than the resident to authorize disclosure of resident records in those instances where the resident is no longer competent. We agree. Generally, when a person is no longer competent to consent to disclosure of records, someone else, either previously designated by the person or through operation of law, is given authority to consent to disclosures, such as a fiduciary, agent, or personal representative. We are amending this rule to address this circumstance.

Based on the rationale set forth in the proposed rule and in this document, VA is adopting the provisions of the proposed rule as a final rule with changes as noted above.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible, or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(2)(vi).

This final rule imposes information collection requirements in 38 CFR 17.63(i) and (j): VA has reviewed the information collection as presented in the proposed rule published on November 12, 2015 (80 FR 69909) and has determined that the proposed information collection was too broad. It included information collection related to both staffing and resident recordkeeping requirements that formerly approved by OMB under control number 2900–0491, which expired on July 31, 1990. By a separate action, VA is requesting that OMB reinstate this information collection under control number 2900–0491 rather than addressing that information collection under the current rulemaking. In addition, the proposed information collection included a collection related to the requirement that a CRC develop policy on the subject of mistreatment, neglect, or abuse of CRC residents. VA has determined that this is not a collection of information as that term is defined in 5 CFR 1320.3. VA has drafted policy on mistreatment, neglect, or abuse of CRC residents which is being provided to CRCs for use and implementation.

This rulemaking at § 17.63(i)(2) requires the CRC to maintain records related to paragraph (j)(3), which addresses procedures for ensuring that reports of alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported and fully investigated. Information collection related to those procedures is contained in paragraph (j)(6). That paragraph requires CRCs to immediately, meaning no more than 24 hours after the provider becomes aware of the alleged violation, report all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property to the approving official.

In the proposed information collection, we estimated the annual burden related to CRC reporting and investigation of alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property based on an assumption that VA would receive one such report from each CRC each year. VA determined that this estimate was too high, as we have not received any reports of mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property during the past ten years. VA believes that a more accurate estimate would be one report per four CRCs. Finally, we based our annual burden hour estimate on the number of approved CRCs as of Q4 FY2012, which was the most recent data available when the proposed rule was drafted. The most recent data from FY2017 reflects that the number of approved CRCs has decreased dramatically, from 1,293 in 2012 to 730 in 2017. We have adjusted the estimated annual burden hours accordingly. VA is not accepting new public comment on these changes, as a public comment period has already been provided on this information collection, and the substance of the information collection related to reporting of mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property has not changed.

As required by the 44 U.S.C. 3507(d), VA submitted this information collection to OMB for its review. OMB approved these new information collection requirements associated with the final rule and assigned OMB control number 2900–0844.

The collection of information is described here.

Title: Ensuring a Safe Environment for Community Residential Care Residents.

Summary of Collection of Information

Paragraph (j)(6) requires CRCs to immediately, meaning no more than 24 hours after the provider becomes aware of the alleged violation, report all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property to the approving official. We require that the report, at a minimum, must include the facility name, address, telephone number, and owner; the date and time of the alleged violation; a summary of the alleged violation; the name of any public or private officials or VHA program offices that have been notified of the alleged violations, if any; whether additional investigation is necessary to provide VHA with more information about the alleged violation; and contact information for a person who can provide additional details at the community residential care provider, including a name, position, location, and phone number.

We require the CRCs to document and thoroughly investigate evidence of an alleged violation. The results of all investigations must be reported to the approving official within 5 working days of the incident and to other officials in accordance with State law. It would also require facilities to develop and implement written policies and procedures to prohibit the mistreatment, neglect, and abuse of residents and misappropriation of resident property.

The most current data available to VA (Q1FY2017) reflects that we have 730 approved CRCs, 150 of which are Medical Foster Homes at the 1 to 3 bed size. The total number of staff working in these facilities is 3,170. This aggregate number of CRC staff is distributed in CRCs as follows: 2.5 staff for a 1 to 3 bed facility, 4 staff for a 4 to 15 bed facility, 5 staff for a 15 to 26

bed facility and 11 staff for a 26 to 100+ bed facility.

CRCs are required to report information under this rule when the facility: (1) Has an alleged violation involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property; or, (2) is reporting the results of an investigation into that alleged violation. CRCs are also required to document and investigate evidence of any alleged violation. We view the reporting, documenting, and investigating of an alleged incident and the subsequent report of the results of the investigation to be one collection of information, as it focuses on one set of alleged facts and the facility's investigation of those facts.

This rule formalizes the reporting and investigation requirement and we believe this would more likely than not result in an increase in the number of reports of alleged abuse mistreatment, neglect, or abuse, including injuries of unknown source, or misappropriation of resident property per year. However, for purposes of this estimate, we will assume that a maximum of one fourth of approved CRCs will have one incident per year related to an alleged violation involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property; or, reporting the results of an investigation into that alleged violation. The estimated average burden for an alleged violation response is three hours.

Description of need for information and proposed use of information: VA needs this information to ensure the health and safety of veterans placed in these facilities. In CRCs, where VA involvement is less intensive and to which VA does not provide any payments or services, we believe that information obtained under the proposed rule would provide necessary protection for veteran residents.

Description of likely respondents: One fourth of approved CRCs currently listed or that request future listing on VA's approved CRCs referral list.

Estimated number of respondents per year: 182 operators of CRCs.

Estimated frequency of responses: Once in a 12-month period.

Estimated average burden per response: 3 hours.

Estimated total annual reporting and recordkeeping burden: 546 hours.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will be small business neutral as it applies only to those CRCs seeking inclusion on VA's list of approved CRCs. The costs associated with this final rule are minimal, consisting of the administrative requirement to develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property; ensure that no employees are employed in contravention to the final rule; report to VA any alleged violation involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property; and investigate alleged resident abuse, take steps to prevent further harm, and implement appropriate corrective measures.

A CRC may elect to order background checks on employees from commercial sources or local law enforcement agencies. The cost of an individual background check varies dependent on the vendor, but VA believes the average cost is $50. VA believes that 75 percent of CRCs are required to, or could obtain, criminal background checks on employees through one or more existing federal or state programs. This includes: (1) The state grant program administered by the Centers for Medicare and Medicaid Services (CMS) for conducting federal and state criminal background checks on direct patient access employees of long-term care facilities and providers (42 U.S.C. 1320a–7l); (2) the CMS requirement applicable to facilities receiving Medicare and Medicaid funds; and (3) various state laws or regulations mandating criminal background screening for employment to work with the elderly or disabled. In addition, many CRCs that are currently servicing veterans already, voluntarily, have policies and procedures in place to review the backgrounds of their employees and make employment decisions consistent with this rulemaking as one way to ensure resident safety.

The remaining 25 percent of CRCs (91) will more likely than not opt to obtain criminal background checks on CRC staff in order to be approved by VA. The median number of staff in CRCs currently approved by VA is five. We estimate the cost that will be incurred for obtaining criminal background checks on CRC staff is $250 per CRC. On this basis, the Secretary certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by OMB, unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that

agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles affected by this document are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.018, Sharing Specialized Medical Resources.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on July 18, 2017, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Veterans.

Dated: July 18, 2017.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

Section 17.38 also issued under 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782, and 1786.

Section 17.169 also issued under 38 U.S.C. 1712C.

Sections 17.380 and 17.412 are also issued under sec. 260, Public Law 114–223, 130 Stat. 857.

Section 17.410 is also issued under 38 U.S.C. 1787.

Section 17.415 is also issued under 38 U.S.C. 7301, 7304, 7402, and 7403.

Sections 17.640 and 17.647 are also issued under sec. 4, Public Law 114–2, 129 Stat. 30.

Sections 17.641 through 17.646 are also issued under 38 U.S.C. 501(a) and sec. 4, Public Law 114–2, 129 Stat. 30.

■ 2. Amend § 17.63 by:

■ a. Adding paragraphs (e)(1)(i) and (ii);

■ b. Revising paragraph (i);

■ c. Adding paragraphs (j)(3) through (9); and

■ d. Adding an OMB approval parenthetical to the end of the section.

The additions and revision read as follows:

§ 17.63 Approval of community residential care facilities.

* * * * *

(e) * * *

(1) * * *

(i) Facilities approved before August 24, 2017 may not establish any new resident bedrooms with more than two beds per room;

(ii) Facilities approved after August 24, 2017 may not provide resident bedrooms containing more than two beds per room.

* * * * *

(i) *Records.* (1) The facility must maintain records on each resident in a secure place. Resident records must include a copy of all signed agreements with the resident. Resident records may be disclosed only with the permission of the resident; an authorized agent, fiduciary, or personal representative if the resident is not competent; or when required by law.

(2) The facility must maintain and make available, upon request of the approving VA official, records establishing compliance with paragraphs (j)(1) and (2) of this section; written policies and procedures required under paragraph (j)(3) of this section; and, emergency notification procedures.

(j) * * *

(3) The community residential care provider must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(4) Except as provided in paragraph (j)(5)(ii) of this section, the community residential care provider must not employ individuals who—

(i) Have been convicted within 7 years by a court of law of any of the following offenses or their equivalent in a state or territory:

(A) Murder, attempted murder, or manslaughter;

(B) Arson;

(C) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem or threats to do bodily harm;

(D) Burglary;

(E) Robbery;

(F) Kidnapping;

(G) Theft, fraud, forgery, extortion or blackmail;

(H) Illegal use or possession of a firearm;

(I) Rape, sexual assault, sexual battery, or sexual abuse;

(J) Child or elder abuse, or cruelty to children or elders; or

(K) Unlawful distribution or possession with intent to distribute, a controlled substance; or

(ii) Have had a finding entered within 6 months into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of property.

(5)(i) If the conviction by a court of law of a crime enumerated in paragraph (j)(4)(i) of this section occurred greater than 7 years in the past, or a finding was entered into an applicable State registry as specified in paragraph (j)(4)(ii) of this section more than 6 months in the past, the community residential care provider must perform an individual assessment of the applicant or employee to determine suitability for employment. The individual assessment must include consideration of the following factors:

(A) The nature of the job held or sought;

(B) The nature and gravity of the offense or offenses;

(C) The time that has passed since the conviction and/or completion of the sentence;

(D) The facts or circumstances surrounding the offense or conduct;

(E) The number of offenses for which the individual was convicted;

(F) The employee or applicant's age at the time of conviction, or release from prison;

(G) The nexus between the criminal conduct of the person and the job duties of the position;

(H) Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;

(I) The length and consistency of employment history before and after the offense or conduct; rehabilitation efforts, including education or training; and,

(J) Employment or character references and any other information regarding fitness for the particular position.

(ii) An individual assessment must be performed to determine suitability for employment for any conviction defined in paragraph (j)(8)(iv), regardless of the age of the conviction.

(6)(i) The community residential care provider must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported to the approving official immediately, which means no more than 24 hours after the provider becomes aware of the alleged violation; and to other officials in accordance with State law. The report, at a minimum, must include—

(A) The facility name, address, telephone number, and owner;

(B) The date and time of the alleged violation;

(C) A summary of the alleged violation;

(D) The name of any public or private officials or VHA program offices that have been notified of the alleged violations, if any;

(E) Whether additional investigation is necessary to provide VHA with more information about the alleged violation;

(F) The name of the alleged victim;

(G) Contact information for the resident's next of kin or other designated family member, agent, personal representative, or fiduciary; and

(H) Contact information for a person who can provide additional details at the community residential care provider, including a name, position, location, and phone number.

(ii) The community residential care provider must notify the resident's next of kin, caregiver, other designated family member, agent, personal representative, or fiduciary of the alleged incident concurrently with submission of the incident report to the approving official.

(iii) The community residential care provider must have evidence that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are documented and thoroughly investigated, and must prevent further abuse while the investigation is in progress. The results of all investigations must be reported to the approving official within 5 working days of the incident and to other officials in accordance with all other applicable law, and appropriate corrective action must be taken if the alleged violation is verified. Any corrective action taken by the community residential care provider as a result of such investigation must be reported to the approving official, and to other officials as required under all other applicable law.

(iv) The community residential care provider must remove all duties requiring direct resident contact with veteran residents from any employee alleged to have violated this paragraph (j) during the investigation of such employee.

(7) For purposes of this paragraph (j), the term ''employee'' includes a:

(i) Non-VA health care provider at the community residential care facility;

(ii) Staff member of the community residential care facility who is not a health care provider, including a contractor; and

(iii) Person with direct resident access. The term ''person with direct resident access'' means an individual living in the facility who is not receiving services from the facility, who may have access to a resident or a resident's property, or may have one-on-one contact with a resident.

(8) For purposes of this paragraph (j), an employee is considered ''convicted'' of a criminal offense—

(i) When a judgment of conviction has been entered against the individual by a Federal, State, or local court, regardless of whether there is an appeal pending;

(ii) When there has been a finding of guilt against the individual by a Federal, State, or local court;

(iii) When a plea of guilty or nolo contendere by the individual has been accepted by a Federal, State, or local court; or

(iv) When the individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(9) For purposes of this paragraph (j), the terms ''abuse'' and ''neglect'' have the same meaning set forth in 38 CFR 51.90(b).

* * * * *

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0844.)

[FR Doc. 2017–15519 Filed 7–24–17; 8:45 am]

BILLING CODE 8320–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1816 and 1852

RIN 2700–AE32

NASA Federal Acquisition Regulation Supplement: Award Term (NFS Case 2016–N027)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is issuing a final rule amending the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) to add policy on the use of additional contract periods of performance or ''award terms'' as a contract incentive.

DATES: *Effective:* August 24, 2017.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Chambers, telephone 202–358–5154.

SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule in the **Federal Register** at 81 FR 89038 on December 9, 2016, to implement policy addressing the use of ''award terms'' or additional contract periods of performance for which a contractor may earn if the contractor's performance is superior, the Government has an on-going need for the requirement, and funds are available for the additional period of performance. The policy provides a non-monetary incentive for contractors whose performance is excellent. An award term incentive would be used where a longer term relationship (generally more than five years) between the Government and a contractor would provide benefits to both parties. Benefits of award term incentives include a more stable business relationship both for the contractor and its employees (thus retaining a skilled, experienced workforce), motivating excellent performance (including cost savings), fostering contractor capital investment, increasing the desirability of the award (potentially increasing competition), and reduced administrative costs and disruptions in preparing for and negotiating replacement contracts.

Award terms are an incentive and not the same as exercising an option as set forth in FAR 17.207. While there are similarities between an award term and an option, such as funds must be available and the requirement must fulfill an existing Government need, the key difference is that an option may be exercised when the contractor's

performance is acceptable, while earning an award term requires sustained excellent performance. Two respondents submitted comments on the proposed rule.

II. Discussion and Analysis

NASA reviewed the public comments in the development of the final rule. An editorial change was made to the rule for clarification. No other changes to the proposed rule were made. A discussion of the comments and the change made to the rule as a result of those comments are provided as follows:

A. *Changes.* No changes are being made to the final rule as a result of the public comments received with the exception of a minor editorial change.

B. *Analysis of Public Comments.*

Comment: One respondent stated exceeding the five-year limit on contracts using award terms, could limit competition, limit the range of solutions available to NASA, and raise prices for the government and would lead to sole source contracting, reduced competition, and higher costs to the government.

Response: FAR 17.204(e) states, unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services. NFS 1817.204(e) provides for exceptions to the 5-year period of performance limitation under Agency contracts. Concerning the impact of the use of award terms on competition, range of solutions available to NASA, and prices, the rule at 1816.405–277(c)states the factors to consider when determining whether to use award terms include, market stability, the potential changes and advancements in technology, and flexibility to change direction with mission changes.

Comment: One respondent stated that contractors would be more interested in proposing on a contract if the contract has the potential for additional years of business. The respondent opined a better course of action is for NASA to issue a request for proposals allowing for the incumbent contractor on an award term contract to compete for a follow-on contract alongside any other interested parties and that this competition would provide NASA with a range of potential solutions and lower costs.

Response: As stated in the policy, the benefits of a longer-term relationship versus more frequent competitions must be considered when determining if an award term incentive is appropriate. The factors considered in this decision would be documented in the Determination and Findings, required in under current NFS policy for incentive contracts, and provided to the Associate Administrator for Procurement for review and approval.

Comment: One respondent inquired about NASA's current award term policy, Procurement Information Circular (PIC) 06–02, Use of Award Term Incentive, dated January 25, 2006, and NASA's current use of award term incentives. Additionally, the respondent referenced an award term contracting pilot program in the late 1990's with the intent of assessing the use of award term contracts at NASA. The respondent questioned how the pilot and (PIC) informed this rule.

Response: The PIC and pilot program the respondent references are more than a decade old. The pilot was conducted to provide information from the NASA procurement organizations on their use of award term incentives. At the time of that pilot, NASA had 12 award term contracts. As discussed in the Initial Regulatory Flexibility Analysis contained in the proposed rule, NASA has ten award term contracts. The PIC was used as a starting point for drafting this rule. Additional research on the use of award term contracts and comments from the NASA procurement organizations also contributed to the formulation of this rule.

Comment: Another respondent stated the proposed clause is ambiguous, specifically, paragraph (a) states that the CO ''may'' award a term, but paragraph (f) gives reasons for not awarding a term. The respondent questioned, if none of those reasons apply, must the CO award a term and, if so what does the ''may'' mean and, if not, why have paragraph (f).

Response: Paragraph (a) of the clause is a general statement that the contracting officer will rely on the Award Term Plan to determine if the contractor is eligible for an award term. ''May'' is used in paragraph (a) because the decision to extend the contract for the number and duration of award terms is discretionary, *i.e.,* a contractor may earn an award term based on meeting the requirements of the Award Term Plan, but the contracting officer, for a variety of reasons, may decide not to grant the award term. NASA agrees there is some overlap of paragraphs (a) and (f). To remove this overlap, paragraph (a) is revised to remove the phrase ''subject to the Government's continuing need for the contract and the availability of funds.'' Paragraph (f) of the clause, which addresses the Government's right not to grant or cancel the award term, states the award term may not be granted if the there is no continuing need or if funds are not available.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The objective of this rule is to implement policy in the NASA Federal Acquisition Regulation Supplement (NFS) to address the use of ''award terms'' or additional contract periods of performance for which a contractor may earn if the contractor's performance is superior, the Government has an on-going need for the requirement, and funds are available for the additional period of performance. This policy provides a non-monetary incentive for contractors whose performance is sustained at an excellent level.

No comments were received in response to the initial regulatory flexibility analysis.

The Federal Procurement Data System (FPDS) does not track award fee contracts, but a survey of NASA's procurement organizations shows there are currently 10 active award term contracts. Of these, six are with small businesses. A range of services are covered, such as logistics, facilities or technical management and information technology.

There are no special reporting, recordkeeping, and other compliance requirements associated with this rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

NASA was unable to identify any alternatives that would reduce the economic impact on small entities. However, NASA does not expect this rule to have any significant economic impact on small entities, because it does

not impose any new requirements on contractors.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 1816 and 1852

Government procurement.

Manuel Quinones,

NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1816 and 1852 are amended as follows:

■ 1. The authority citation for parts 1816 and 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PART 1816—TYPES OF CONTRACTS

■ 2. Amend section 1816.001 by adding in alphabetical order the definition ''Term-determining official'' to read as follows:

1816.001 Definitions.

* * * * *

Term-determining official means the designated Agency official who reviews the recommendations of the Award-Term Board in determining whether the contractor is eligible for an award term.

* * * * *

■ 3. Add section 1816.405–277 to read as follows:

1816.405–277 Award term.

(a) An award term enables a contractor to become eligible for additional periods of performance or ordering periods under a service contract (as defined in FAR 37.101) by achieving and sustaining the prescribed performance levels under the contract. It incentivizes the contractor for maintaining superior performance by providing an opportunity for extensions of the contract term.

(b) Award terms are best suited for acquisitions where a longer term relationship (generally more than five years) between the Government and a contractor would provide significant benefits to both. Motivating excellent performance, fostering contractor capital investment, and increasing the desirability of the award, thus potentially increasing competition, are benefits that may justify the use of award terms.

(c) While the administrative burden and cost of more frequent procurements to both the Government and potential offerors should be considered when determining whether to use award terms, this decision must be weighed against market stability, the potential changes and advancements in technology, and flexibility to change direction with mission changes and associated frequent procurements.

(d) Award terms may be used in conjunction with contract options under FAR 17.2. Award terms are similar to contract options in that they are conditioned on the Government's continuing need for the contract and the availability of funds. However, FAR 17.207(c)(7) states the contracting officer must determine that the contractor's performance has been acceptable, *e.g.,* received satisfactory ratings. In contrast, to become eligible for an award term, the contractor must maintain a level of performance above acceptable as specified in the Award Term Plan (see 1816.405–277(i)). In contracts with both option periods and award terms, the award term period of performance or ordering period shall begin after completion of any option period of performance or ordering period.

(e) Contracts with award terms shall include a base period of performance or ordering period and may include a designated number of option periods during which the Government will observe and evaluate the contractor's performance allowing the contractor to earn an award term. Additionally, as specified in the Award Term Plan, the contractor may also be evaluated for additional award terms during performance of an earned award term. If the contractor meets or exceeds the performance requirements, there is an on-going need for and desire to continue the contract, funds are available, and the contractor is not listed in the System for Award Management Exclusions, then the contractor may be eligible for contract extension for the period of the award term.

(f) Contracts with award terms shall comply with FAR and NFS restrictions on the overall contract length, such as the 5-year period of performance limitation found at NFS 1817.204.

(g) Award terms may only be used in acquisitions for services exceeding $20 million dollars. Use of award terms for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(h) Consistent with the Competition in Contracting Act and general procurement principles, the potential award term periods in a procurement must be priced, evaluated, and considered in the initial contract selection process in order to be valid.

(i) All contracts including award terms shall be supported by an Award Term Plan that establishes criteria for earning an award term and the methodology and schedule for evaluating contractor performance. A copy of the Award Term Plan shall be included in the contract. The contracting officer may unilaterally revise the Award Term Plan. Award Term Plans shall—

(1) Identify the officials to include Term-Determining Official involved in the award term evaluation and their function;

(2) Identify and describe each evaluation factor, any subfactors, related performance standards, adjectival ratings, and numerical ranges or weights to be used. The contracting officer should follow the guidance at 1816.405–274 in establishing award term evaluation factors and 1816.405–275 in establishing adjectival rating categories, associated descriptions, numerical scoring system, and weighted scoring system;

(3) Specify the annual overall rating required for the contractor to be eligible for an award term that reflects a level of performance above acceptable and the number of award terms the contractor may qualify for based on the rating score;

(4) Identify the evaluation period(s) and the evaluation schedule to be conducted at stated intervals during the contract period of performance or ordering period so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (*e.g.,* six months, nine months, twelve months, or at other specific milestones), and when the decision points are for the determination that the contractor is eligible for an award term; and

(5) Identify the contract's base period of performance or ordering period, any option period(s), and total award-term periods(s). Award term periods shall not exceed one year.

(j)(1) The Government has the unilateral right not to grant or to cancel award term periods and the associated Award Term Plans if—

(i) The contractor has failed to achieve the required performance measures for the corresponding evaluation period;

(ii) After earning an award term, the contractor fails to earn an award term in any succeeding year of contract performance, the contracting officer may cancel any award terms that the contractor has earned, but that have not begun;

(iii) The contracting officer notifies the contractor that the Government no longer has a need for the award term period before the time an award term period is to begin;

(iv) The contractor represented that it was a small business concern prior to award of the contract, the contract was set-aside for small businesses, and the contractor rerepresents in accordance with FAR clause 52.219–28 Post-Award Small Business Program Rerepresentation, that it is no longer a small business; or

(v) The contracting officer notifies the contractor that funds are not available for the award term.

(2) When an award term period is not granted or cancelled, any—

(i) Prior award term periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term periods are also cancelled.

(k) Cancellation of an award term period that has not yet commenced for any of the reasons set forth in paragraph (j) of this section shall not be considered either a termination for convenience or termination for default, and shall not entitle the contractor to any termination settlement or any other compensation. If the award term is cancelled, a unilateral modification will cite the clause as the authority.

■ 4. Amend section 1816.406–70 by adding paragraph (g) to read as follows:

1816.406–70 NASA contract clauses.

* * * * *

(g) Insert the clause at 1852.216–72, Award Term in solicitations and contracts for services exceeding $20 million when award terms are contemplated.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 1852.216–72 to read as follows:

1852.216–72 Award term.

As prescribed in 1816.406–70(g), insert the following clause:

AWARD TERM

(AUG 2017)

(a) Based on overall Contractor performance as evaluated in accordance with the Award Term Plan, the Contracting Officer may extend the contract for the number and duration of award terms as set forth in the Award Term Plan.

(b) The Contracting Officer will execute any earned award term period(s) through a unilateral contract modification. All contract provisions continue to apply throughout the contract period of performance or ordering period, including any award term period(s).

(c) The Government will evaluate offerors for award purposes by adding the total price for all options and award terms to the price for the basic requirement. This evaluation will not obligate the Government to exercise any options or award term periods.

(d) The Award Term Plan is attached in Section J. The Award Term Plan provides the methodology and schedule for evaluating Contractor performance, determining eligibility for an award term, and, together with Agency need for the contract and availability of funding, serves as the basis for award term decisions. The Contracting Officer may unilaterally revise the Award Term Plan. Any changes to the Award Term Plan will be in writing and incorporated into the contract through a unilateral modification citing this clause prior to the commencement of any evaluation period. The Contracting Officer will consult with the Contractor prior to the issuance of a revised Award Term Plan; however, the Contractor's consent is not required.

(e) The award term evaluation(s) will be completed in accordance with the schedule in the Award Term Plan. The Contractor will be notified of the results and its eligibility to be considered for the respective award term no later than 120 days after the evaluation period set forth in the Award Term Plan. The Contractor may request a review of an award term evaluation which has resulted in the Contractor not earning the award term. The request shall be submitted in writing to the Contracting Officer within 15 days after notification of the results of the evaluation.

(f)(1) The Government has the unilateral right not to grant or to cancel award term periods and the associated Award Term Plan if—

(i) The Contractor has failed to achieve the required performance measures for the corresponding evaluation period;

(ii) After earning an award term, the Contractor fails to earn an award term in any succeeding year of contract performance, the Contracting Officer may cancel any award terms that the Contractor has earned, but that have not begun;

(iii) The Contracting Officer has notified the Contractor that the Government no longer has a need for the award term period before the time an award term period is to begin;

(iv) The Contractor represented that it was a small business concern prior to award of this contract, the contract was set-aside for small businesses, and the Contractor rerepresents in accordance with FAR clause 52.219–28, Post-Award Small Business Program Rerepresentation, that it is no longer a small business; or

(v) The Contracting Officer has notified the Contractor that funds are not available for the award term.

(2) When an award term period is not granted or cancelled, any—

(i) Prior award term periods for which the contractor remains otherwise eligible are unaffected, except as provided in paragraph (g) of this clause; or

(ii) Subsequent award term periods are also cancelled.

(g) Cancellation of an award term period that has not yet started for any of the reasons set forth in paragraph (f) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the Contractor to any termination settlement or any other compensation.

(h) Cancellation of an award term period that has not yet commenced for any of the reasons set forth in paragraphs (f) and (g) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the Contractor to any termination settlement or any other compensation. If the award term is cancelled, a unilateral modification will cite this clause as the authority.

(i) Funds are not presently available for any award term. The Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any award term payment may arise until funds are made available to the Contracting Officer for an award term and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

[FR Doc. 2017–15520 Filed 7–24–17; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–HQ–MB–2013–0070; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AZ69

Migratory Bird Permits; Control Order for Introduced Migratory Bird Species in Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Introduced, nonnative, alien, and invasive species in Hawaii displace, compete with, and consume native species, some of which are endangered, threatened, or otherwise in need of additional protection in order to increase or maintain viable populations. To protect native species, we establish a control order for cattle egrets (*Bubulcus ibis*) and barn owls (*Tyto alba*), two invasive migratory bird species in Hawaii, under the direction of Executive Order 13112. We also make available the supporting final environmental assessment, the finding of no significant impact, and public comments for this control order.

DATES: This rule is effective August 24, 2017.

FOR FURTHER INFORMATION CONTACT: Jerry Thompson, at 703–358–2016.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Fish and Wildlife Service (Service) is delegated with the primary responsibility of conserving migratory birds through protection, restoration, and management. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR).

Regulations pertaining to migratory bird permits are at 50 CFR part 21. Subpart D of part 21 contains regulations for the control of depredating birds. Depredation and control orders authorize the take of specific species of migratory birds for specific purposes without a Federal depredation permit, as long as the control and depredation actions comply with the regulatory requirements of the order. Depredation orders are generally established to protect human property, such as agricultural crops, from damage by migratory birds, and we issue control orders to protect natural resources. To protect native species in Hawaii, we are adding a control order to part 21 at § 21.55 for cattle egrets (*Bubulcus ibis*) and barn owls (*Tyto alba*), two invasive migratory bird species in Hawaii. The terms ''introduced,'' ''native species,'' ''alien species,'' and ''introduced species'' are used in this document as defined in Executive Order 13112, ''Invasive Species'' (64 FR 6183; February 8, 1999).

II. Comments on the Proposed Rule or the Draft Environmental Assessment

In the proposed rule published on November 4, 2013 (78 FR 65955), we requested that all interested parties submit written comments on the proposal by February 3, 2014. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. During the public comment period for the proposed rule, we received 117 letters addressing the proposed control order for cattle egrets and barn owls in Hawaii. One commenter was from a Federal agency, eight commenters were from nongovernmental organizations, and 107 commenters were private citizens. Seventy-four commenters were opposed to the proposed rule. Seventeen commenters partially supported the proposed rule; fifteen of these commenters supported control of cattle egrets but not of barn owls, while two commenters supported control of barn owls but not cattle egrets. Twenty-five commenters were in favor of the proposed rule.

In this final rule, all substantive information relating to the implementation of a control order for cattle egrets and barn owls in Hawaii has either been incorporated directly into this final determination or is addressed in the summary, below. All comment letters and responses are available at *http://www.regulations.gov* under Docket No. FWS–HQ–MB–2013–0070.

Comment: Sixty commenters stated that invasive species have a negative impact on the environment and need to be controlled.

Response: We agree that invasive species control is necessary to restore healthy, functioning, native ecosystems that have been negatively affected by their introduction. The Service is directed by the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), MBTA, internal directives and policies, and Executive Order 13112 (''Invasive Species'') to take actions necessary to control damage caused by introduced species.

Comment: Fifty-two commenters stated that action needs to be taken to protect native birds, endangered and threatened species, and/or fragile native ecosystems.

Response: We agree that action needs to be taken to protect native and imperiled species and ecosystems. It is the responsibility of the Service to direct and implement the actions necessary to accomplish protection and restoration of native species.

Comment: Thirty-six commenters were opposed to lethal take for any reason, wanted more information about nonlethal control methods, and/or stated that the control order demonstrates disregard for the value of birds.

Response: Lethal take is initiated after nonlethal control alone has been shown to be ineffective or unfeasible. Nonlethal attempts to control cattle egrets and barn owls that have been implemented include habitat alterations, changes in management practices, and hazing by humans and/or noise-making devices. Live-capture and relocation, and sterilization were also considered.

Habitat alteration at nest or roost sites typically targets removal of roost or nest trees. This may be done on wildlife management areas and is consistent with successful habitat management for wetland birds and seabirds. However, not all nest and roost sites are located on public land and removing the appropriate structure(s) is often not possible. Furthermore, this technique does not necessarily resolve depredation problems because cattle egrets and barn owls can travel considerable distances to forage.

Management practices are altered to the extent possible as another nonlethal approach. Vegetation disturbance caused by tractors and other heavy equipment, for example, reduces concealment cover to waterbird chicks and other sensitive wildlife native to Hawaii and exposes them to increased risk of predation by cattle egrets. Wildlife managers believe that cattle egrets are attracted to tractors and other heavy equipment, and have observed them following the equipment and preying upon waterbird chicks exposed or disturbed by the activity. In response, managers have attempted to minimize this impact by avoiding the use of heavy equipment during periods when chicks are most vulnerable. Some sensitive species nest throughout the year in Hawaii, however, and chicks may be present throughout the year, which complicates habitat management strategies and achievement of already challenging goals. Further, once cattle egrets have learned that prey is available in an area, they return to forage even when the heavy equipment is no longer present.

Active nonlethal techniques, such as hazing using noise-making devices, can be an effective method in some circumstances. However, they are not species-specific and disturb all wildlife, not just cattle egrets and barn owls. On wildlife management areas and other public lands, active nonlethal techniques, may therefore, incidentally harass or harm the species that were intended to be protected.

We considered trap and relocation of cattle egrets and/or barn owls. These species, however, cannot be relocated within the Hawaiian archipelago, due to their ability to travel between islands, return to the site from which they were captured, and perpetuate the conflict with endangered and threatened species. The Service contacted government and nongovernment organizations located in the continental United States and Canada where populations of barn owls are locally endangered in order to examine the potential that owls captured in Hawaii might contribute to conservation efforts in those populations through relocation, reintroduction, translocation, or head-starting programs. As of publication of this final rule, no other locations or agencies have agreed to accept relocated birds.

Sterilization was also proposed as an alternative to lethal take. However, sterilizing cattle egrets and barn owls does not stop them, in the short term, from preying upon native wildlife.

Lethal take of problem individuals is highly feasible, has been effective in reducing predation of sensitive species, and has therefore proven to be a useful wildlife management strategy in many instances. The use of lethal take does not reflect any individual preference for certain species. The Service works toward conservation of all species protected by the MBTA and ESA, and only employs lethal take as a management strategy when it can be accomplished without causing detrimental population-level effects to any protected species. Lethal take could involve egg oiling, egg and nest destruction, the use of firearms, trapping, cervical dislocation, and other methods. All individuals and agencies participating in lethal take activities will be required to use humane methods of capture and euthanasia, and to adhere to the American Veterinary Medical Association Guidelines on euthanasia.

Comment: Thirty-five commenters were concerned about other impacts to endangered and threatened species and felt those should be prioritized.

Response: The Service seeks to implement actions to assist in the recovery of endangered and threatened species and the conservation of other protected wildlife. The Service works cooperatively with multiple entities on actions such as constructing predator-proof fencing, protecting and restoring wildlife habitat, researching disease, and engaging in predator control whenever possible. The Service can lethally take other predators, such as mongooses and cats, on Service lands and is supportive of predator management as allowed elsewhere in Hawaii. We agree that predator control without adequate habitat protection measures will not be effective in conserving and restoring endangered and threatened species. Likewise, habitat conservation alone without adequate predator control will not be effective in conserving and restoring populations of endangered and threatened species. Lethal take of cattle egrets and barn owls in Hawaii is just one part of the Service's efforts to meet its various obligations, including protection and restoration of endangered and threatened species populations and habitat, protection of native migratory bird species, and management of National Wildlife Refuges.

Comment: Thirty-three commenters stated that we should not call barn owls or cattle egrets ''invasive,'' and/or that we should not manage native and nonnative species differently, stating that invasive species now represent a natural balance in the environment.

Response: The terms used in this rule and the environmental assessment (EA) were selected to be consistent with the MBTA, Executive Order 13112, and Service regulations and policy. The following terms are defined in Executive Order 13112:

- ''Introduction'' means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.
- ''Native species'' means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.
- ''Alien species'' means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.
- ''Invasive species'' means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

Cattle egrets and barn owls were intentionally introduced to Hawaii in the late 1950s, in attempts to control rodents in sugar cane fields and horn flies on cattle, and meet the criteria of alien as they thrive and propagate in Hawaii. Barn owls and cattle egrets meet the criteria of invasive, as they cause environmental harm. This is described in the EA: ''Predation by cattle egrets and barn owls is currently having a direct, detrimental impact on numerous threatened or endangered species in the Hawaiian Islands.''

The introduction of alien species can cause environmental or ecological harm if they become invasive. Invasive species have traits or combinations of traits that facilitate a competitive advantage in acquiring limited resources and enable them to quickly proliferate in their introduced environment. As invasive species flourish, they also tend to degrade, change, or displace native wildlife and habitats, resulting in a loss of biodiversity and ecosystem services.

The purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend. Imperiled Hawaiian species are directly preyed upon by invasive species and also depend on an ecosystem of native flora and fauna that is disrupted and displaced by invasive species. The changes to the native ecosystem that occur as a result of invasive species introductions hinder or prevent the protection and recovery of endangered and threatened species. Removal of cattle egrets and barn owls is one step in restoring native Hawaiian ecosystems.

Comment: Thirty commenters expressed concern about growth of pest populations that could result from removal of barn owls and cattle egrets (such as rodents, insects, coqui, cane toad), and or spread of zoonotic disease from these pest species.

Response: We recognize that the barn owl and cattle egret have value to many people. While cattle egrets and barn owls were brought to the Hawaiian Islands with good intent, they do not serve the purpose for which they were released. As explained in the EA, populations of other invasive species such as rats, mice, and coqui in Hawaii have spread independently of, and in spite of, the presence of barn owls or cattle egrets. Conversely, endangered and threatened seabird and waterbird populations are being adversely affected by barn owls and cattle egrets. Cattle egrets and barn owls are opportunistic predators and preferentially choose the prey that is easiest to capture. Native birds, especially juvenile waterbirds and nesting seabirds are less mobile and easier to catch than rodents. Cattle egrets and barn owls that have learned to successfully prey upon avian species will generally continue to do so.

Cattle egrets and barn owls do not protect humans against diseases and parasites. According to the Hawaii Department of Health, rat lungworm disease is spread to humans through ingestion of slugs on unwashed produce. Practicing hygienic food preparation is the best defense against lungworm, regardless of location. Leptospirosis is spread in soil or fresh water contaminated by any infected mammal, including domestic livestock and pets. A 10-year study conducted in Hawaii from 1999–2008 documented an average leptospirosis case rate of 1.63 people per 100,000 per year. Information on preventing and recognizing both rat lungworm disease and leptospirosis is available through the Hawaii Department of Health and summarized in the following online brochures: *http://health.hawaii.gov/san/files/2013/06/ratlungworm-bulletin.pdf* and *http://health.hawaii.gov/about/files/2013/06/leptobrochure.pdf.*

Comment: Twenty-four commenters stated that they do not believe that barn owls or cattle egrets prey upon native birds, and/or are concerned that the proposed rule contains vague language (*e.g.* may cause mortality, is believed to be significant, could impact, etc.).

Response: The assertion that these species do not prey upon birds is incorrect. As noted in the EA, cattle egrets and barn owls have become an increasing problem in efforts to protect and restore endangered and threatened species in Hawaii. Although cattle egrets and barn owls prey primarily on rodents and insects in their natural ranges, where they have been introduced to Hawaii they have adapted to the available prey base, which includes birds.

As presented in the EA, credible, trained, educated scientific professionals have documented repeated occurrences of predation and response, including through examination of remains and owl pellets, personal observations, and photographs obtained with remote cameras. Predation has been documented since the 1970s on all the main Hawaiian Islands as well as on islands in the Northwestern Hawaiian Islands. Cattle egrets and barn owls have been documented preying upon endangered and threatened waterbirds and seabirds, including Hawaiian stilt (*Himantopus mexicanus (=himantopus) knudseni*), Hawaiian coot (*Fulica americana alai*), Hawaiian common moorhen (*Gallinula chloropus sandvicensis*), Hawaiian duck (*Anas wyvilliana*), Hawaiian petrel (*Pterodroma sandwichensis*), and Newell's Townsend's shearwater (*Puffinus auricularis newelli*). Hawaiian honeycreeper (species unknown) bones have also been found in barn owl pellets. Cattle egrets and barn owls are opportunistic predators and preferentially choose the prey that is easiest to capture.

In addition to expert and agency information, we did use available peer-reviewed literature, as noted in the Literature Cited section of the final EA. Regulations, such as control orders, are reevaluated as relevant research and information becomes available. In the event that new information becomes available, we will take that into consideration when we review this control order in the future. In all scientific work there is some chance that an unknown variable has been introduced. In the interest of being fully transparent in our work, we acknowledge that chance by not using absolute terminology in our writing. We recognize that communicating that uncertainty can be unsettling, but it is consistent with the scientific approach.

Comment: Twenty commenters misinterpreted our proposed rule to state that lethal take will be open to the public with no limitations, and/or would result in complete eradication of cattle egrets and barn owls.

Response: Enactment of this control order does not remove the cattle egret or the barn owl from the list of species protected by the MBTA. Neither does this ruling allow private citizens to capture, kill, or harm cattle egrets or barn owls. Barn owls and cattle egrets and their parts, nests, and eggs remain protected under Federal law, and may not be taken or possessed without a Federal permit. The provisions of the MBTA allow the Federal Government to issue permits or control orders in specific circumstances. The purpose of this control order is to comply with that requirement while easing the administrative burden on those agencies already charged with endangered and threatened species protection and invasive species control. Authorization to lethally take cattle egrets and barn owls without a permit will be restricted to agencies with authority and responsibility for managing wildlife and invasive species. Those authorized agencies are identified in the control order. The control order will not authorize lethal take of cattle egrets and barn owls by private citizens or by any group not specifically identified in the control order. Any individual not designated to act on behalf of one of the agencies specifically identified in the control order will not be allowed to take or possess cattle egrets or barn owls, their parts, nests, or eggs without a Federal permit. Doing so without the necessary authorization is a violation of the MBTA.

Lethal take of cattle egrets and barn owls will only be authorized in Hawaii where both species are considered invasive. Cattle egrets and barn owls have substantial populations where they naturally exist, and this rule does not authorize lethal take in those areas.

Comment: Fourteen commenters stated that lethal take should be limited to problem individuals, and/or stated that they do not believe the same situation exists or the same methods should be employed on different parts of the island chain.

Response: The evidence of predation is not solely from any one part of the Hawaiian archipelago. We have documentation of the effects of barn owls and cattle egrets on the main Hawaiian Islands and in the Northwestern Hawaiian Islands. As described in the EA, this evidence includes collected remains, collected owl pellets, personal observations, and photographs obtained with remote cameras.

The intent of this control order is to provide a tool to allow removal of individuals and populations which have learned to prey upon and specifically target the State's endangered and threatened species. The individuals and/or populations that have learned to prey upon avian species will be the focus of lethal take efforts. This will occur primarily on public land, but may occur on private land with landowner approval. Barn owls and cattle egrets that are on private property and not foraging on native birds will not be the focus of lethal take efforts.

Comment: Thirteen commenters specifically agreed that cattle egrets and barn owls prey upon native birds and/or had personal evidence of this.

Response: We agree.

Comment: Eleven commenters were concerned that the decision was made in haste or without adequate public outreach.

Response: This decision has been thoroughly considered by State and Federal wildlife management agencies in Hawaii, incorporating the best available science as well as the perspectives of the public. As previously stated, predation has been documented since the 1970s on all the main Hawaiian Islands as well as on islands in the Northwestern Hawaiian Islands chain. The problems created by cattle egrets and barn owls have been well documented and were analyzed in the EA. We published our proposal in the **Federal Register** and allowed 90 days for public comment. Public comments received during that period have been reviewed and incorporated, as appropriate, in our final EA and this final rule.

Comment: Eight commenters stated that the proposal circumvents the regulatory process or do not understand which regulations are applicable.

Response: Regulation and management of barn owls and cattle egrets in the United States is the responsibility of the Service. The Service operates under many directives. Many are from Congress, such as the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), MBTA, ESA, and the Wild Bird Conservation Act (16 U.S.C. 4901 *et seq.*). Others are from the Executive Branch of the U.S. Government, such as Executive Orders or Secretarial Orders. In this case, cattle egrets and barn owls are protected under the MBTA, but the MBTA also allows for take of protected species when responsible management dictates it is necessary, such as in the case of protecting endangered and threatened species from extinction. Killing birds protected under the MBTA is illegal, ''[u]nless and except as permitted by regulations made as hereinafter provided in this subchapter'' (16 U.S.C. 703(a)). Executive Order 13112 directs

Federal agencies to control populations of invasive species in a cost-effective and environmentally sound manner in order to minimize the effects of invasive species, including ecological effects. In most circumstances, a permit is necessary to legally take or possess a species protected by the MBTA. However, for MBTA species subject to control or depredation orders, an individual specifically authorized by the order may take or possess that species without a Federal permit, so long as the regulatory requirements and restrictions of the order are complied with.

When this rule becomes effective (see **DATES,** above), there will be 12 depredation and control orders authorized under the MBTA. Each order is assigned its own section in the Code of Federal Regulations (CFR), from 50 CFR 21.42 through 21.54, with this rule adding § 21.55. Sections 21.42 and 21.45 are currently ''reserved,'' meaning they do not contain a depredation order. Eight of the current orders are for a single species (§§ 21.47 through 21.54), one is for two species (§ 21.46), and two are for multiple species (§§ 21.43 and 21.44). Two of these orders apply only in a specific State, one is for two States, three are for a described region of the United States, and seven authorize take nationwide. Six of these control orders were created to protect multiple agriculture, aquaculture, or horticulture interests; two are for a specific crop or specific type of crop; four are for protection of human health; one is to protect personal property; two are for protection of fish, wildlife, native plants, and their habitats; and two allow take to alleviate any type of nuisance. As stated above, this rule adds a new control order at 50 CFR 21.55 authorizing lethal take of two nongame species in a specified geographic region for the protection of endangered and threatened wildlife resources. We did not claim that cattle egrets or barn owls caused harm to humans or agricultural interests, and that is not required for us to adopt this rule.

Birds federally protected by the MBTA, including barn owls and cattle egrets, are under Federal jurisdiction wherever they occur, even on private property. However, this rule does not grant access to private property. This control order requires landowner permission for employees or agents of the authorized agencies to enter private property for the purpose of capturing or killing cattle egrets or barn owls.

This control order is a Federal regulation under the provisions of the MBTA. No review by the State of Hawaii is required for the Federal government to implement this regulation. However, the State of Hawaii supports this regulation and is a cooperating agency on the EA.

Department of the Interior regulations state, ''[t]he purpose of an environmental assessment is to allow the Responsible Official to determine whether to prepare an environmental impact statement or a finding of no significant impact'' (43 CFR 46.300). Through the analysis in the EA we were able to make a finding of no significant impact (FONSI, online at *http://www.regulations.gov* under Docket No. FWS–HQ–MB–2013–0070). This action will have no significant environmental effects other than the desired effect of reduced populations of the two invasive species and reduced predation on endangered and threatened species. An environmental impact statement for this action is not required.

Comment: Five commenters were concerned about the cultural significance of owls and confused the invasive barn owl with the native Hawaiian short-eared owl (pueo; *Asio flammeus sandwichensis*).

Response: Hawaiian cultural practices have been considered in writing this rule. Many of the individuals who assisted in writing the control order and EA are practitioners of traditional Hawaiian culture as well as employed in environmental fields. It is possible that some people confuse the barn owl with the native pueo, or Hawaiian short-eared owl. The pueo has existed in Hawaii throughout human history and is honored in Hawaiian culture. The barn owl, however, has only occurred in Hawaii since the late 1950s, and is not traditionally associated with Hawaiian cultural practices.

We acknowledge that some people may find pleasure in seeing the two invasive species. However, native Hawaiian birds are an integral part of daily life and the cultural traditions of Hawaiians. The primary purpose of this control order is to protect seabirds and waterbirds native to Hawaii, and thereby keeps in step with Hawaiian cultural traditions. Historically, seabirds were used by Hawaiians to navigate back to land from fishing or trading voyages and to lead fishermen to schools of fish, as well as being a source of food and feathers. Waterbirds were also of great importance. In Hawaiian mythology, a moorhen brought fire to humans, which explains the red on its forehead, a symbol of the scorching from the fire. The Hawaiian coot and Hawaiian moorhen are sacred to Hina, a Hawaiian Earth-mother category of goddess who can take the form of these birds. The eggs of these birds were traditionally used in ceremonies to consecrate chiefs and priests. The Hawaiian stilt is sacred to the Hawaiian god Ku, in his form as a fisherman. These birds are a culturally significant and endangered resource. They are being preyed upon by invasive cattle egrets and barn owls. Lethal take of the two invasive species is much needed in Hawaii for protection of the native bird species, including endangered and threatened species, not only for their own sake, but also to protect cultural practices.

Comment: Four commenters specifically noted the isolation of the Hawaiian Islands as an environment amenable to the control proposed.

Response: We agree that the remoteness and isolation of the Hawaiian Islands greatly decreases the likelihood that individual cattle egrets and barn owls from other populations will emigrate to the islands, supplementing current populations. However, the goal of this control order is population control rather than eradication, where needed, to enhance endangered species recovery. The potential emigration of a few individuals is less of a concern in such cases.

Comment: Three commenters were concerned about global barn owl or cattle egret populations.

Response: Distribution and abundance of global cattle egret and barn owl populations was thoroughly researched in preparing the control order and EA. As noted in the EA, both cattle egrets and barn owls have stable, cosmopolitan distributions with global populations between 5 and 8 million individuals. Cattle egrets and barn owls are both listed as ''Species of least concern'' by the International Union for the Conservation of Nature (IUCN). The number of cattle egrets and barn owls removed from the Hawaiian Islands as a result of this control order will not have a significant negative impact on global populations of either species.

As previously noted, we considered the option of live-trapping and relocating barn owls from Hawaii to areas in the continental United States and Canada where barn owls and cattle egrets are considered locally rare. As of publication of this final rule, no other locations or agencies have agreed to accept relocated birds.

Comment: Three commenters were concerned that the actions outlined in the proposed rule would negatively impact endangered and threatened species.

Response: We completed consultation as required under section 7 of the ESA to ensure that the proposed rule would

not jeopardize the existence of endangered or threatened species in Hawaii. The analysis in the environmental assessment supporting the proposed rule concludes that the rule would have only beneficial effects on listed species in Hawaii; the expected beneficial effects to listed species are, in part, why this rulemaking has been undertaken. Our internal consultation determined that the proposed rule may affect, but is not likely to adversely affect, listed endangered, threatened, proposed to be listed, or candidate birds; the Hawaiian hoary bat (*Lasiurus cinereus semotus*); and invertebrates species, and their designated critical habitats in Hawaii. We also determined there would be no effects on ESA-listed plants. The National Marine Fisheries Service (NMFS) concurred with our determination that the proposed rule may affect, but is not likely to adversely affect, any endangered or threatened species under their jurisdiction, or adversely modify any designated critical habitat. We further outlined best management practices that will be required by participating agencies when implementing the control order to minimize any effects to ESA-listed species or their designated critical habitats.

Comment: Three commenters specifically noted approval of lethal control as a valid management technique.

Response: We agree.

III. Changes From Proposed Rule

We made several changes from what we proposed to what we are making final in this rule. Specifically, we changed the name of the control order to more accurately and intentionally identify the kind of impact some introduced, nonnative species of birds have in Hawaii. The new title also references Executive Order 13112, ''Invasive Species,'' an underpinning of this rulemaking. We reordered the list of authorized agencies at § 21.55(b) so that they appear in alphabetical order. Under § 21.55(c), *Means of take,* we made changes to the description to more clearly distinguish between the take of birds versus active nests, and we added authorization to use concealment (such as blinds) in the course of taking birds under this control order; concealment is a prohibited practice under depredation permits (50 CFR 21.41(c)(3)), so specifically authorizing the use of blinds or other means of concealment expands the range of tools available to take cattle egrets and barn owls, and is one of several ways that this control order will improve the control of these invasive species compared to their control under depredation permits. We also changed ''eggs'' to ''nest contents'' in the title of, and description under, § 21.55(g); nests may include hatched young, not just eggs, and so this change accurately describes what we originally intended in the proposed rule. Finally, we lengthened the time allowed for reporting the take of nontarget birds under § 21.55(i) from ''immediately'' in the proposed rule to ''within 72 hours'' in this final rule, because if we had retained ''immediately,'' compliance would have been difficult to achieve for activities taking place in remote locations.

IV. This Rule

Cattle egrets and barn owls are invasive in Hawaii and threaten native wildlife with extinction. Nonlethal methods have been unsuccessful in reducing the impacts caused by cattle egrets and barn owls. We, therefore, are making final a regulation that allows take by agencies that have functional and/or jurisdictional responsibility for controlling invasive species and protecting native species in the Hawaiian Islands. The control methods we authorize are similar to measures allowed in other control orders and encompass a suite of techniques that give wildlife managers flexibility in achieving control of invasive species while avoiding or minimizing significant impacts to native species.

V. Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 (E.O. 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 rule is not significant.

Executive Order 13563 (E.O. 13563) reaffirmed the principles of E.O. 12866, and called 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 further emphasizes 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.

Executive Order 13771

This action is considered to be an E.O. 13771 deregulatory action (82 FR 9339, February 3, 2017). Consistent with E.O. 13771, at a minimum, we estimate the annual cost savings for this final rule to be $6,726.72. This estimate includes the current time spent by entities in applying for depredation permits and meeting reporting requirements and by the Service in issuing the permits. We multiplied the per-applicant cost of $517.44 per permit times 13, which is the average number of depredation permits that we issue per year to address the cattle egret and barn owl issues in Hawaii.

Executive Order 13112—Invasive Species

This rule supports and enacts mandates of invasive species control detailed in Executive Order 13112 of February 3, 1999 (64 FR 6183; February 8, 1999). Section 2 directs Federal agencies whose actions may affect the status of invasive species to take certain actions. These agencies, to the extent practicable and permitted by law and subject to the availability of appropriations and within Administration budgetary limits, should use relevant programs and authorities to:

(i) Prevent the introduction of invasive species;

(ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner;

(iii) monitor invasive species populations accurately and reliably; and

(iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), 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 effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies 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 the 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 have identified no small entities that this regulation could impact. Therefore, this regulation change will not have a significant economic impact on a substantial number of small entities, so a regulatory flexibility analysis is not required.

This is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant impact on a substantial number of small entities:

- This rule will not have an annual effect on the economy of $100 million or more;
- This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, Tribal, or local government agencies, or geographic regions; and
- This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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.*), we have determined the following:

- This rule will not affect small governments. A small government agency plan is not required. Allowing control of invasive migratory bird species will not affect small government activities; and
- This rule will not produce a Federal mandate. It is an authorization to take voluntary action, not a requirement to act. It is not a significant regulatory action.

Takings

This rule does not contain a provision for taking of private property. In accordance with Executive Order 12630, a takings implication assessment is not required.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a federalism summary impact statement under Executive Order 13132. It will not interfere with the State's ability to manage itself or its funds. No significant economic impacts are expected to result from the regulations change.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and a submission to the OMB under the PRA is not required. 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

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and U.S. Department of the Interior regulations at 43 CFR part 46. We have completed an environmental assessment of the rule change and a findings document, a finding of no significan impact (FONSI), which are available at *http://www.regulations.gov* under Docket No. FWS–HQ–MB–2013–0070. We conclude that our preferred alternative will have the following impacts:

Socioeconomic. The regulation change will have no discernible socioeconomic impacts.

Migratory bird populations. The regulation change will not negatively affect native migratory bird populations. Cattle egret and barn owl, the subjects of control, are alien and invasive to Hawaii.

Endangered and threatened species. The regulation change will have an overall benefit to endangered or threatened species or habitats important to them by reducing predation and competition by the cattle egret and the barn owl.

We concluded in a finding of no significant impact that the action is not likely to adversely affect any endangered or threatened species.

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 512 DM 2, we determined that there are no potential effects on federally recognized Indian Tribes from the regulation change. The regulation change will not interfere with Tribes' abilities to manage themselves or their funds, or to regulate migratory bird activities on tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule will not affect energy supplies, distribution, or use. This action will not be a significant energy action, and no Statement of Energy Effects is required.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out . . . 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'' (16 U.S.C. 1536(a)(2)). We completed informal consultation on this action; internally we concluded that this action would have ''no effect'' on ESA-listed plants, and ''may affect but is unlikely to adversely affect'' ESA-listed birds, the Hawaiian hoary bat, invertebrates, their designated critical habitats, and those proposed for listing. NMFS concurred with our determination that actions under this regulation are ''not likely to adversely affect'' ESA-listed marine species. The regulation change will result in an overall benefit to listed species or habitats important to them by reducing predation and competition by the cattle egret and the barn owl.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons described in the preamble, we amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—MIGRATORY BIRD PERMITS

■ 1. The authority for part 21 continues to read as follows:

Authority: 16 U.S.C. 703–712.

■ 2. Add § 21.55 to read as follows:

§ 21.55 Control order for invasive migratory birds in Hawaii.

(a) *Control of cattle egrets and barn owls.* Personnel of the agencies listed in paragraph (b) of this section may take cattle egrets (*Bubulcus ibis*) or barn owls (*Tyto alba*) using the methods authorized in paragraph (c) of this section at any time anywhere in the State of Hawaii, the Northwestern Hawaiian Islands, or the unincorporated territory of Midway Atoll. No permit is necessary to engage in these actions. In this section, the word ''you'' means a person operating officially as an employee of one of the authorized agencies.

(b) *Authorized agencies.* (1) Federal Aviation Administration;

(2) Hawaii Department of Agriculture;

(3) Hawaii Department of Lands and Natural Resources, Division of Forestry and Wildlife;

(4) National Oceanic and Atmospheric Administration;

(5) National Park Service;

(6) U.S. Department of Agriculture—Animal and Plant Health Inspection Service, Wildlife Services;

(7) U.S. Department of Defense;

(8) U.S. Fish and Wildlife Service;

(9) U.S. Geological Survey; and

(10) University of Hawaii—Pacific Cooperative Studies Units with program mandates to accomplish invasive species eradication and control, including the five island Invasive Species Committees.

(c) *Means of take.* (1) You may take cattle egrets and barn owls by means of lethal take or active nest take. Lethal take may occur by firearm or slingshot in accordance with paragraph (c)(2) of this section or lethal or live traps. Active nest take may occur by egg oiling in accordance with paragraph (c)(3) of this section or destruction of nest material and contents (including viable eggs and chicks). Birds may be euthanized by cervical dislocation, CO_2 asphyxiation, or other recommended method in the American Veterinary Medical Association Guidelines on Euthanasia.

(2) If you use a firearm or slingshot to kill cattle egrets or barn owls under the provisions of this order, you must use nontoxic shot or nontoxic bullets to do so. See § 20.21(j) of this chapter for a list of approved nontoxic shot types.

(3) Eggs must be oiled with 100 percent corn oil, which is exempted from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act by the U.S. Environmental Protection Agency.

(4) You may use concealment (such as blinds) and luring devices (such as decoys or recorded calls) for locating, capturing, and/or taking cattle egrets or barn owls.

(d) *Land access.* You must obtain appropriate landowner permission before conducting activities authorized by this order.

(e) *Relationship to other regulations.* You may take cattle egrets and barn owls under this order only in a way that complies with all applicable Federal, State, county, municipal, or tribal laws. You are responsible for obtaining all required authorizations to conduct this activity.

(f) *Release of injured, sick, or orphaned cattle egrets or barn owls.* Wildlife rehabilitators, veterinarians, and all other individuals or agencies who receive sick, injured, or orphaned cattle egrets or barn owls are prohibited from releasing any individuals of those species back into the wild in the State of Hawaii, the Northwestern Hawaiian Islands, or the unincorporated territory of Midway Atoll. All applicable local, State, Federal, and/or territorial regulations must be followed to transfer, possess, and/or release cattle egrets or barn owls in any other location.

(g) *Disposal of cattle egret or barn owl carcasses, nests, or nest contents.* You may donate carcasses, nests, or nest contents taken under this control order to public museums or public institutions for scientific or educational purposes or to persons authorized by permit or regulation to possess them. You may dispose of the carcasses by burial or incineration; or, if the carcasses are not safely retrievable, you may leave them in place. No one may retain for personal use, offer for sale, barter or trade, or sell a cattle egret or a barn owl or any feathers, parts, nests, or nest contents taken under this section.

(h) *Endangered or threatened species.* You may not take cattle egrets or barn owls if doing so will adversely affect other migratory birds protected under the Migratory Bird Treaty Act or species designated as endangered or threatened under the authority of the Endangered Species Act.

(i) *Reporting take.* Any agency engaged in control activities under this control order must provide an annual report of take during the calendar year for each species by January 31st of the following year. The report must include a summary of the number of birds and number of active nests taken for each species, the months in which they were taken, and the island(s) on which they were taken. Multiple reports within agencies may be combined, as appropriate. Submit annual reports to the Pacific Region Migratory Bird Permit Office in Portland, Oregon, at the address shown at 50 CFR 2.2.

(j) *Reporting nontarget take.* If, while operating under this control order, you take any other species protected under the Endangered Species Act or the Migratory Bird Treaty Act, you must report within 72 hours the take to the Pacific Region Migratory Bird Permit Office in Portland, Oregon, at the address shown at 50 CFR 2.2.

(k) *Revocation of authority to operate under this order.* We may suspend or revoke the authority of any individual or agency to operate under this order if we find that the individual or agency has taken actions that may take federally listed endangered or threatened species or any other bird species protected by the Migratory Bird Treaty Act (see 50 CFR 10.13 for the list of protected migratory bird species), or has violated any Federal or State law or regulation governing this activity. We will notify the affected agency by certified mail, and may change this control order accordingly.

Dated: July 13, 2017.

Virginia H. Johnson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2017–15471 Filed 7–24–17; 8:45 am]

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Proposed Rules

Federal Register
Vol. 82, No. 141
Tuesday, July 25, 2017

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 ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0018]

RIN 1904–AD93

Energy Conservation Program for Certain Commercial and Industrial Equipment: Test Procedure for Certain Categories of Commercial Air Conditioning and Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for information (RFI).

SUMMARY: In response to statutory requirements to review its test procedures in response to any updates of the relevant industry test procedures, as referenced in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1 (ASHRAE Standard 90.1), the U.S. Department of Energy (DOE) is initiating a data collection process to consider amendments to DOE's test procedures for commercial package air conditioning and heating equipment with test procedure updates included in ASHRAE Standard 90.1–2016—specifically, those evaporatively-cooled commercial unitary air conditioners (ECUACs), water-cooled commercial unitary air conditioners (WCUACs), and air-cooled commercial unitary air conditioners (ACUACs) which have a rated cooling capacity greater than or equal to 65,000 Btu/h and less than 760,000 Btu/h; and all classes of computer room air conditioners (CRACs); as well as to consider adopting a new test procedure for dedicated outdoor air systems (DOASes), equipment covered by ASHRAE Standard 90.1 for the first time. In response to other statutory requirements for DOE to review its test procedures at least once every seven years, DOE is also reviewing its test procedures for ECUACs and WCUACs with a rated cooling capacity less than 65,000 Btu/h, as well as all classes of variable refrigerant flow multi-split air conditioners and heat pumps (VRF multi-split systems) but excluding single-phase systems with a rated cooling capacity less than 65,000 Btu/h, which are covered as consumer products. To inform interested parties and to facilitate this process, DOE has gathered data and has identified several issues that might warrant modifications to the currently applicable Federal test procedures, topics on which DOE is particularly interested in receiving comment. In overview, the issues outlined in this document mainly concern incorporation by reference of the most recent version of the relevant industry standard(s); efficiency metrics and calculations; clarification of test methods; and any additional topics that may inform DOE's decisions in a future test procedure rulemaking, including methods to reduce regulatory burden while ensuring the procedures' accuracy. These topics (and others identified by commenters) are ones which may be addressed in proposed test procedure amendments in a subsequent notice of proposed rulemaking (NOPR). DOE welcomes written comments and data from the public on any subject related to the test procedures for this equipment, including topics not specifically raised in this RFI.

DATES: Written comments, data, and information are requested and will be accepted on or before August 24, 2017.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–TP–0018, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CommACHeatingEquipCat 2017TP0018@ee.doe.gov.* Include EERE–2017–BT–TP–0018 in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Test Procedure RFI for Commercial Package Air Conditioning and Heating Equipment, Docket No. EERE–2017–BT–TP–0018 and/or RIN 1904–AD93, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Telephone: (202) 586–6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section III of this document (Public Participation).

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting document/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket Web page can be found at: *https://www.regulations.gov/docket?D=EERE-2017-BT-TP-0018.* The docket Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section III of this document, Public Participation, for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

For further information on how to submit a comment, or review other public comments and the docket,

contact the Appliance and Equipment Standards Program staff at (202) 586–6636 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background
II. Discussion
A. Test Procedure for Computer Room Air Conditioners
1. Scope
a. Computer Room Cooling Application
b. Configurations
2. Energy Efficiency Descriptor
a. Integrated Efficiency Metrics
b. Part-Load Operation Due to Unit Oversizing
c. Operation Modes Other Than Standard Cooling Mode
3. Industry Test Standards
a. Standard Models and Application Classes in AHRI 1360–2016
b. ASHRAE 37 and Secondary Method
c. Minimum External Static Pressure
d. Setting Indoor Airflow
e. Refrigerant Charging Instruction
B. Test Procedure for Dedicated Outdoor Air Systems
1. Definition
a. Air Intake Source and Dehumidification Capability
b. Reheat
2. Energy Efficiency Descriptors
a. Dehumidification Metric
b. Heating Metric
3. Test Method
a. Airflow
b. Liquid Flow
c. Test Conditions
d. Tolerances
e. Capacity Measurement
f. Test Set-Up
C. Test Procedure for Air-Cooled, Water-Cooled, and Evaporatively-Cooled Equipment
1. Energy Efficiency Descriptor
2. Addressing Changes to AHRI 340/360
a. Head Pressure Controls
b. Refrigerant Charging Requirements
c. Adjustment for Different Atmospheric Pressure Conditions
d. Measurement of Condenser Air Inlet Temperature (ACUAC and ECUAC)
e. Tolerance of Tested Indoor Airflow Relative to Rated Indoor Airflow (ECUAC and WCUAC)
f. Vertical Separation of Indoor and Outdoor Units
g. Outdoor Entering Air Wet-Bulb Temperature (ECUAC)
h. Single-Zone Variable-Air-Volume and Multi-Zone Variable-Air-Volume
3. Additional Test Method Issues
a. Length of Refrigerant Line Exposed to Outdoor Conditions
b. Atmospheric Pressure Measurement
c. Consistency Among Test Procedures for Small and Large ECUAC and WCUAC Equipment Classes
d. Make-Up Water Temperature (ECUAC)
e. Secondary Measurement Method for Capacity (ECUAC)
f. Piping Evaporator Condensate to Condenser Pump (ECUAC)
g. Purge Water Settings (ECUAC)
h. Condenser Spray Pumps (ECUAC)
i. Additional Steps To Verify Proper Operation (ECUAC)
D. Test Procedure for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps
1. Energy Efficiency Descriptors
2. Representativeness and Repeatability
3. Test Method
a. Transient Testing: Oil Recovery Mode
b. Airflow Setting and Minimum External Static Pressure
c. Condenser Head Pressure Controls
d. Air Volume Rate for Non-Ducted Indoor Units
e. Secondary Test Method
f. Heat Recovery
4. Representations
a. Tested Combination
b. Determination of Represented Values
E. Other Test Procedure Topics
III. Submission of Comments

I. Authority and Background

Title III, part C [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which includes provisions covering the types of commercial heating and air conditioning equipment that are the subject of this notice.[2] This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment, which specifically includes variable refrigerant flow multi-split air conditioners and heat pumps (VRF multi-split systems),[3] computer room air conditioners (CRACs), dedicated outdoor air systems (DOASes), evaporatively-cooled commercial unitary air conditioners (ECUACs) less than 760,000 Btu/h, water-cooled commercial unitary air conditioners (WCUACs) less than 760,000 Btu/h, and air-cooled commercial unitary air conditioners (ACUACs) greater than or equal to 65,000 Btu/h and less than 760,000 Btu/h, all of which are addressed in this document. (42 U.S.C. 6311(1)(B)–(D))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of the Act include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (See 42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (see 42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Under 42 U.S.C. 6314, EPCA sets forth the general criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any prescribed or amended test procedures must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a covered equipment during a representative average use cycle or period of use and requires that the test procedure not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedures for commercial package air conditioning and heating equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (ASHRAE Standard 90.1), and that if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and

[1] For editorial reasons, upon codification in the U.S. Code, part C was redesignated part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (April 30, 2015).

[3] Not including single-phase VRF less than 65,000 Btu/h.

supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4))

ASHRAE Standard 90.1 was updated on October 26, 2016,[4] and this update made changes to the test procedure references in ASHRAE Standard 90.1–2013 for CRACs, as well as ACUACs, ECUACs, and WCUACs with cooling capacity ≥65,000 Btu/h and <760,000 Btu/h.[5] Additionally, ASHRAE Standard 90.1–2016 added efficiency levels and a test procedure for DOAS. These changes on the part of ASHRAE trigger DOE's obligation to review these test procedures pursuant to the requirements of EPCA.

EPCA also requires that DOE conduct an evaluation of test procedures at least once every seven years for each class of covered equipment to determine if an amended test procedure would more accurately or fully comply with the requirements in 42 U.S.C. 6314(a)(2) and (3). (42 U.S.C. 6314(a)(1)(A)) After this evaluation, DOE must either prescribe amended test procedures or publish a notice in the **Federal Register** regarding its determination not to amend test procedures. (42 U.S.C. 6314(a)(1)(A)(i) and (ii)) In either case, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b)) To amend a test procedure, DOE must determine the extent to which the proposed test procedure would alter the equipment's measured energy efficiency. If DOE determines that the amended test procedure would alter the measured efficiency of the covered equipment, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6314(a)(4)(C); 42 U.S.C. 6293(e))

Although ASHRAE Standard 90.1–2016 did not include revisions to the test procedures for VRF equipment or ECUACs and WCUACs with cooling capacity <65,000 Btu/h, DOE is including such equipment in this RFI under DOE's 7-year lookback authority. The test procedures under review in this RFI are shown in Table I.1.

TABLE I.1—COMMERCIAL AIR CONDITIONING AND HEATING EQUIPMENT INCLUDED IN THE RFI

Equipment included in RFI	Review test procedure due to amendments to industry test or rating procedure?	Last test procedure (final rule)	7-Year review due (final rule)
CRAC	Yes	77 FR 28928 (May 16, 2012)	May 16, 2019.
DOAS	Yes	N/A	N/A.
ECUAC	Yes (≥65,000 Btu/h only*)	77 FR 28928 (May 16, 2012)	May 16, 2019.
WCUAC	Yes (≥65,000 Btu/h only*)	77 FR 28928 (May 16, 2012)	May 16, 2019.
ACUAC ≥ 65,000 Btu/h**	Yes	80 FR 79655 (Dec. 23, 2015)	Dec. 23, 2022.
VRF (except single-phase <65,000 Btu/h***).	No	77 FR 28928 (May 16, 2012)	May 16, 2019.

* DOE is considering ECUAC and WCUAC with cooling capacity less than 65,000 Btu/h in this rulemaking notice under its 7-year lookback authority.

** DOE will be considering ACUAC with cooling capacity less than 65,000 Btu/h under its 7-year lookback authority in a separate test procedure rulemaking.

*** Single-phase VRF with rated cooling capacity less than 65,000 Btu/h are covered under DOE's consumer product regulations for central air conditioners.

Upon completion of this proceeding, DOE expects to satisfy for all the equipment categories listed in Table I.1, both the requirements of EPCA pertaining to DOE action prompted by amendments to industry test or rating procedures, as well as EPCA's 7-year review requirements. In support of its test procedures, DOE conducts in-depth technical analyses of publicly-available test standards and other relevant information. DOE continually seeks data and public input to improve its testing methodologies to more accurately reflect customer use and to produce repeatable results. In general, DOE is requesting comment and supporting data regarding representative and repeatable methods for measuring the energy use of the equipment that is the subject of this RFI. As such, DOE is interested in feedback on any aspect of the test procedures for the identified equipment, but it is especially interested in receiving comment and information on the specific topics discussed below.

II. Discussion

This RFI discusses each category of equipment under consideration in separate sections set forth below. DOE seeks input to aid in the development of the technical and economic analyses regarding whether amended test procedures for each category of equipment may be warranted. Specifically, DOE is requesting comment on any opportunities to streamline and simplify testing requirements for each category of equipment discussed in this notice.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (Feb. 3, 2017). Pursuant to that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its regulations applicable to the commercial equipment addressed in this notice consistent with the requirements of EPCA.

Within each section, DOE raises relevant issues regarding scope, efficiency metric, and test method, with a focus on changes identified by review of the updated test procedures in ASHRAE Standard 90.1–2016. As required by statute, DOE is considering amendments to the current test procedures (and in the case of DOAS, adoption of a new test procedure) to be consistent with those specified in

[4] There is no publication date printed on ASHRAE Standard 90.1–2016, but ASHRAE issued a press release on October 26, 2016, which can be found at *https://www.ashrae.org/news/2016/ashrae-ies-publish-2016-energy-efficiency-standard.*

[5] For water-source heat pumps, ASHRAE Standard 90.1–2016 included reference to a reaffirmation of the existing test procedure, and as such, does not constitute a change requiring DOE action.

ASHRAE 90.1–2016, where possible. Further, DOE requests comment on the benefits and burdens of adopting the industry test procedures referenced in ASHRAE 90.1–2016, without modification.

A. Test Procedure for Computer Room Air Conditioners

DOE's test procedure for CRACs, set forth at 10 CFR 431.96, currently incorporates by reference ASHRAE 127–2007, ''Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners'', (omit section 5.11), with additional provisions indicated in 10 CFR 431.96(c) and (e). The energy efficiency metric is sensible coefficient of performance (SCOP) for all CRAC equipment categories. ASHRAE 90.1–2016 updated its test procedure reference for CRACs from ASHRAE 127–2007 to AHRI 1360–2016, ''Performance Rating of Computer and Data Processing Room Air Conditioners'', which in turn references ASHRAE 127–2012. This update on the part of ASHRAE triggered DOE to review its test procedure for CRACs. In addition, DOE is aware that the ASHRAE 127 committee is working on an updated version of that standard, and DOE may consider the updated version when it is available.

In order to ensure that potential adoption of AHRI 1360–2016 as the DOE test procedure for CRACs would satisfy statutory requirements, the following sections consider issues related to the reduced scope of AHRI 1360–2016 relative to ASHRAE 127–2007, as well as updates in the industry test standards to the test method and rating conditions. DOE also explores other CRAC-related issues including definitions and the efficiency metric.

1. Scope

a. Computer Room Cooling Application

The definition for ''computer room air conditioner'' in DOE's regulations does not include physical design differences, component characteristics, or performance features that distinguish CRACs from other commercial package air conditioning and heating equipment (*e.g.,* CUACs) used for comfort cooling.[6] In March 2012, DOE published a supplemental notice of proposed rulemaking (SNOPR) refining its proposed definition of ''computer room air conditioner.'' 77 FR 16769, 16772–16773 (March 22, 2012). In response to this SNOPR, several stakeholders commented about differences in performance features between CRACs and CUACs. Carrier commented that CRACs are designed to handle different load characteristics, most notably by focusing on sensible load and not latent cooling. (EERE–2011–BT–STD–0029, Carrier, No. 28 at p. 1) Panasonic commented that CRACs have a different operating range and that they operate with tighter tolerances on temperature and relative humidity than do CUACs. (EERE–2011–BT–STD–0029, Panasonic, No. 20 at pp. 68–69) Despite these comments, DOE was unable to determine any specific requirements on sensible load that would consistently differentiate CRACs from CUACs and allow it to incorporate performance characteristics into the CRAC definition. Therefore, on May 16, 2012, DOE adopted the current definition for ''computer room air conditioner'' that distinguishes them from CUACs based on application differences. 77 FR 28928, 28947–28948 (May 16, 2012; ''May 2012 final rule'').

A review of 1000 CRAC models in DOE's Compliance Certification Management System (CCMS) shows that all of these models have a sensible heat ratio (SHR) above 80 percent. In contrast, commercial air conditioners used for comfort cooling generally have SHRs between 65 percent and 80 percent. DOE notes that the indoor air test condition for CUACs has a higher relative humidity than the test condition for CRACs. Therefore, the SHR for any air conditioner will be higher when tested using the CRAC test condition than when using the CUAC test conditions. However, DOE is considering whether a specific SHR (*e.g.,* 80 percent at the test condition of CRACs) would be sufficient to differentiate CRACs from other CUACs.

Issue CRAC–1: DOE requests comment on the extent to which models of commercial package air conditioners are marketed and/or installed for use in both comfort cooling and computer room cooling applications. DOE also seeks comment on whether there are models rated for energy efficiency ratio (EER) or seasonal energy efficiency ratio (SEER) and not SCOP that are used for computer room cooling—if so, DOE requests comment and data on the extent of the use of such equipment for computer room cooling.

Issue CRAC–2: DOE seeks comment and data on whether a specific sensible heat ratio could be selected that would effectively and consistently distinguish CRACs from other classes of commercial package air conditioners. DOE also seeks comment on any other design differences or performance features that would help resolve this issue.

b. Configurations

The following sections discuss configurations of CRACs that DOE has identified on the market and for which DOE is considering potential modifications to its current test procedure.

i. Airflow Direction and Mounting Location

DOE's minimum efficiency standards for CRACs in 10 CFR 431.97 apply to down-flow and up-flow units, which is terminology typically applied to floor-mounted units. However, DOE's test procedure for CRACs in 10 CFR 431.96 is not limited to floor-mounted units. On January 15, 2015, DOE published a final guidance document (''January 2015 Guidance Document'') to clarify the coverage of horizontal free-discharge CRACs under DOE's regulations for CRACs set forth in 10 CFR part 431.[7] In the January 2015 Guidance Document, DOE clarified that while horizontal free-discharge CRACs are not subject to the energy conservation standards for CRACs, the 2012 test procedure final rule did not have an exception for any specific airflow direction (*i.e.,* down-flow, up-flow or horizontal-flow) or mounting type (*i.e.,* floor-mount, ceiling-mount).[8] Therefore, any manufacturer making representations of the energy consumption of CRACs (including ceiling-mounted ducted or free-discharge units or horizontal free-discharge units and all other equipment that meets the CRAC definition) must base these representations on tests conducted according to the current DOE test procedure. A manufacturer may request a test procedure waiver for a

[6] DOE defines ''computer room air conditioner'' as a basic model of commercial package air-conditioning and heating equipment (packaged or split) that is: used in computer rooms, data processing rooms, or other information technology cooling applications; rated for sensible coefficient of performance (SCOP) and tested in accordance with 10 CFR 431.96, and is not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 6292. A computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature, and/or humidity control of the supplied air, and reheating function. 10 CFR 431.92.

[7] The January 2015 Guidance document can be found as Document Number 2 in Docket Number EERE–2014–BT–GUID–0022.

[8] On October 7, 2015, DOE published a draft guidance document (''October 2015 Guidance Document'') seeking comment concerning the coverage of ceiling-mount ducted and free-discharge CRACs. (The October 2015 Guidance document can be found as Document Number 3 in Docket Number EERE–2014–BT–GUID–0022.) DOE has not yet finalized this guidance with respect to ceiling-mounted ducted and free-discharge CRACs. The draft guidance also took the position that such CRACs were not subject to standards, but the test procedure did not have an exception for any specific airflow direction.

basic model if it contains design features that prevent testing according to the DOE test procedure, or such testing may generate results that are unrepresentative of the true energy consumption of the basic model. 10 CFR 431.401. To date, DOE has not received any such waiver requests.

DOE notes that the scope of AHRI Standard 1360–2016 (AHRI 1360–2016), ''2016 Standard for Performance Rating of Computer and Data Processing Room Air Conditioners'', the test procedure referenced in ASHRAE 90.1–2016, excludes ceiling-mounted units, only covering floor-mounted units. As stated in the October 2015 Guidance Document, ASHRAE 127–2007 can be used to test ceiling-mounted units. DOE understands that the ASHRAE 127 committee is considering additional provisions that would apply specifically to ceiling-mounted equipment, but a revised ASHRAE 127 standard is not yet available. For those CRACs not addressed by AHRI 1360–2016, DOE may consider continuing to reference ASHRAE 127–2007 or updating to a revised version of ASHRAE 127 when published, if appropriate.

Issue CRAC–3: DOE requests comment on the appropriate test procedure for ceiling-mounted CRACs, considering that AHRI 1360–2016 does not address them, and the test burden associated with any such procedure.

ii. Three-Phase Portable Units

Several manufacturers market portable units for commercial use in data centers and computer rooms. On June 1, 2016, under its authority for regulating consumer products, DOE published a final rule that established a test procedure for portable air conditioners. 81 FR 35242. In addition, DOE issued a final rule to establish energy conservation standards for portable air conditioners. In a final determination published on April 18, 2016, DOE established a definition for ''portable air conditioner'' that excludes units that use three-phase power as a means of differentiating the portable air conditioners that are consumer products (and thus determined to be covered products) from those that could normally not be used in residential applications. 81 FR 22514, 22519–22520. DOE identified several models of portable units that are marketed for commercial computer room cooling applications and use three-phase power instead of single-phase power. This equipment does not meet DOE's definition for ''portable air conditioner'' and is not subject to DOE's current test procedures or standards for portable air conditioners. DOE considers any portable unit marketed for computer room cooling that is rated with SCOP and is not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 6292 to meet its definition of ''computer room air conditioner.'' DOE is considering amendments to its test procedure for computer room air conditioners to better reflect usage in the field of portable units used for computer room cooling that are not covered consumer products, as applicable.

Issue CRAC–4: DOE requests comments on whether any specific provisions should be considered to address how to test portable units used in computer room cooling applications, such as whether they are typically ducted and, if so, what a representative minimum external static pressure (ESP) and return air temperature would be.

iii. Single Package Non-Floor-Mounted Air Conditioners

DOE identified several manufacturers that produce single package non-floor-mounted air conditioners (other than portable units) that are marketed specifically for cooling computer rooms, telecommunication rooms, and data centers. DOE identified such air conditioners designed for both interior and exterior installation. Of the exterior-mount units DOE identified, some meet DOE's definition for ''single package vertical air conditioner'' (one type of single-package vertical unit (SPVU)), while others are rooftop units. All of these identified models appear to meet DOE's definition for computer room air conditioners. Therefore, DOE is considering whether amendments are needed in its test procedure for CRACs to better reflect the in-field energy use and installation practices of single-package non-floor-mounted air conditioners used for computer room cooling.

Issue CRAC–5: DOE seeks information on the extent to which single-package non-floor-mounted air conditioners are used in computer room applications.

Issue CRAC–6: DOE seeks comment on whether special test procedure provisions should be developed for different kinds of single package non-floor-mounted air conditioners that are used for computer room cooling, including: (1) Whether such units are typically installed with supply/return air ducting; and (2) whether the test set-up described in ANSI/ASHRAE 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' (ASHRAE 37–2009) is appropriate and if any additional test set-up provisions would be needed.

Issue CRAC–7: DOE requests comment on whether there are other configurations of commercial package air conditioners that are marketed for computer room cooling applications and that meet DOE's definition for CRAC, beyond floor-mounted units (*i.e.,* up-flow, down-flow, and horizontal discharge), ceiling-mounted units, portable units, indoor single package units, rooftop units, and certain SPVUs.

2. Energy Efficiency Descriptor

When ASHRAE 90.1–2016 amended its energy efficiency levels, it also updated its test procedure from ASHRAE 127–2007 to AHRI 1360–2016. AHRI 1360–2016 defines standard rating configurations and conditions and provides additional requirements for testing CRACs, but does not include a method of test. Instead, AHRI 1360–2016 references ASHRAE 127–2012 as the method of test. This test procedure change also updated the ASHRAE 90.1 efficiency metric for CRACs from SCOP to net sensible coefficient of performance (NSenCOP). DOE's current efficiency metric for CRACs is SCOP. As compared with SCOP, the new metric NSenCOP specifies different operating conditions for water-cooled and glycol-cooled models and adjusts the efficiency to account for the energy use associated with the water or glycol pump. These changes presumably result in a more accurate representation of the energy use associated with the equipment. Because ASHRAE 90.1 changed the metric to NSenCOP, EPCA requires that DOE must consider updating to NSenCOP as well. For completeness, DOE reviews other issues related to efficiency metrics for CRACs in this section, including: (1) Integrated efficiency metrics; (2) part-load operation due to unit oversizing; and (3) operation modes other than standard cooling mode. If DOE ultimately decides to change its metric from SCOP to NSenCOP, DOE would need to develop a crosswalk analysis to translate DOE's existing standards—which are in terms of SCOP—to the NSenCOP metric.

a. Integrated Efficiency Metrics

ASHRAE 127–2007 includes the integrated efficiency metric, adjusted sensible coefficient of performance (ASCOP), which is calculated based on the SCOPs at four different rating conditions (A, B, C, and D), representing different ambient conditions, with weightings for the SCOP at each rating condition based on the climate at a specific location. ASHRAE 127–2012 and AHRI 1360–2016 include an updated integrated efficiency metric, integrated net sensible coefficient of

performance iNSenCOP, instead of ASCOP. There are differences between ASCOP and iNSenCOP, similar to those between SCOP and NSenCOP, but both are weighted averages of sensible-capacity-based efficiencies measured for operation at different ambient conditions.

The ASCOP and iNSenCOP test methods in ASHRAE 127–2007, ASHRAE 127–2012, and AHRI 1360–2016 require units to maintain a constant sensible cooling capacity at lower ambient temperatures. However, it is not clear how the lower-ambient tests are to be conducted. As the ambient temperature decreases, the maximum cooling capacity of a CRAC will inherently increase. ASHRAE 127–2012 does not provide guidance regarding how the unit should be controlled in order to deliver the same amount of sensible cooling as its capacity increases for the lower-ambient tests.

Issue CRAC–8: DOE requests comment on whether DOE should consider adopting an integrated efficiency metric (*e.g.,* iNSenCOP). Also if so, DOE requests comment on how the requirement to maintain a constant sensible cooling capacity associated with the iNSenCOP test procedure should be implemented during testing.

b. Part-Load Operation Due to Unit Oversizing

CRACs typically operate at part-load (*i.e.,* less than designed full cooling capacity) in the field. Reasons for this may include, but are not limited to, redundancy in installed units to prevent server shutdown if a CRAC unit stops working, and server room designers building in extra cooling capacity to accommodate additional server racks in the future. At part-load, single-speed systems cycle on and off to match the cooling requirement, while variable speed systems might operate at a different speed, but both control strategies change performance as compared to full-load operation. While the DOE test procedure measures performance at full-load, DOE estimated in its May 2012 final rule analysis that CRAC units operate on average at a sensible load of 65 percent of the full-load sensible capacity. (EERE–2011–BT–STD–0029–0021, pp. 4–15, 4–16). This may indicate a difference between DOE test procedure operating requirements and typical field operation. Therefore, DOE is considering whether this practice of oversizing should be factored into a CRAC efficiency metric to the extent that it would better represent an average use cycle.

Issue CRAC–9: DOE requests information on the range of typical field load levels for CRACs at conditions close to or at the maximum ambient outdoor air temperature conditions specified in the DOE test procedure for various unit capacities. DOE seeks input on typical rules of thumb for oversizing and whether the issues of oversizing of this equipment should be addressed in the efficiency metric.

c. Operation Modes Other Than Standard Cooling Mode

Many CRACs operate in air circulation mode. DOE understands that redundant units are usually installed in the computer room, and some of the redundant units can be controlled to operate in air circulation mode for better air movement. In this mode, the direct expansion refrigerant system is shut down, and only evaporator blowers and controls are on. DOE is considering whether the energy consumption of air circulation mode should be considered in the CRAC energy efficiency metric.

Issue CRAC–10: DOE seeks comment on the conditions under which CRACs will operate in air circulation mode (*i.e.,* operating the indoor fan without actively cooling) in the field, whether each CRAC switches automatically between standard cooling mode and air circulation mode, and if so, the time percentage that CRACs operate in such circulation mode. DOE also seeks comment on what fan setting(s) is used for air circulation mode and whether DOE should consider this energy use in the CRAC efficiency metric.

3. Industry Test Standards

In its test procedure for CRACs, DOE currently incorporates by reference ASHRAE 127–2007 (omitting section 5.11). 10 CFR 431.96. As mentioned previously, ASHRAE published an updated version of this test standard in 2012, ASHRAE 127–2012. ASHRAE 127–2012 includes several modifications from ASHRAE 127–2007, which are discussed in the following sections. DOE is aware that ASHRAE is working to update ASHRAE 127–2012, and DOE may consider the newer version of the test standard if it is published during the course of this rulemaking. As discussed previously, DOE is also aware that the referenced industry test procedure in ASHRAE Standard 90.1–2016 has changed to AHRI 1360–2016. The scope of AHRI 1360–2016 covers only floor-mounted computer and data processing room air conditioners, including up-flow, down-flow, and horizontal-flow units. AHRI 1360–2016 defines standard configurations and provides rating conditions and additional requirements for testing CRACs, but does not include a method of test. Instead, AHRI 1360–2016 references ASHRAE 127–2012 to conduct the test. Consequently, DOE will consider adopting both industry test standards. In the following sections, DOE discusses specific test procedure-related issues and questions regarding ASHRAE 127–2012 and AHRI 1360–2016.

a. Standard Models and Application Classes in AHRI 1360–2016

Indoor floor-mounted CRACs can be installed in different configurations, which vary by direction of airflow and connections (*e.g.,* raised floor plenum, ducted, free air). Instead of specifying test conditions for all possible combinations, AHRI 1360–2016 includes the concept of ''standard models'' that characterize common configurations and specify standard rating conditions (*e.g.,* external static pressure, return air temperature) for each style of indoor floor-mounted CRAC. Table C.1 of Appendix C of AHRI 1360–2016 defines four different standard models: (1) Down-flow (with raised floor plenum discharge and free air return); (2) horizontal-flow (with free air discharge and free air return); (3) up-flow ducted (with ducted discharge and free air return); and (4) up-flow non-ducted (with free air discharge and free air return). AHRI 1360–2016 also specifies which of the four standard model test set-ups and standard rating conditions apply for down-flow, horizontal-flow, and up-flow CRACs. For example, down-flow units are tested with a raised floor plenum discharge and a free air return.

DOE notes that for up-flow CRACs, AHRI 1360–2016 includes two standard models with associated standard rating conditions, one for ducted discharge connections and one for free air discharge. However, connection variations are characteristics of installations. A given up-flow unit could be installed either with or without a duct. DOE's research has not revealed that up-flow CRACs have physical characteristics that clearly distinguish them as ducted or non-ducted models. Hence, it is not clear which of the AHRI 1360–2016 up-flow standard model requirements would be used for testing.

Issue CRAC–11: DOE requests comment on what equipment characteristics can be used to determine whether up-flow CRACs should be tested as ducted or non-ducted models. DOE also requests comments on whether up-flow units can be sold for both up-flow ducted and up-flow non-ducted applications and whether such

models are currently tested using both ducted and non-ducted standard rating conditions.

DOE also notes that, in addition to the four standard models of floor-mounted CRACs, Table C.1 of AHRI 1360–2016 also includes many additional combinations of connections, referred to as application configurations, but does not provide standard rating conditions for these configurations.

Issue CRAC–12: DOE requests confirmation that, although floor-mounted CRACs may be sold to be installed in multiple configurations, all models are capable of being tested as one of the four standard models identified in Table C.1 of AHRI 1360–2016.

AHRI 1360–2016 does not include standard models or standard rating conditions for ceiling-mount or non-floor mount CRACs. The current DOE test procedure, which incorporates by reference ASHRAE 127–2007, specifies different test operating conditions (*e.g.,* different external static pressure) than AHRI 1360–2016.

Issue CRAC–13: DOE requests comment on whether the test requirements of ASHRAE 127–2007 are representative of average use cycles for ceiling-mount and other non-floor-mounted CRACs. If not, DOE requests comment on which, if any, of the test requirements of AHRI 1360–2016 would more appropriately represent average use cycles for such CRACs.

b. ASHRAE 37 and Secondary Method

ASHRAE 127–2007 references ANSI/ASHRAE 37–2005, ''Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment'' (ASHRAE 37–2005), while 127–2012 and AHRI 1360–2016 reference the updated version, ASHRAE 37–2009. ASHRAE 37–2005 and the updated ASHRAE 37–2009 describe test methods for measuring cooling capacity, heating capacity, and electrical energy use of air conditioners and heat pumps. However, it is not clear whether the industry test standards for CRACs reference specific provisions or all of the provisions of ASHRAE 37–2005 or ASHRAE 37–2009.[9] No alternate methods for determining cooling capacity are included in ASHRAE 127 or AHRI 1360. Therefore, DOE expects that manufacturers do use the test methods of ASHRAE 37–2005 or ASHRAE 37–2009 to determine cooling capacity, sensible cooling capacity, and electric energy use of CRACs. DOE is considering updating the DOE test procedure to clarify that the test method is based on ASHRAE 37–2009, except as modified or adjusted by ASHRAE 127–2012 or AHRI 1360–2016.

Issue CRAC–14: DOE seeks comment on whether the test method of ASHRAE 37–2009 is appropriate for measuring capacity, sensible capacity, and electric energy use for all configurations of CRACs (including configurations for which DOE does not currently prescribe energy conservation standards).

Table 2b in section 8 of ASHRAE 37–2009 includes test operating tolerances (maximum allowable observed range) and condition tolerances (maximum variation of the average from a specified test condition) for several parameters, including air and fluid temperatures, in order to reduce the uncertainty of the measurement of cooling capacity, heating capacity, and/or energy use of air conditioners or heat pumps. However, this section of ASHRAE 37–2009 is not explicitly referenced by the CRAC industry test standards. Section 5.1 of ASHRAE 127–2007 and section 5.2.1 of ASHRAE 127–2012 only include an operation tolerance for the room temperature, and no versions of ASHRAE 127 or AHRI 1360 include any other tolerances. DOE considers the tolerances of Table 2b of ASHRAE 37–2009 to be relevant for CRACs and important to reduce variability of key CRAC performance measurements.

Issue CRAC–15: DOE requests comment on whether any operating or condition tolerances included in Table 2b in section 8 of ASHRAE 37–2009 are not appropriate for CRACs. If any are not appropriate, DOE requests an explanation as to why and suggestions on how the tolerances should be changed.

Section 7.2.1 of ASHRAE 37–2009 requires that when testing equipment with a total cooling capacity less than 135,000 Btu/h, simultaneous capacity tests using the indoor air enthalpy method and one other applicable method must be conducted. Specifically, these other test methods include the outdoor air enthalpy method, the compressor calibration method, the refrigerant enthalpy method, and the outdoor liquid coil method. Table 1 in section 7 of ASHRAE 37–2009 specifies which of these test methods are applicable for each equipment configuration and method of heat rejection in cooling mode. Section 10.1.2 of ASHRAE 37–2009 requires that the total cooling capacity calculated from the two simultaneously conducted methods agree within 6.0 percent.

For CRACs with cooling capacity less than 135,000 Btu/h, DOE is considering whether its test procedure should require a secondary test method and how agreement between the primary and secondary methods should be evaluated. DOE is also considering whether the primary and secondary tests should be based on total cooling capacity or sensible cooling capacity. Basing these tests on sensible cooling capacity may be more appropriate because it is the basis of the CRAC efficiency metric in both ASHRAE Standard 90.1 and the current Federal standard.

Issue CRAC–16: DOE seeks comment on whether a secondary test is appropriate for testing CRACs, for what range of cooling capacity such a requirement should apply for CRACs, how the requirement should be applied (given that most secondary test methods measure total rather than sensible capacity), and what level of agreement (in percent) should be required. DOE is also interested in detailed information on whether there would be a significant additional test burden resulting from a secondary test—and if so, the nature and extent of that burden.

Many CRACs have compressors housed in their indoor units. ASHRAE 37–2009 specifies modification of the indoor enthalpy method as depicted in its Figure 3, Calorimeter air enthalpy test method arrangement, for capturing the impact of compressor heat on the capacity measurement. However, none of the industry test standards explicitly call for using this test set-up for CRAC indoor units to take into consideration the cooling capacity reduction associated with compressor heat.

Issue CRAC–17: DOE requests comment on whether it is appropriate to incorporate the impact of compressor heat in sensible capacity measurements for CRACs with compressors housed in their indoor units. DOE requests that the comments provide an explanation as to why it is or is not appropriate, and whether the answer depends on the specific CRAC configuration.

c. Minimum External Static Pressure

ASHRAE 127–2007, ASHRAE 127–2012, and AHRI 1360–2016 all contain different minimum external static pressure (ESP) levels and categories, as indicated in Table II.1. In ASHRAE 127–2012, the minimum ESP levels are the same as for ASHRAE 127–2007, but ASHRAE 127–2012 defines ''ducted systems'' as ''air conditioners intended to be connected to supply and/or return ductwork'' instead of ''to supply and return ductwork,'' as specified in ASHRAE 127–2007.

[9] For example, in ASHRAE 127–2007, the reference to ASHRAE 37–2005 is located under a subsection 5.1.4.5.2 titled, ''Raised Floor Plenum Systems'' which is located under section 5.1.4.5 titled ''External Resistance, Ducted Connected, Floor Plenum and Free Air Discharge.''

TABLE II.1—EXTERNAL STATIC PRESSURE REQUIREMENTS

Test standard	CRAC Category	Minimum ESP (in. w.c.)
ASHRAE 127–2007 and ASHRAE 127–2012.	Ducted:	
	Net Sensible Capacity < 20 kW	0.8
	Net Sensible Capacity ≥ 20 kW	1.0
	Free Discharge	0.0
AHRI 1360–2016	Up-flow Ducted:	
	Net Sensible Capacity <65 kBtu/h	0.3
	Net Sensible Capacity ≥65 kBtu/h and <240 kBtu/h	0.4
	Net Sensible Capacity ≥240 kBtu/h and <769 kBtu/h	0.5
	Horizontal and Up-flow Non-ducted	0.0
	Down-flow	0.2

DOE is considering the test procedures and the ESP levels of AHRI 1360–2016, but seeks input on the significant difference in the ESP values of the different test standards. Additionally, AHRI 1360–2016 does not include minimum ESP requirements for ceiling-mounted units. AHRI–1360–2016 also made very significant changes to the ESPs for up-flow ducted and down-flow configurations compared to ASHRAE 127–2012. DOE received no data or information from ASHRAE indicating the rationale for the changes or why lower static pressures are more representative of field performance. Thus, DOE is particularly interested in any information regarding the static pressures that are likely representative of all CRACs.

Issue CRAC–18: DOE requests comment on whether the ESP levels required by AHRI 1360–2016 are representative of field operation for floor-mounted CRACs.

Issue CRAC–19: DOE requests information on whether the ESP levels required by ASHRAE 127–2012 are representative of field operation for ceiling-mounted CRACs and for other non-floor-mounted CRAC configurations, and if not, what a representative minimum ESP would be.

DOE's review of CRAC installation manuals suggests that some up-flow units are installed with a plenum box that redirects the airflow from the upwards direction to the front or rear.

Issue CRAC–20: DOE requests comment on the percentage of up-flow CRAC installations in which a plenum box that redirects air from the upward direction to the front or rear would be attached, and whether non-ducted units are tested with or without this plenum.

DOE identified several models of air-cooled CRACs that have an indoor condenser and, therefore, may require ducting of condenser air. Neither AHRI 1360–2016 nor ASHRAE 127–2013 address the possibility of condenser ducting, and accordingly, would call for testing such CRACs like others in free-inlet and free-discharge mode. However, this might not be representative of field operation. The condenser fan for a CRAC with a ducted condenser has to overcome the additional pressure drop of the ducts; thus, imposing a minimum ESP requirement for testing may better reflect field operating conditions than testing the unit with free air inlet and discharge. However, this could require attaching an apparatus to allow adjustment of ESP, which would add to test burden. Alternatively, if a well-defined air duct set-up for indoor condensers could be developed (*e.g.,* specific length and cross-sectional dimensions for the inlet and/or outlet air duct), a standardized airflow resistance could be imposed without requiring a similar connection and adjustment of the airflow and measurement apparatus as used for measurement of indoor airflow, which could significantly reduce test burden.

Issue CRAC–21: DOE seeks comment on how to set up the condenser air flow when testing CRACs manufactured with condenser air inlet and outlet connections and high-static condenser fans, which indicate that such units can be installed indoors with the condenser air ducted to and from the outdoors. Additionally, DOE requests comment on whether some CRACs can be installed with or without condenser ducting, and if so, how often these units are typically installed with condenser ducting. DOE also seeks comment on whether certain CRAC configurations are more likely to be installed with condenser ducting.

d. Setting Indoor Airflow

DOE currently requires manufacturers to certify the indoor airflow for CRACs. However, DOE's test procedure and industry test standards do not impose tolerances on achieving the certified airflow and/or the minimum ESP during testing. The performance of any air conditioner can be significantly affected by operation with indoor airflow that is very different from the intended airflow.

For ACUACs with capacity ≥65,000 Btu/h, DOE established a requirement that the full-load indoor airflow rate must be within ±3 percent of the certified airflow. 80 FR 79655, 79671 (Dec. 23, 2015; ''December 2015 CUAC TP final rule''). Tolerance for ESP in this test is −0.00/+0.05 in. w.c. In contrast, for consumer central air conditioners and heat pumps (CAC/HPs), the method for setting indoor air volume rate for ducted units without variable-speed constant-air-volume-rate indoor fans is a multi-step process that addresses the discrete-step fan speed control of these units. In this method, (a) the air volume rate during testing may not be higher than the certified air volume rate, but may be 10 percent less, and (b) the ESP during testing may not be lower than the minimum specified ESP, but may be higher than the minimum if this is required to avoid having the air volume rate overshoot its certified value. 81 FR 36992, 37026 (June 8, 2016; ''June 2016 CAC TP final rule'').

Issue CRAC–22: DOE seeks information on how certified airflow is achieved in laboratory testing of CRACs, both with indoor blowers that are continuously variable and for indoor blowers that are adjustable in discrete steps. DOE also seeks comments on whether the tolerances for setting airflow of commercial CUACs or of CAC/HPs are appropriate for CRACs, and what tolerances would be appropriate for airflow and ESP.

e. Refrigerant Charging Instruction

Neither the ASHRAE nor the AHRI testing standards for CRACs include specific instructions for refrigerant charging. The June 2016 CAC TP final rule provides a comprehensive approach for charging intended to improve test reproducibility. The approach indicates which set of installation instructions to use for charging, explains what to do if there are no instructions, indicates that target values of parameters are the centers of the ranges allowed by installation

instructions, and specifies tolerances for the measured values. 81 FR 36992, 37030–37031. An approach that details methods such as these could improve the CRAC test method.

Issue CRAC–23: DOE requests comments on what refrigerant charging requirements should be considered to establish reproducible test results for CRACs, and whether the approach developed for CAC/HP products may be appropriate. Also, DOE seeks comments on the typical operating conditions at which the unit is charged in the field and/or what conditions should be used to set refrigerant charge for testing purposes.

Issue CRAC–24: DOE requests comments on any other issues related to the adoption of AHRI 1360–2016 as the test procedure for CRACs.

B. Test Procedure for Dedicated Outdoor Air Systems

DOASes appear to meet the EPCA definition for ''commercial package air conditioning and heating equipment,'' [10] and could be considered as a category of that covered equipment. (42 U.S.C. 6311(8)(A)) However, DOE has tentatively concluded that if DOASes are a category of ''commercial package air conditioning and heating equipment,'' there are no existing DOE test procedures or energy conservation standards for that category of commercial package air conditioning and heating equipment. Specifically, DOE does not believe that DOAS are among the commercial ''central air conditioners and central air conditioning heat pumps'' for which EPCA originally established standards (42 U.S.C. 6313(a)(1)–(2), (7)–(9)), and for which the current test procedure and standards are codified in Table 1 to 10 CFR 431.96 and Tables 1–4 of 10 CFR 431.97 (as air conditioners and heat pumps).

Neither EPCA nor DOE defines commercial ''central air conditioners and central air conditioning heat pumps.'' DOASes operate similarly to commercial central air conditioners and central air conditioning heat pumps, in that they provide space conditioning using a refrigeration cycle consisting of a compressor, condenser, expansion valve, and evaporator. However, DOASes are designed to provide 100 percent outdoor air to the conditioned space, while outdoor air makes up only a small portion of the total airflow for typical commercial air conditioners, usually less than 50 percent. When operating in humid conditions, the dehumidification load is a much larger percentage of total cooling load for a DOAS than for a typical commercial air conditioner. Additionally, compared to a typical commercial air conditioner, the amount of total cooling (both sensible and latent) is much greater per pound of air for a DOAS at design conditions (*i.e.,* the warmest/most humid expected summer conditions), and a DOAS is designed to accommodate greater variation in entering air temperature and humidity. DOASes are typically installed in addition to a primary cooling system (*e.g.,* CUAC, VRF, chilled water system, water-source heat pumps)—the DOAS conditions the outdoor ventilation air, while the primary system provides cooling to balance building shell and interior loads and solar heat gain. DOE is considering whether there is a need for definitions of ''commercial central air conditioners and central air conditioning heat pumps'' and ''dedicated outdoor air systems'' to clarify this distinction. If DOE determines this necessary, it would do so through a future rulemaking proceeding.

ASHRAE 90.1–2016 created separate equipment classes for DOAS units and set minimum efficiency levels using the integrated seasonal moisture removal efficiency (ISMRE) metric for all DOAS classes and the integrated seasonal coefficient of performance (ISCOP) metric for air-source heat pump and water-source heat pump DOAS classes. Both metrics are measured in accordance with AHRI Standard 920–2015, ''Performance Rating of DX-Dedicated Outdoor Air System Units'' (AHRI 920–2015). AHRI 920–2015 references ASHRAE Standard 198–2013, ''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency'' (ASHRAE 198–2013), as the method of test for DOAS units.

DOE must adopt the industry standard designated by ASHRAE 90.1 unless it is not consistent with EPCA requirements. Accordingly, DOE is considering the test methods of AHRI 920–2015 and ASHRAE 198–2013, but may consider modifications of these test methods if necessary to fulfill the EPCA requirements. In the following sections, DOE reviews potential definitions and efficiency metrics for DOAS, as well as questions regarding the test method in the industry standards.

1. Definition

As stated previously, DOE is considering how to define ''dedicated outdoor air system.'' Both AHRI 920–2015 and ASHRAE 198–2013 include definitions for DOAS. DOE may adopt one of these definitions, but it may also adjust the definition to assure that it is clear and complete. The following sections address different aspects of the definitions provided in the industry test standards.

a. Air Intake Source and Dehumidification Capability

Both AHRI 920–2015 and ASHRAE 198–2013 define a DOAS as a product that dehumidifies 100-percent outdoor air to a low dew point. However, section 6.6 of ASHRAE 198–2013 provides requirements for dampers not used for introducing outdoor air, suggesting that some DOAS units take in some percentage of return air. Accordingly, DOE has identified models from multiple manufacturers that are advertised as DOASes, but which incorporate a damper-controlled return air inlet that allows return air to be mixed with outdoor air.

CUACs also often incorporate a damper to mix return air and outdoor air. Additionally, CUACs also can dehumidify 100-percent outdoor air, although generally not to a dew point as low as DOASes. Hence, DOE is concerned that the dehumidification capability and/or the range of percentage of return air flow may have to be quantified to distinguish DOASes and CUACs.

Issue DOAS–1: DOE requests information on the range of the maximum percentage of return air intake relative to total air flow of DOAS models in order to determine whether the maximum return air percentage is an important DOAS distinguishing feature.

Issue DOAS–2: DOE requests comment on the differences in dehumidification capabilities of CUACs and DOASes when operating with 100-percent outdoor air. Specifically, DOE seeks comment on whether a difference can be quantified to be a clear differentiating feature of DOASes—for example, can a specific dew point criterion for a given set of outdoor air conditions be established that can be achieved by any DOAS, but that no conventional CUAC can achieve?

b. Reheat

DOE is interested in determining how the ability to reheat dehumidified air should be incorporated into the definition of a DOAS. The AHRI 920–2015 definition requires that a DOAS

[10] Under the statute, ''commercial package air conditioning and heating equipment'' means air-cooled, water-cooled, evaporatively-cooled, or water-source (not including ground-water-source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application.

include reheat ''capable of controlling the supply dry-bulb temperature of the dehumidified air to the designed supply air temperature,'' whereas the ASHRAE 198–2013 definition indicates only that DOASes may have this functionality. The ASHRAE 198–2013 definition indicates that the DOAS might also have a supplemental heat system ''for use when outdoor air requires heating beyond the capability of the refrigeration system and/or other heat transfer apparatus.'' Supplemental heating is also mentioned in the note below the AHRI 920–2015 definition.

Issue DOAS–3: DOE requests comment on whether and how reheating functionality should be included in the DOAS definition. If reheat should be required for a unit to be considered a DOAS, DOE requests comment on whether a minimum reheat capacity should be specified in the definition. DOE also requests information to clarify the difference between a reheat system and a supplementary heat system in a DOAS—for example, if reheat is required for a DOAS, can it be a supplementary reheat system (*i.e.,* one that uses a heat source other than warm refrigerant or heat recovered from the return air)?

2. Energy Efficiency Descriptors

a. Dehumidification Metric

ISMRE is a seasonal efficiency metric calculated based on moisture removal efficiency (MRE) at four different dehumidification rating conditions. The weighted values are derived from bin hour data (*i.e.,* temperature/humidity data for a selection of representative cities indicating the number of hours of occurrence of each ''bin'' representing a defined range of temperature and humidity) to represent seasonal operation. MRE is calculated as moisture removal capacity (MRC) divided by the total energy input, as described in ASHRAE 198–2013 section 10.6.

DOE is seeking clarification on the calculation procedure for ISMRE. ASHRAE 198–2013 indicates measuring MRE twice for each test condition, once with reheat on and once with reheat off. AHRI 920–2015 does not specify which of these values of MRE is used in the calculation of ISMRE. AHRI 920–2015 section 6.1.3.1 calls for a supplemental heat penalty if the supply air temperature is less than 70 °F, but the incorporation of this penalty into the MRE equation is not clearly described. It is also not clear whether the ASHRAE 198–2013 test method considers this penalty. Finally, the equation for the supplemental heat penalty in AHRI 920–2015 appears to be missing the supply air volume flow rate as a factor.

Issue DOAS–4: DOE requests information to clarify the calculation procedure for ISMRE. Specifically, DOE requests input on which dehumidification test MRE should be used (and why), how and when the supplementary heat penalty is applied, and the basis for the supplementary heat equation.

While the primary functions of DOASes are to provide ventilation and to dehumidify the outdoor air, the units also provide sensible cooling to the supplied air stream. However, the sensible cooling provided by the unit is not accounted for as part of the MRE or ISMRE efficiency metric. DOE is aware that the total sensible cooling provided may be significantly less than the latent cooling associated with removal of moisture—for example, conditions C and D of Tables 2 and 3 of AHRI 1360–2016 specify inlet air conditions already cooler than the target 70 °F supply temperature—but sensible cooling may be important enough to consider for the warmer test conditions.

Issue DOAS–5: DOE requests comment on whether the DOAS efficiency metric should also account for sensible cooling provided for ventilation air during the cooling/dehumidification season.

The ISMRE metric is based on testing at four different operating conditions, involving specification of both dry bulb and wet bulb outdoor temperature. A weighted average of the MRE measurements determined for the four conditions is calculated to obtain ISMRE. DOE test procedures must provide a measurement that is representative of an average use cycle for the tested equipment. (42 U.S.C. 6314(a)(2)) Among the considerations that might be relevant in defining the test conditions and weighting factors is the fact that ventilation air must be delivered to occupied spaces during occupied hours, which would put more emphasis on daytime hours for development of the metric.

Issue DOAS–6: DOE seeks information about analysis of climate data relevant to the development of the ISMRE test conditions and weighting factors in order to confirm that the metric provides a measurement that is representative of an average use cycle for DOAS equipment.

b. Heating Metric

ISCOP is a seasonal energy efficiency descriptor calculated as the weighted average of heating COP determined for two different heating rating conditions. DOE test procedures must provide a measurement that is representative of an average use cycle for the tested equipment. (42 U.S.C. 6314(a)(2)) Section 6.4 of AHRI 920–2015 indicates that the weighting factors for the COPs are derived from bin hour data to represent a full year of operation.

Issue DOAS–7: DOE seeks information about analysis of climate data relevant to the development of the ISCOP test conditions and weighting factors in order to allow confirmation that the metric provides a measurement that is representative of an average use cycle for DOAS heat pump equipment.

''Integrated seasonal coefficient of performance,'' as defined in AHRI 920–2015, is an energy efficiency metric for water-source heat pumps. However, DOE notes that ASHRAE 90.1–2016 includes ISCOP minimum efficiency levels for air-source heat pumps (heating mode) in Table 6.8.1–16 in addition to water-source heat pumps. ASHRAE 198–2013 section 10.9 claims that its equations for calculating COP are for water-source heat pumps, although the COP definition in ASHRAE 198–2013 does not exclude air-source heat pumps, and the equations should apply equally well for air-source heat pumps. Finally, DOE notes that tests conducted at 35 °F dry bulb temperature for consumer central air conditioning heat pumps (which are air-source) consider the impacts of defrosting of the outdoor coil in the energy use measurement (see section 3.9 of 10 CFR part 430, subpart B, appendix M), while defrost is not discussed at all in ASHRAE 198–2013. Defrost has a real impact on efficiency because of energy use associated with defrost and because a system cannot continue to provide heating during defrost operation, thereby reducing time-averaged capacity. Hence, consideration of defrost could provide a more field-representative measurement of performance.

Issue DOAS–8: DOE seeks input on the calculation procedure for the COP of air-source heat pump DOASes, including whether testing for test condition E of AHRI 920–2015 Table 2 (35 °F dry bulb/29 °F wet bulb) should consider energy use associated with defrost.

The COP equation of ASHRAE 198–2013 section 10.9 uses the term q_{hp} to represent the heating capacity in the COP calculation. This term does not appear in the nomenclature section, but the subscript ''hp'' suggests that this includes only heat provided by the heat pumping function of the DOAS unit. However, the equation defining q_{hp} is based on supply air temperature, suggesting that any of the possible

additional methods for providing heat (*e.g.,* supplemental heat, heat recovery) may contribute to q_{hp} and thereby boost COP by increasing the numerator of the COP equation. The COP equation includes only electric power input in the denominator and does not include energy use that might be associated with fuel-fired supplemental heat. In addition, the supplemental heat penalty of AHRI 920–2015 section 6.1.3.1, which the section states applies to the heating test conditions as well as the dehumidification test conditions, seems to penalize the COP calculation excessively, because it does not indicate that the additional heating should be added to the q_{hp} of the COP equation.

Issue DOAS–9: DOE seeks input on the calculation for COP and how the supplemental heat penalty is included. DOE also seeks input on how the heating capacity and power/fuel consumption of various supplemental heating sources are accounted for as part of the COP equation and how DOAS manufacturers incorporate the impacts of these sources in their ISCOP calculations.

3. Test Method

a. Airflow

i. Supply Airflow

Section 5.2.2 of AHRI 920–2015 specifies instructions regarding supply airflow rate. Section 5.2.2.1 of that industry standard requires either use of the supply airflow that occurs at the minimum external static pressure of Table 4 or a manufacturer-specified lower leaving airflow rate that occurs with higher external static pressure. Section 5.2.2.3 of that industry standard further requires that the manufacturer specify a single airflow for all tests. However, many DOAS systems can operate over a range of airflow rates, and DOE expects that their indoor fans can be set up with a range of speeds to accommodate the airflow range and the variation in duct length in field installations. Further, some DOAS systems are employed for demand ventilation use, for which reduced airflow will likely be required for a significant portion of the unit's use. Such systems also are likely to have variable-speed indoor fans, whose speed settings for the test may also have to be defined clearly. The performance of the DOAS may vary significantly from the low end to the high end of the rated installation airflow range. DOE is concerned that the selected airflow rate may not provide a representative indication of field use, and that there may not be sufficient clarity regarding how to set up for testing a unit with multiple indoor fan speed options.

Issue DOAS–10: DOE requests input on the appropriate selection of the supply airflow rate for testing units that can operate with a range of airflow rates. DOE requests information regarding how manufacturers select the airflow rate for testing and any data demonstrating the variation of DOAS unit performance over a range of installed airflow rates.

Issue DOAS–11: DOE requests comment on whether it would be appropriate to develop a test that includes part-load (reduced ventilation air) test points to quantify the efficiency benefit of demand-controlled ventilation for DOASes that are capable of operating with this control.

ii. Return Airflow

For testing DOAS units with energy recovery,[11] Tables 2 and 3 in AHRI 920–2015 provide return airflow temperature conditions and indicate that they apply to units with energy recovery at balanced airflow (*i.e.,* tested with supply airflow equal to exhaust airflow). It is unclear what airflow streams should be balanced, how to determine if they are balanced, and within what tolerances they should be balanced. DOE is considering clarifying the return airflow set-up procedures.

Issue DOAS–12: DOE requests comment regarding how manufacturers who have tested heat recovery DOAS set up return airflow for testing DOAS units with energy recovery as prescribed by the AHRI 920–2015 test standard. Further, DOE requests comment on whether balanced airflow is representative of field installation, and what ESP levels should be set up for the return airflow.

iii. Exhaust Air Transfer Ratio

Exhaust air transfer ratio (EATR) is an indicator of the amount of air that leaks from the return air side of the energy recovery wheel to the supply air side. Such leakage could increase the apparent dehumidification provided by a DOAS unit because the return air is less humid than the outdoor air into which the return air could leak—thus, high leakage could boost the ISMRE rating without providing any real benefit. However, DOE recognizes that such leakage may be low enough in most energy recovery wheels that the EATR measurement would represent an unnecessary addition to test burden.

Issue DOAS–13: DOE seeks comments on whether EATR should be included in DOE's test procedure for DOAS, and, if so, how it should be used in determining DOAS ratings. DOE requests information on the range of return air leakage typical for energy recovery wheels used in DOASes.

b. Liquid Flow

i. Water Flow Rate for Water-Source DOASes

Neither AHRI 920–2015 nor ASHRAE 198–2013 provides requirements for outlet water temperature or water flow rate for water-cooled units. Instead, AHRI 920–2015 specifies a standard rating test water entering temperature in Table 2 and requires in section 6.1.4.3 that the manufacturer specify a water flow rate, unless it is controlled automatically by the device. However, ANSI/AHRI 340/360–2007 with addenda 1 and 2, ''Standard for Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'' (AHRI 340/360–2007) and ANSI/AHRI 210/240–2008 with addenda 1 and 2, ''Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment'' (AHRI 210/240–2008), which cover performance rating for water-cooled commercial air-conditioning equipment, employ a different method. Both of these standards specify water inlet and outlet temperatures for the standard rating conditions, rather than relying on manufacturers to determine water flow rate. Further, both standards specify that the full-load water flow rate determined for the standard rating conditions should also be used for IEER part-load rating conditions. DOE believes that these approaches to testing reflect the typical design temperature differential for cooling towers serving water-cooled equipment, and a very common approach for control of condenser water pumps, and hence it is not clear why the same approach would not be adopted for water-cooled DOAS.

Issue DOAS–14: DOE requests information on how condenser water flow rates are set in the field and how they are controlled at part load. DOE also requests comment on whether the provisions of section 6.1.4.3 of AHRI 920–2015 provide sufficient guidance regarding how to set up water flow for DOASes with automatic water flow control systems.

[11] DOAS units with energy recovery take in and discharge exhaust air, using a device such as an energy recovery wheel that can transfer heat and moisture from the exhaust air to the outdoor air, thereby preconditioning the outdoor air and reducing the load required to cool, dehumidify, or heat the air to the desired supply conditions.

ii. Energy Consumption of Pumps and Fans for Water-Source Condensers

AHRI 920–2015 offers Equation 1 for calculating the total pump effect (PE), an estimate of the energy consumption of non-integral water pumps (*i.e.,* pumps that are not part of the DOAS unit and whose power consumption would, therefore, not already be part of the measured power). Section 6.1.3 of AHRI 920–2015 implies that this calculation applies solely to water pumps serving refrigerant-to-liquid heat recovery devices—no indication is given whether the equation also applies for pumps serving water-source or water-cooled condensers—although it is possible that the term ''refrigerant-to-liquid heat recovery device'' refers to the condenser of a water-source heat pump DOAS. Further, neither AHRI 920–2015 nor ASHRAE 198–2013 mention accounting for the energy consumption of heat recovery fans for water loops or water-cooled condensers. In contrast, AHRI 340/360–2007, which is used for rating water-cooled CUACs, provides in section 6.1 a power consumption allowance for both the cooling tower fan and the circulating water pump.

Issue DOAS–15: DOE requests confirmation that the ''refrigerant-to-liquid heat recovery device'' cited in section 6.1.3 of AHRI 920–2015 is intended to include heat exchangers used for rejection of refrigerant circuit heat during the dehumidification cycle, and comment on whether Equation 1 of this section for estimating the energy usage of water pumps is appropriate for DOASes with water-cooled condensers.

Issue DOAS–16: DOE requests comment on accounting for the energy consumption for heat-rejection fans employed in water-cooled or water-loop DOASes.

iii. Energy Consumption for the Chiller System for Liquid-Cooled DOAS Using Chilled Water for Condenser Cooling

One of the options for testing water-cooled DOAS is to provide condenser cooling water at 45 °F, replicating operation in which condenser cooling is provided by a chilled water system. When operating in this fashion, the chilled water system must expend additional energy to maintain the 45 °F supply water condition—it is not clear that this energy is considered in the ISMRE metric. Without this energy use contribution, the ratings for such equipment would appear to be have an unfair advantage in comparison to the ratings for DOAS rated using cooling tower water. The minimum efficiency levels in ASHRAE 90.1–2016 for both equipment classes certainly do reflect this advantage, with the ISMRE levels being 4.9 for water-cooled DOAS using cooling tower water and 6.0 for those using chilled water. Although the 6.0 ISMRE level for chilled-water-cooled operation appears to be much more efficient, it does not include the energy use associated with the chiller system required to deliver the chilled water at the specified 45 °F.

Issue DOAS–17: DOE requests comment on whether energy contributions should be considered for the chiller system of a water-cooled DOAS that is rated for use with chilled water for condenser cooling. If so, DOE requests comment on the appropriate representative value for the chiller system energy contribution.

c. Test Conditions

i. Supply Air Conditions

AHRI 920–2015 includes a requirement of minimum supply air temperature of 70.0 °F for all standard rating conditions and a maximum dew-point temperature of 55.0 °F for standard rating conditions for dehumidification. ASHRAE 198–2013 requires a supply air temperature of 75.2 °F or as close to this value as the controls will allow during testing.

Issue DOAS–18: DOE requests comment or clarification related to the difference in target supply air temperature requirements between AHRI 920–2015 and ASHRAE 198–2013. DOE requests comments as to the appropriate supply air temperature for use in the DOE test procedure for DOAS.

ii. Cooling Tower and Closed-Loop Water-Source Differences

The water entering temperature test conditions in AHRI 920–2015 Table 2 for testing water-cooled DOAS differ from the water-source heat pump inlet temperature conditions specified in Table 3 for water-source heat pump DOAS tested using the ''water source'' test conditions. Water-source water loops generally provide heat rejection using cooling towers. Hence, it is unclear that there is much value in having incremental differences for the dehumidification test conditions for these types of equipment.

Issue DOAS–19: DOE requests comment on the need for different dehumidification test conditions for a water-cooled DOAS as compared to a water-source heat pump DOAS using the closed water loop test conditions.

iii. Water-Cooled Condensing and Ground-Source Equipment

Tables 2 and 3 in AHRI 920–2015 include two categories for water-cooled DOASes and three categories for heat pump DOASes. The test standard specifies a different set of inlet water/fluid temperatures for each category. The different categories and their associated rating conditions could require some DOASes to be tested separately as different basic models. For example, water-cooled DOASes that can be operated with either chilled water or condenser water would have to be tested and rated in both configurations. Similarly, ASHRAE 90.1–2016 includes three rating subcategories for water-source heat pump DOASes—ground-source, closed loop; ground-water-source; and water-source. The EPCA definition for ''commercial package air conditioning and heating equipment'' does not include ground-water-source products (42 U.S.C. 6311(8)(A)), but ground-source and water-source heat pumps would be covered by DOE with two different rating conditions. DOE is considering whether such dual rating and certification is appropriate.

Issue DOAS–20: DOE requests comment on whether condenser cooling by cooling tower water versus chilled water demarcates two distinct equipment categories, or whether a single piece of equipment could operate in both applications. Likewise, DOE requests comments on whether ground-source closed-loop DOASes represent equipment that is distinct from water-source models. For each of these pairs of categories, if they do only represent different test conditions for the same equipment, DOE requests input on whether testing and rating equipment for two applications is preferable, or whether a single set of test conditions and rating would be sufficient.

Section 2 of ASHRAE 198–2013 specifically excludes DOASes with water coils that are supplied by a chiller located outside of the unit. However, AHRI 920–2015 Table 2 includes operating conditions for which a water-cooled condenser is supplied with chilled water, and ASHRAE 90.1–2016 established standard levels for DOASes that operate with chilled water as the condenser cooling fluid.

Issue DOAS–21: DOE seeks confirmation that the ASHRAE 198–2013 chiller exclusion applies to cooling coils rather than condenser coils.

d. Tolerances

Rating test tolerances for DOASes are listed in Table 1 of ASHRAE 198–2013. This table specifies tolerances for

airflow rate and outdoor and return air dry-bulb and wet-bulb temperatures, but does not list any tolerances for supply airflow temperature. However, tolerances for supply temperature are included in other relevant test procedures, such as in Table 2b of ASHRAE 37–2009. DOE is considering adding operating tolerances for supply airflow dry-bulb and wet-bulb temperatures to the test procedure.

In addition, the operating and condition tolerances listed for airflow rate are 5 percent in Table 1 of ASHRAE 198–2013, which is looser than the airflow rate tolerance adopted for CUACs. In fact, DOE proposed to apply ± 5 percent condition tolerance on cooling full-load indoor airflow rate for CUACs (see 80 FR 46870, 46873 (August 6, 2015; ''August 2015 CUAC TP NOPR'')), but received several comments suggesting that a 5-percent tolerance would result in too much variation in the measurement of EER and cooling capacity. Therefore, DOE adopted a 3-percent tolerance in the December 2015 CUAC TP final rule, as suggested by stakeholder comments. 80 FR 79655, 79659–79660 (Dec. 23, 2015). DOE has concerns that the 5-percent condition tolerance on airflow in ASHRAE 198–2013 may result in too much test variability for DOASes.

Issue DOAS–22: DOE requests comment on whether to adopt the operating condition tolerances for supply air temperature listed in Table 2b of ASHRAE 37–2009 for DOAS testing. DOE also seeks input regarding whether a 5-percent airflow tolerance is acceptable. Further, DOE requests any information or data regarding tolerances for any other test operating parameters. Specifically, DOE requests comment on whether there are any parameters whose tolerances should be tightened or relaxed to ensure limited variation and high certainty for the ISMRE and ISCOP results with appropriate test burden.

e. Capacity Measurement

The air enthalpy method, as specified in section 6.1 of ASHRAE 198–2013, is the only capacity measurement method required in the test procedure. There is no mention of a secondary test method for capacity measurement verification in AHRI 920–2015 or ASHRAE 198–2013. In contrast, secondary capacity measurements are generally required for testing of air conditioners with capacity less than 135,000 Btu/h (see, *e.g.,* ASHRAE 37–2009 section 7.2.1). Measurement of air conditioning capacity is based on the measurements of air flow rate, temperature, and humidity, which can have an uncertainty range associated with them that makes use of a secondary method to check the primary method worthwhile to ensure accuracy. DOE is considering whether secondary measurements should be required for DOAS testing in order to ensure accuracy of measurements. Section 7 of ASHRAE 37–2009 describes several different test methods applicable to testing of unitary air-conditioning and heat pump equipment. The cooling condensate method may be particularly relevant as a secondary test method for measuring the dehumidification performance of a DOAS.

Issue DOAS–23: DOE requests comment on the need for a secondary test method requirement for DOAS testing. DOE seeks input regarding potentially applicable secondary test methods for the dehumidification and heating tests, and whether a secondary test method requirement and/or the secondary method allowed by the test procedure should depend on cooling (or dehumidification) capacity or airflow rate. DOE is also interested in detailed information on the test burden that would be associated with a secondary test method.

f. Test Set-Up

Figures 1 and 2 of ASHRAE 198–2013 show the typical test set-up for DOASes with and without energy recovery. The figures show airflow and condition measuring devices at both the inlet and the outlet of each airstream, but it is not clear in the test standard that both airflow measurement devices are required. DOE notes that typically only one airflow measuring device, which measures airflow downstream of the unit, is installed in air-conditioner and heat pump testing. ASHRAE 198–2013 provides no description of the use of two sets of airflow measurements per airstream, for example, for a tolerance check of the airflow calculation or determination of leakage between air streams when testing a DOAS with energy recovery.

Issue DOAS–24: DOE requests comments on whether it is beneficial or necessary to use two airflow measuring devices per airstream when testing DOAS equipment.

Section 6.6 of ASHRAE 198–2013, which deals with Unit Preparation, describes that any energy recovery devices that include a purge or other function that transfers air from supply or exhaust shall be disabled to set at zero position.

Issue DOAS–25: DOE seeks additional information on the purge function mentioned in section 6.6 of ASHRAE 198–2013. Specifically, are all purge devices adjustable to zero purge, and is it always clear how to set them to zero purge? Also, DOE requests feedback on whether it is appropriate to set purge to zero or whether it would be more appropriate to set purge to its highest setting or to some standard setting?

Issue DOAS–26: DOE requests any additional comments related to the adoption of AHRI 920–2015 as the test procedure for DOAS.

C. Test Procedure for Air-Cooled, Water-Cooled, and Evaporatively-Cooled Equipment

DOE's test procedures for ACUACs, ECUACs, and WCUACs are codified at 10 CFR 431.96. Table 1 at 10 CFR 431.96 incorporates by reference AHRI 340/360–2007 for WCUACs and ECUACs with cooling capacity ≥65,000 Btu/h, excluding section 6.3. For ACUACs with cooling capacity ≥65,000 Btu/h, Table 1 refers to appendix A to subpart F of part 431, which references sections 3, 4, and 6 of AHRI 340/360–2007, excluding section 6.3. Paragraphs (c) and (e) of 10 CFR 431.96 and appendix A to subpart F of part 431 contain additional test procedure provisions for WCUACs/ECUACs and ACUACs, respectively. ASHRAE 90.1–2016 updated its test procedure reference for this equipment to AHRI 340/360–2015, ''Performance Rating of Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment'' (AHRI 340/360–2015), which has triggered the requirement for DOE to review its test procedures for this equipment.

At 10 CFR 431.95 and Table 1 of 10 CFR 431.96, DOE incorporates by reference AHRI 210/240–2008 for testing of ACUACs, WCUACs, and ECUACs with cooling capacity <65,000 Btu/h, excluding section 6.5. While ASHRAE 90.1–2016 did not update its test procedure reference for this equipment, AHRI has made public a draft update of AHRI 210/240 (AHRI 210/240–2015–Draft) that was submitted to the docket for the test procedure for CAC/HPs on August 14, 2015 (Docket No. EERE–2009–BT–TP–0004). For this reason, and to comply with the statutory requirement to review test procedures at least once every seven years (42 U.S.C. 6314(a)(1)(A)), DOE is reviewing its test procedures for ECUACs and WCUACs with cooling capacity less than 65,000 Btu/h in this RFI. DOE will consider ACUACs with a cooling capacity less than 65,000 Btu/h in a separate RFI.

The following sections explore aligning the ECUAC and WCUAC metric with that of ACUAC, review updates in AHRI 340/360–2015 to determine if adopting that industry standard would meet EPCA requirements, and explore

additional test procedure issues related to the subject equipment.

1. Energy Efficiency Descriptor

DOE's current energy efficiency descriptor for ECUACs and WCUACs is the energy efficiency ratio (EER). 10 CFR 431.96. The EER metric only captures performance at a single set of rating conditions with equipment operating at full-load, and it is calculated by dividing the full-load cooling capacity by the equipment power input. In contrast, DOE adopted integrated energy efficiency ratio (IEER) as an energy efficiency metric for ACUACs in the December 2015 CUAC TP final rule. 80 FR 79655 (Dec. 23, 2015). ASHRAE 90.1–2016 also provides minimum efficiency IEER levels (in addition to EER levels) for ECUACs and WCUACs.

AHRI 340/360–2007 includes a method for testing and calculating IEER for ECUACs and WCUACs. IEER is an energy efficiency descriptor that is calculated from test results at four sets of conditions including a full-load test at standard rating conditions and three part-load tests at different outdoor conditions for ECUACs and different entering water temperatures for WCUACs. IEER utilizes adjustment factors to account for cycling losses, when applicable, at part-load conditions. IEER also includes continuous indoor fan operation, during times when the compressor would be cycling to meet the required load, to account for fan operation during ventilation mode. After the measured efficiencies at the four test conditions are adjusted for cycling losses and continuous fan use, if applicable, the results are multiplied by weighting factors and added together to determine the IEER. The weighting factors used are as follows: 0.020 for the full-load test, 0.617 for the 75-percent load test, 0.238 for the 50-percent load test, and 0.125 for the 25-percent load test.

Issue CUAC–1: DOE seeks comment or data on whether the IEER part-load conditions and IEER weighting factors are representative of the operation of field-installed ECUACs and WCUACs. DOE also seeks comment or data regarding the typical cycling losses of field-installed ECUACs and WCUACs.

The Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) Commercial and Industrial Fans and Blowers Working Group developed recommendations regarding the energy conservation standards, test procedures, and efficiency metrics for commercial and industrial fans and blowers in a term sheet (Docket No. EERE–2013–BT–STD–0006–0179), which was the culmination of a negotiated rulemaking involving that equipment. As part of this term sheet, Recommendation #3 discussed the need for DOE's test procedures and related efficiency metrics to properly account for the energy consumption of fans embedded in regulated commercial air-conditioning equipment.

In addition, the working group agreed that in the next round of test procedure rulemakings, DOE should consider revising efficiency metrics that include energy use of supply and condenser fans to include the energy consumption during all relevant operating modes (*e.g.,* auxiliary heating mode, ventilation mode, and part-load operation). The working group included ACUACs, ECUACs, and WCUACs in its list of regulated equipment for which fan energy use should be considered. (Docket No. EERE–2013–BT–STD–0006–0179 at pp. 3–4, 16)

Consequently, DOE is considering what changes to its ACUAC, ECUAC, and WCUAC test procedures may more accurately represent fan energy use in field applications. DOE is aware that field-installed fan energy use will vary based on the use of the fan for ancillary functions (*e.g.,* economizers, ventilation, filtration, and auxiliary heat). In order to properly account for fan energy use, DOE is requesting information on how frequently field installations use the supply fan of the CUAC for various ancillary functions.

Issue CUAC–2: DOE requests information, including any available data, on how frequently CUAC supply fans are operated when there is no demand for heating or cooling (*i.e.,* for fresh air ventilation or air circulation/filtration), and what the typical operating schedules or duty cycles are for this function. Additionally, DOE requests data or information regarding how frequently and what forms of primary and auxiliary heating are installed with CUACs and whether their operation is dependent on the supply fan of the CUAC. DOE requests data or information regarding how frequently the systems are used with economizers, how the economizers are integrated with the systems, and what control logic is typically used on the economizers. DOE also seeks comment and information regarding the use of the indoor supply fan of CUACs for any ancillary functions not mentioned above. Please differentiate by ACUAC, ECUAC, or WCUAC, as necessary.

Another factor that influences fan energy use is the external static pressure that is required to overcome the air distribution system pressure drop. Both AHRI 210/240–2008 and AHRI 340/360–2007 specify minimum external static pressures for testing based on the rated unit capacity of ECUACs and WCUACs. DOE is interested in ensuring that the external static pressures in the test procedures are representative of those experienced in field installations. In the December 2015 CUAC TP final rule, DOE summarized stakeholder comments regarding the possibility that external static pressures as measured in the field may be higher than those found in the industry test standards. 80 FR 79655, 79664 (Dec. 23, 2015). Based on this information, DOE is examining the external static pressures specified in the test procedures for ECUACs and WCUACs.

Issue CUAC–3: DOE requests comment or data regarding the typical external static pressures in field installations of ECUACs and WCUACs and whether these field-installed external static pressures typically vary with capacity. DOE also seeks comment regarding whether the field applications of ECUACs and WCUACs are different from ACUACs with regards to the typical ducting installed on the system.

Another issue related to fan energy is the default fan power for ACUACs, ECUACs, and WCUACs with a coil-only configuration (*i.e.,* without an integral supply fan). Current test procedures for ACUACs, ECUACs, and WCUACs specify that indoor fan power of 365 Watts (W) per 1000 standard cubic feet per minute (scfm) be added to power input for coil-only units and that the corresponding heat addition be subtracted from measured cooling. This value has been used to account for the fan energy use associated with coil-only units for many years, and more-efficient motors and fans may be in use for which the current 365 W/1000 scfm fan power value is not representative. It is also possible that the value is not consistent with field-typical external static pressures.

Issue CUAC–4: DOE seeks comment or data on the prevalence of ACUACs, ECUACs, and WCUACs that are sold in coil-only configurations (*i.e.,* neither with an integral supply fan, nor with a designated air mover such as a furnace or modular blower).

Issue CUAC–5: DOE seeks comment or data on the typical efficiency or typical power use and flow of fans used with coil-only ACUACs, WCUACs, and ECUACs in field installations.

2. Addressing Changes to AHRI 340/360

As noted previously, ASHRAE 90.1–2016 updated its reference from AHRI 340/360–2007 to AHRI 340/360–2015. The updated AHRI 340/360–2015 includes significant changes from AHRI 340/360–2007 for ACUACs, ECUACs,

and WCUACs, and DOE seeks comment on those changes as discussed in this section. Several changes are relevant to all three categories of equipment, while other changes are only relevant to one or two of the equipment categories. Table II.2 illustrates to which equipment category each change is relevant. In some cases, a change may not be relevant to ACUACs because the change has already been adopted in the December 2015 CUAC TP final rule.

TABLE II.2—AHRI 340/360–2015 CHANGES

Topic	ACUAC	ECUAC	WCUAC
Head Pressure Controls	X	X	X
Refrigerant Charging Requirements	X	X	X
Adjustment for Different Atmospheric Pressure Conditions	X	X	X
Measurement of Condenser Air Inlet Temperature	X	X	.....
Tolerance of Tested Airflow Relative to Rated Airflow	.....	X	X
Vertical Separation of Indoor and Outdoor Units	X	X	X
Outdoor Entering Air Wet-Bulb Temperature	.....	X	.....
Single-Zone Variable-Air-Volume and Multi-Zone Variable-Air-Volume	X	X	X

a. Head Pressure Controls

Condenser head pressure controls regulate the flow of refrigerant through the condenser and/or adjust operation of condenser fans to prevent condenser pressures from dropping too low during low-ambient operation. When employed, these controls ensure that the refrigerant pressure is high enough to maintain adequate flow through refrigerant expansion devices such as thermostatic expansion valves. AHRI 340/360–2007 provides minimal guidance on head pressure controls, only mentioning in note 2 of Table 6 that the condenser airflow should be adjusted as required by the unit controls for head pressure control. AHRI 340/360–2015 states that any head pressure controls shall be left at the manufacturer's settings and operated in automatic mode, but that, if this results in unstable operation exceeding the tolerances of ASHRAE 37–2009, the time-averaged head pressure control test described in section F7 of appendix F of AHRI 340/360–2015 shall be used. This test requires measuring performance using two one-hour test periods, first after approaching the target ambient condition from warmer temperatures, and once after approaching from lower temperatures. During these tests, the looser tolerance requirements from Table 2b of ASHRAE 37–2009 for the ''heat portion'' of the heat with defrost test must be met. This issue was reviewed by DOE for ACUACs in the December 2015 CUAC TP final rule. In that final rule, DOE clarified that head pressure controls must be active during the test, but DOE did not adopt the time-averaged head pressure control test specified in AHRI 340/360–2015, indicating that AHRI 340/360–2015 was a draft document at the time and that DOE would reconsider adoption of the provisions for testing units with head pressure control later. 80 FR 79655, 79660 (Dec. 23, 2015).

Issue CUAC–6: DOE seeks information and data regarding testing of CUACs with head pressure control that would require the special test provisions described in AHRI 340/360–2015. Specifically, can such units be tested in compliance with the relaxed stability requirements of these test provisions? Do the test results accurately represent field use? Is the test burden associated with these tests appropriate?

b. Refrigerant Charging Requirements

AHRI 340/360–2007 does not provide any specific guidance on setting the refrigerant charge of a unit.

The DOE test procedures for ACUACs, ECUACs, and WCUACs state that if the manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressures in the installation or operation manual, any value within that range may be used to determine refrigerant charge, unless the manufacturer clearly specifies a rating value in its installation or operation manual, in which case the specified value shall be used. 10 CFR 431.96(e)(1); section (5)(i) of appendix A to subpart F of part 431.

AHRI 340/360–2015 states that equipment shall be charged with refrigerant at standard rating conditions (or conditions specified by the manufacturer in the installation instructions) in accordance with the manufacturer's installation instructions or label applied to the equipment. In contrast with the DOE test procedure, the industry test standard calls for the use of the average of ranges of sub-cooling or superheat specified in installation manuals.

As discussed in section II.A.3.e, the June 2016 CAC TP final rule provides a comprehensive approach for charging that improves test reproducibility. The approach indicates which set of installation instructions to use for charging, explains what to do if there are no instructions, indicates that target values of parameters are the centers of the ranges allowed by installation instructions, and specifies tolerances for the measured values. 81 FR 36992, 37030–37031. These methods could be considered as an example for the CUAC test method.

Issue CUAC–7: DOE seeks comment on whether it would be appropriate to adopt an approach for charging requirements for commercial CUACs similar or identical to the approach adopted in the June 2016 CAC TP final rule for residential products. DOE seeks comments regarding which parts of the approach should or should not be adopted, and for what reasons they might or might not be suitable for application to CUACs. DOE is also interested in receiving data that demonstrate how sensitive the performance of ACUACs, ECUACs, and WCUACs is relative to changes in the various charge indicators used for different charging methods, specifically the method based on sub-cooling.

c. Adjustment for Different Atmospheric Pressure Conditions

In order to address potential differences in measured results conducted at different atmospheric pressure conditions, AHRI 340/360–2015 introduced an adjustment for indoor supply fan power and corresponding fan heat. This adjusts the fan power based on the barometric pressure at the test site, multiplying the measured supply fan power by the square of the ratio of the measured air density (density of air at measured supply air temperature and humidity and measured atmospheric pressure) to the density of the supply air if it were at standard pressure (14.696 pounds per square inch). Consequently, the cooling capacity and efficiency are also impacted by this correction.

The outdoor air mass flow rate and fan power will also vary with

atmospheric pressure; however, the outdoor fan speed is typically not adjustable, because most outdoor fans have single-speed direct-drive motors, and no rated outdoor air flow rate in scfm is set during the test for the majority of CUACs. To address the potential impact of barometric pressure on the outdoor fan air flow, AHRI 340/360–2015 imposed a minimum atmospheric pressure of 13.7 pounds per square inch absolute (psia) for testing equipment.

Issue CUAC–8: DOE requests test data that validate the supply fan power correction used in AHRI 340/360–2015. DOE is also interested in comments on whether the minimum atmospheric pressure of 13.7 psia will prevent any existing laboratories from testing equipment, and what burden, if any, is imposed by such a requirement. DOE also seeks any available test data showing the impact that variations in atmospheric pressure have on the performance (*i.e.,* capacity and component power use) of ACUACs, ECUACs, and WCUACs.

d. Measurement of Condenser Air Inlet Temperature (ACUAC and ECUAC)

A number of requirements have been added in Appendix C of AHRI 340/360–2015 to help ensure accurate and reproducible measurement of the condenser air inlet temperature. These requirements include specifications on the acceptable number, geometry, placement, and construction details of air sampling trees; specifications on the required accuracy of dry bulb, wet bulb, and thermopile measurement devices; requirements on the set-up and number of aspirating psychrometers; and criteria for assessing acceptable air distribution and control of air temperature.

Issue CUAC–9: DOE requests comment on whether any manufacturers have evaluated the condenser inlet air uniformity using the criteria in Appendix C of AHRI 340/360–2015 for ACUACs and ECUACs and if so, whether any alterations to the laboratory or test set-up were necessary to meet those requirements. Also, DOE requests comment on whether the requirements of Appendix C are sufficient to ensure reproducibility of results and/or any test data that demonstrate sufficient reproducibility.

Due to the different heat exchange process of ECUAC condensers when compared to ACUACs, ECUACs may have lower condenser airflow and in turn, smaller openings for the condenser inlet air when compared to ACUACs of similar capacity. Consequently, the air sampler tree and thermopile requirements in AHRI 340/360–2015 may not be appropriate for ECUACs.

Issue CUAC–10: DOE requests comments and data on the sizes of the smallest and largest openings for condenser inlet air on the sides of ECUACs. DOE seeks comment on whether the air sampler tree requirements in Appendix C of AHRI 340/360–2015, specifically the requirement of 10 to 20 branch tubes, and the thermopile requirement of having 16 thermocouples per air sampler tree, are feasible for all ECUACs. DOE also seeks information regarding any alternative methods or measurements for determining condenser inlet air uniformity that may be more suitable for ECUACs.

Issue CUAC–11: DOE requests comments and data regarding whether a method of measuring and specifications for uniformity of the outdoor inlet wet bulb temperature would benefit test reproducibility for ECUACs.

e. Tolerance of Tested Indoor Airflow Relative to Rated Indoor Airflow (ECUAC and WCUAC)

AHRI 340/360–2007 does not provide any tolerance on the tested indoor airflow relative to the rated airflow of the unit under test. AHRI 340/360–2015 has added a 3-percent tolerance for the tested airflow relative to the rated airflow (*i.e.,* the tested airflow is permitted to be 3 percent higher or 3 percent lower than the rated airflow). DOE adopted a 3 percent tolerance on indoor airflow for testing ACUACs in the December 2015 CUAC TP final rule to limit variation in EER and cooling capacity, based on test data and feedback provided by industry commenters. 80 FR 79655, 79659–79660 (Dec. 23, 2015).

Issue CUAC–12: DOE seeks comment or data showing whether variations in indoor airflow impact the measured efficiency or capacity of ECUACs and WCUACs more or less than ACUACs and whether the 3-percent tolerance provided in AHRI 340/360–2015 (and adopted for ACUACs in DOE's regulations) is appropriate for these other equipment categories.

f. Vertical Separation of Indoor and Outdoor Units

AHRI 340/360–2007 does not limit the vertical separation of indoor and outdoor units when testing split systems. However, AHRI 340/360–2015 adds a requirement that the maximum allowable vertical separation of the indoor and outdoor units be 10 feet, presumably because separation greater than 10 feet can adversely affect measured performance. If test facilities use indoor and outdoor environmental chambers that are stacked vertically, the limitation on vertical separation may make it impractical or impossible to test split systems.

Issue CUAC–13: DOE seeks comment regarding whether a maximum of 10 feet of vertical separation of indoor and outdoor units would limit the ability of existing facilities to test split-system ACUACs, ECUACs, or WCUACs. DOE also seeks comment on the impact that vertical separation of split systems has on efficiency and capacity.

g. Outdoor Entering Air Wet-Bulb Temperature (ECUAC)

AHRI 340/360–2007 provides the same outdoor entering air conditions (*i.e.,* 95.0 °F dry bulb and 75.0 14; °F wet bulb) for the standard rating condition (Table 3 of AHRI 340/360–2007) and the 100-percent-capacity test point used to calculate IEER (Table 6 of AHRI 340/360–2007) for ECUACs. While the outdoor entering air dry-bulb temperature is unchanged in AHRI 340/360–2015, the outdoor entering air wet-bulb temperature for the 100-percent-capacity test point used to calculate IEER was changed from 75.0 °F to 74.5 °F (Table 6 of AHRI 340/360–2015). This change suggests that two full-load tests may be required: One at the standard rating conditions for measuring the rated capacity and EER, and another at the 100-percent-capacity test point for the IEER test. Table 6 of AHRI 340/360–2015 also lists only entering air wet-bulb temperatures for ECUACs, with no corresponding dry-bulb temperatures.

Issue CUAC–14: DOE seeks comment regarding the slightly different air wet-bulb test conditions of AHRI 340/360–2015 for standard rating conditions as compared with the 100-percent-capacity test point for the IEER test, and whether the requirement should be 75.0 °F for both purposes.

Issue CUAC–15: DOE seeks comment on whether the air-cooled entering air dry-bulb temperatures in Table 6 of AHRI 340/360–2015 apply to evaporatively-cooled units. If any manufacturers have developed IEER ratings for ECUACs using AHRI 340/360–2015, DOE requests information about what outdoor entering air dry-bulb temperatures were used during the 100-percent and part-load tests.

h. Single-Zone Variable-Air-Volume and Multi-Zone Variable-Air-Volume

AHRI 340/360–2015 established different approaches for setting indoor air flow for the part-load test conditions for single-zone variable-air-volume (SZVAV) and multi-zone variable-air-

volume (MZVAV) systems (see section 6.1.3.3). The test standard defines MZVAV as units ''designed to vary the indoor air volume and refrigeration capacity/staging at a controlled discharge air temperature and static pressure as a means of providing space temperature control to independent multiple spaces with independent thermostats.'' (AHRI 340/360–2015 section 3.14) It defines SZVAV as units with a ''control system designed to vary the indoor air volume and refrigeration capacity/staging as a means to provide zone control to a single or common zones, controlled by a single space thermostat input.'' The SZVAV definition further explains that, ''the capacity, as well as the supply air flow shall be controlled either through modulation, discrete steps or combinations of modulation and step control based on the defined control logic.'' (AHRI 340/360–2015 section 3.25)

Part of the focus of each definition is the number of zones and number of thermostats involved in a system served by a given variable-air-volume unit. However, the zones served and thermostats connected are part of the installation of a unit and not inherent attributes of a unit's characteristics. Another part of the definition addresses the variation of indoor air flow and capacity. For MZVAV, the air flow and capacity can be varied to provide a controlled discharge temperature and a controlled static pressure, which suggests, but does not clearly state, that such units have variable-capacity compressors, and that their indoor fan controls allow fully variable control of fan speed. In contrast, the SZVAV definition seems to allow modulation, steps, or a combination of steps and modulation for both fan and compressor capacity control. Based on these definitions, it seems that a unit with a variable-capacity compressor system and a variable-speed fan could meet both definitions. Also, it would appear that any unit with a variable-capacity compressor system that has SZVAV characteristics could be converted to a MZVAV system by changing the indoor fan motor controller or perhaps simply changing its settings.

Issue CUAC–16: DOE requests comment on whether a CUAC model that could be both SZVAV and MZVAV should be tested both ways, representing two separate basic models. If tested as one basic model, DOE requests information regarding how to determine which of the two test methods would apply. How frequently would such a model be installed in the field as a SZVAV as opposed to a MZVAV? DOE also requests comment on whether status as a proportionally controlled unit (see AHRI 340/360–2015 section 3.20) would be considered to be the appropriate indication of whether a CUAC can be used as a MZVAV unit, or whether some other characteristics regarding variable capacity control would have to be satisfied. Finally, for models that can be both SZVAV and MZVAV, how much do the efficiency ratings for the two configurations differ?

3. Additional Test Method Issues

In this section, DOE explores several additional issues related to the test procedures for CUACs. Most issues are relevant to only ECUACs, but a few are also relevant to WCUACs and/or ACUACs, as shown in Table II.3.

TABLE II.3—ADDITIONAL CUAC TEST METHOD ISSUES

Topic	ACUAC	ECUAC	WCUAC
Length of Refrigerant Line Exposed to Outdoor Conditions	X	X	X
Atmospheric Pressure Measurement	X	X	X
Consistency Among Test Procedures for Small and Large Equipment		X	X
Make-up Water Temperature		X	
Secondary Measurement Method for Capacity		X	
Piping Evaporator Condensate to Condenser Pump		X	
Purge Water Settings		X	
Condenser Spray Pumps		X	
Additional Steps to Verify Proper Operation		X	

a. Length of Refrigerant Line Exposed to Outdoor Conditions

AHRI 340/360–2007, AHRI 340/360–2015, AHRI 210/240–2008, and AHRI 210/240–2015–Draft all require at least 25 feet of interconnecting refrigerant line when testing split-systems. However, both versions of AHRI 340/360 require that at least 5 feet of the interconnecting refrigerant line must be exposed to outdoor test chamber conditions, while both versions of AHRI 210/240 require at least 10 feet be so exposed. DOE has estimated an upper bound of the capacity loss to be approximately 1 percent of the capacity of the unit for 10 feet of refrigerant line located in the outdoor chamber and approximately 0.5 percent for 5 feet.

Issue CUAC–17: DOE seeks comment or data regarding the typical length of refrigerant line that is exposed to outdoor conditions on split-system ACUAC, ECUAC or WCUAC installations and whether this length varies depending on the capacity of the unit. DOE also seeks comment or data on any measurements or calculations that have been made of the losses associated with refrigerant lines located in the outdoor chamber and whether the impact is larger or smaller than DOE's estimate of approximately 1 percent of capacity per 10 feet of refrigerant line located in the outdoor chamber.

b. Atmospheric Pressure Measurement

The accuracy of atmospheric pressure measurements required by section 5.2.2 of ASHRAE 37–2009 (which is referenced by AHRI 340/360–2015) is ±2.5 percent. This level of uncertainty can result in error when calculating the indoor entering and leaving air enthalpies and resulting cooling capacity. Under certain circumstances, atmospheric pressure measurements at the extremes of this tolerance result in capacity measurement errors of 1–2 percent.

Issue CUAC–18: DOE seeks comment on the typical accuracy of the atmospheric pressure sensors used by existing test laboratories.

c. Consistency Among Test Procedures for Small and Large ECUAC and WCUAC Equipment Classes

The current test procedure and referenced industry standard for ECUACs and WCUACs that have cooling capacities less than 65,000 Btu/h (AHRI 210/240–2008) reference the same test method (ASHRAE 37–2005) and contain the same efficiency metrics as those for units with capacities greater than or equal to 65,000 Btu/h (AHRI 340/360–2007). However, there are some differences that have been identified in this section. DOE is considering whether the

consistency of test procedures could be improved by referencing a single industry standard for all cooling capacities of ECUACs and WCUACs. The updated industry standard for rating units with a capacity greater than or equal to 65,000 Btu/h (AHRI 340/360–2015) has significant changes that affect the testing of ECUACs and WCUACs. However, the industry standard for rating units with a cooling capacity less than 65,000 Btu/h is in the process of being updated and could potentially be finalized with better consistency with AHRI 340/360 for testing of this equipment.

Issue CUAC–19: DOE requests comment on whether there are differences between ECUACs and WCUACs that have cooling capacities less than 65,000 Btu/h and those that have cooling capacities greater than or equal to 65,000 Btu/h that justify the incorporation by reference of different industry test standards for the different cooling capacity ranges. If not, DOE seeks feedback on whether referencing a single industry standard for units of all cooling capacities would be beneficial and/or whether there could or should be better consistency between the test standards for testing of this equipment. Specifically, DOE requests comment on whether there are actual differences in field installations and field use of this equipment and on the extent to which these differences impact performance.

d. Make-Up Water Temperature (ECUAC)

Neither AHRI 340/360–2007 nor AHRI 340/360–2015 provide any requirements on the make-up water temperature for the standard rating condition or for the part-load IEER tests. Make-up water must be supplied to the sump of an ECUAC to replenish the evaporated water (or to spray nozzles for models without sumps). AHRI 210/240–2008 and AHRI 210/240–2015–Draft specify 85.0 °F for the full-load standard rating condition and 77.0 °F for the part-load tests. Cooler makeup water temperature could increase measured cooling capacity and vice versa, causing variation in measurements if specific temperatures are not required.

Issue CUAC–20: DOE seeks comment or data regarding the impact that the make-up water temperature has on the unit performance. DOE also seeks comment or data on whether the make-up water temperatures, including the temperatures for part-load conditions, specified in AHRI 210/240–2008 and AHRI 210/240–2015–Draft are representative of conditions experienced by field-installed ECUACs of all cooling capacities.

e. Secondary Measurement Method for Capacity (ECUAC)

ASHRAE 37–2009 requires the indoor air enthalpy method plus an additional secondary method for calculating the test equipment capacity for all units with less than 135,000 Btu/h rated capacity. The test standard lists applicable test methods in Table 1, but this table does not indicate that the outdoor air enthalpy method is applicable for any configuration of evaporatively-cooled equipment. Therefore, the secondary method for ECUACs is limited to use of the refrigerant enthalpy method or compressor calibration method for split systems and only the compressor calibration method for single-package equipment. DOE recognizes that the refrigerant enthalpy method and compressor calibration method can, in some circumstances, add burden to the testing procedure, so DOE examined the potential use of the outdoor air enthalpy method as a secondary method for ECUACs. During testing, DOE observed that the part-load test conditions produce an environment where condensation is likely in the outdoor unit supply duct, because the outdoor air dry bulb temperature cooling the duct walls can be lower than the dew point of the warm moist air leaving the outdoor unit. This condensation would be unaccounted for by the outdoor air enthalpy method, resulting in a calculated capacity less than the actual capacity. To consider another approach, DOE notes that it modified the CAC/HP test method to require a secondary capacity measurement only for full-load operation for cooling and heating, rather than for all tests in a January 5, 2017 final rule. 82 FR 1426, 1441. While this change was for central air conditioners and heat pumps, limiting the secondary method test to a single set of conditions, such as the full-load cooling (and heating, if applicable) test conditions, would eliminate or reduce the potential for condensation in the outdoor supply duct when testing ECUACs.

Issue CUAC–21: DOE seeks comment or test data on the difficulty of getting a match of primary and secondary capacity measurements when testing ECUACs with rated capacities less than 135,000 Btu/h and whether the difficulty level is higher, lower, or the same when testing the unit at full-load conditions as compared to part-load conditions. DOE also seeks comment and data on how often the primary capacity measurement results in an exceeded allowable percent difference between the primary and secondary capacity measurements.

Issue CUAC–22: DOE seeks comment on whether single-package ECUACs with a rated cooling capacity less than 135,000 Btu/h are currently sold.

Issue CUAC–23: DOE seeks comment on whether manufacturers would see a benefit in allowing the outdoor air enthalpy method as a secondary capacity measurement for ECUACs. If so, DOE is interested in feedback on methods to mitigate the risk of condensation in the outdoor unit supply duct and the outdoor supply wet-bulb sample station. DOE also asks if other alternative approaches could be considered for mitigating the potential test burden associated with the secondary test methods that ASHRAE 37–2009 specifies for evaporatively-cooled equipment.

f. Piping Evaporator Condensate to Condenser Pump (ECUAC)

Some split-system ECUACs provide the option for piping evaporator condensate to the condenser sump. This reduces the make-up water use of the unit and may provide some performance improvement. Neither DOE's current test procedures nor the industry ECUAC test standards address this potential variation, which could result in differences in test results depending on whether this feature was employed in a test.

Issue CUAC–24: DOE seeks comment on whether ECUACs that allow piping of evaporator condensate to the condenser sump present any complications (*e.g.,* maintaining proper slope in the piping from the evaporator to the outdoor unit and test repeatability issues) when testing in a laboratory. DOE also seeks comment or data indicating what kind of impact piping the evaporator condensate to the condenser sump has on the efficiency and/or capacity of ECUACs.

g. Purge Water Settings (ECUAC)

Some ECUACs require the sump water to be continuously or periodically purged in order to reduce mineral and scale build-up on the condenser heat exchanger. AHRI 340/360–2015 provides guidance to set up and configure the unit per the manufacturer's installation instructions, which would include setting the purge rate if specified.

Issue CUAC–25: DOE seeks comment on how the purge water rate should be set for laboratory testing if the manufacturer's installation instructions do not contain information on this topic.

h. Condenser Spray Pumps (ECUAC)

The rate that water is sprayed on the condenser coil may have an impact on the performance of an ECUAC. For units with sumps, this rate may be affected by the pump set-up, and, for units without sumps, the incoming water pressure may have an impact. Neither DOE's current test procedures nor the industry ECUAC test standards address these potential variations.

Issue CUAC–26: DOE requests comment on whether the pump flow can be adjusted on any ECUACs on the market that have circulation pumps. DOE also requests comment on whether ECUACs without a sump exist and, if so, whether there are requirements on the incoming water pressure to ensure proper operation of the spray nozzles. DOE also requests comments and/or data regarding the sensitivity of performance test results to these adjustments.

i. Additional Steps To Verify Proper Operation (ECUAC)

Some ECUACs may use spray nozzles with very small diameter openings that may become easily clogged, thereby reducing the effectiveness of the heat exchanger.

Issue CUAC–27: DOE requests comment on whether there are any additional steps that should be taken to verify proper operation of ECUACs during testing, such as ensuring nozzles are not blocked.

Issue CUAC–28: DOE requests comment on any additional issues associated with adopting AHRI 340/360–2015 for ACUACs, ECUACs, and WCUACs.

D. Test Procedure for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps

DOE's commercial equipment regulations include test procedures and energy conservation standards that apply to air-cooled VRF multi-split air conditioners, air-cooled VRF multi-split heat pumps, and water-source VRF multi-split heat pumps, all with cooling capacity less than 760,000 Btu/h, except air-cooled, single-phase VRF multi-split air conditioners and heat pumps with cooling capacity less than 65,000 Btu/h (which are covered by DOE's consumer product regulations for central air conditioners [12]). 10 CFR 431.96 and 431.97.

DOE's test procedure for (commercial) VRF multi-split systems is codified at 10 CFR 431.96 and was established in the May 2012 final rule. 77 FR 28928 (May 16, 2012). DOE's current regulations require that manufacturers test VRF multi-split systems using AHRI 1230–2010 with addendum 1, except for sections 5.1.2 and 6.6. DOE's current test procedure also requires that manufacturers adhere to certain additional requirements listed in 10 CFR 431.96(c)–(f). Although ASHRAE 90.1–2016 did not update its test procedure reference for VRF (AHRI 1230–2010 with addendum 1), DOE is reviewing its test procedure in response to the seven-year-lookback statutory review requirement (see 42 U.S.C. 6314(a)(1)(A)), and in advance of its review of energy conservation standards for VRF in response to changes in ASHRAE 90.1–2016.

As part of its seven-year-lookback review, DOE is examining updated industry test standards, including Addendum 2 to AHRI 1230–2010 (approved June 2014) and a draft version of AHRI 1230 provided by AHRI for the docket that will supersede AHRI 1230–2010 (with Addendum 1 and 2) once published (''AHRI 1230-Draft,'' No. 1). DOE reviewed the AHRI 1230-Draft and discusses in the following sections specific issues regarding the draft and other items related to the VRF test procedure.

1. Energy Efficiency Descriptors

DOE currently prescribes energy conservation standards for air-cooled VRF multi-split systems with cooling capacity greater than or equal to 65,000 Btu/h and water-source VRF multi-split systems in terms of the EER metric for cooling-mode operation and in terms of the coefficient of performance (COP) metric for heating-mode operation.[13] DOE is considering whether to add or replace the existing cooling-mode efficiency descriptor (*i.e.,* EER) with a new cooling-mode energy-efficiency descriptor that better captures part-load performance, such as IEER.

IEER factors in the efficiency of operating at part-load conditions of 75-percent, 50-percent, and 25-percent of capacity, as well as the efficiency at full-load. The IEER metric provides a more representative measure of energy consumption in actual operation by weighting the full-load and part-load efficiencies with the average amount of time equipment spends operating at each load point. ASHRAE 90.1 has specified an IEER metric for commercial air conditioning and heat pump equipment since the 2008 Supplement to Standard 90.1–2007, effective January 1, 2010.[14] [15] ASHRAE Standard 90.1–2013 included minimum efficiency levels for both the EER and IEER of air-cooled VRF multi-split systems and for the EER of water-source VRF multi-split systems. ASHRAE Standard 90.1–2016 added IEER levels for water-source VRF multi-split systems, including units with cooling capacity less than 65,000 Btu/h. DOE notes that in addition to ASHRAE 90.1, both the ENERGY STAR and Consortium for Energy Efficiency (CEE) programs use the IEER metric for VRF systems.[16] [17]

On January 15, 2016, DOE published a direct final rule for energy conservation standards for small, large, and very large air-cooled commercial package air conditioners and heat pumps (CUACs and CUHPs), which amended the energy conservation standards for CUACs and CUHPs and changed the cooling efficiency metric from EER to IEER. 81 FR 2420. Except possibly for ventilation, VRF multi-split systems serve the same primary functions as CUACs and CUHPs (*i.e.,* space heating and cooling commercial buildings) and are used in a similarly wide range of climatic conditions.

Because the vast majority of cooling and heating loads do not demand operation at full-load, the full-season metric IEER may capture the efficiency of VRF multi-split systems operating in the field more realistically than does the full-load metric EER. DOE believes that the publication of IEER ratings for most units on the market (as in AHRI's *Directory of Certified Product Performance* for VRF multi-split systems), as well as the inclusion of minimum efficiency levels and test procedures for IEER of VRF multi-split systems in ASHRAE Standard 90.1–2016 and AHRI 1230–2010, respectively, demonstrate that IEER is an industry-accepted metric for measuring efficiency of VRF multi-split systems. For these reasons, DOE is considering replacing the current EER metric for VRF multi-split systems with

[12] See 10 CFR 430.32(c) and Appendix M and M1 to Subpart B of Part 430.

[13] DOE also prescribes energy conservation standards for three-phase air-cooled VRF multi-split systems with cooling capacity less than 65,000 Btu/h in terms of the SEER metric for cooling-mode operation and in terms of the heating seasonal performance factor (HSPF) metric for heating-mode operation.

[14] ASHRAE Standard 90.1 first specified a part-load performance metric in the 2007 edition, which used integrated part load value (IPLV).

[15] ASHRAE, ASHRAE Addenda (2008 Supplement) (Available at: *http://www.ashrae.org/File%20Library/docLib/Public/20090317_90_1_2007_supplement.pdf*).

[16] ENERGY STAR Program Requirements, Product Specifications for Light Commercial HVAC (Available at: *https://www.energystar.gov/sites/default/files/specs//private/LC_HVAC_V2.2.pdf*).

[17] Consortium for Energy Efficiency, CEE Commercial Unitary AC and HP Specification (Available at: *http://www.cee1.org/files/CEE_CommHVAC_UnitarySpec2012.pdf*).

the full-season IEER metric, or adding IEER in addition to EER. DOE's ultimate decision will be impacted by the separate energy conservation standards rulemaking considering the efficiency levels for VRF in ASHRAE 90.1–2016.

Issue VRF–1: DOE requests comment on issues DOE should consider regarding potentially using IEER as an efficiency metric for energy conservation standards for air-cooled VRF multi-split systems with a cooling capacity greater than or equal to 65,000 Btu/h and all water-source VRF multi-split systems, so as to capture efficiency in part-load operation.

2. Representativeness and Repeatability

Operation of VRF multi-split systems is inherently variable, and DOE notes that the control systems of VRF multi-split systems can be significantly more sophisticated than control systems in other commercial HVAC systems. In order to achieve steady-state operation, it is generally necessary for a manufacturer's representative that is knowledgeable about the control system to be present during testing in order to override the typical dynamic control and to set each individual component at a fixed position or speed. It may be possible to achieve ''full-load'' capacity and/or part-load operation in different ways, all of which may be consistent with the test procedure and manufacturer's installation instructions.

Issue VRF–2: DOE seeks comment on the settings required to be reported in order for third-party laboratories to reproduce unit performance in a rating test.

Section 6.3.4 of AHRI 1230–Draft requires that for air-cooled VRF multi-split systems with a cooling capacity less than 65,000 Btu/h, at least one indoor unit must be turned off for tests conducted at minimum compressor speed. DOE also established a similar requirement for CACs in the June 2016 CAC TP final rule. 81 FR 36992, 37038 (June 8, 2016). However, AHRI 1230-Draft does not include a corresponding requirement for equipment with a cooling capacity greater than or equal to 65,000 Btu/h or for water-source VRF multi-split systems. This requirement for equipment less than 65,000 Btu/h considers the wide range of loads that can occur in the field. However, DOE expects that load diversity would also be an issue for larger-capacity VRF multi-split systems used in commercial applications.

Issue VRF–3: DOE requests information and data on the field operating states of indoor units of VRF multi-split systems when operating at low compressor speeds (*i.e.,* near 25-percent load). Specifically, are there field data available that show operating states of VRF multi-split systems at different load levels? Such data might show what happens with indoor fan speeds and expansion devices of indoor units at low load percentages, including whether any indoor fans shut off, or whether any refrigerant flow control devices shut off refrigerant flow, and how this might be affected by the user-accessible control positions set for the indoor units. DOE is also interested in whether indoor unit operation at low compressor speeds is different in field application for VRF multi-split systems with cooling capacities less than 65,000 Btu/h than those with capacities greater than or equal to 65,000 Btu/h, and whether these trends follow at intermediate compressor speeds as well. Further, DOE requests data that would show the trends of total system capacity, total indoor air flow, and sensible heat ratio as a function of compressor speed (*e.g.,* percentage of full-speed revolutions per minute) for laboratory rating tests of typical VRF multi-split systems conducted either with one or no indoor unit shut off at the lowest load point.

3. Test Method

a. Transient Testing: Oil Recovery Mode

AHRI 1230-Draft refers to ASHRAE 37–2009 for provisions for transient tests, which are required when defrost interferes with steady-state operation sufficiently frequently to prevent completion of a steady-state test (see, for example, sections 8.8.2.5.1 and 8.8.2.5.2 of that test standard). Specific instructions are provided for how to determine an average heating capacity for the transient test, with different instructions depending on the number and completion of defrost cycles. Tables 2a and 2b of ASHRAE 37–2009 specify the test tolerances to be used when conducting a transient heating capacity test.

VRF multi-split systems may periodically operate in an oil recovery mode in order to return oil from the refrigeration loop to the compressor. Section 5.1.3 of AHRI 1230–Draft requires that if a manufacturer indicates that a VRF multi-split system is designed to recover oil more frequently than every two hours of continuous operation, the oil recovery mode shall be activated during testing, and the additional power shall be included in the efficiency calculations. However, there is no specific instruction in the AHRI 1230–Draft that indicates how the additional power should be incorporated into the efficiency metric. DOE expects that maintenance of steady-state conditions may be affected during oil recovery mode and that, as a result, some type of transient test procedure may be appropriate when oil recovery mode happens during testing. However, AHRI 1230-Draft does not specify use of the transient test for this case, and the ASHRAE 37–2009 description of the transient test does not mention oil recovery. DOE notes that VRF multi-split systems vary in the way they activate oil recovery mode; some may initiate oil recovery mode at a set time interval, and others may instead initiate oil recovery mode only when the system detects that the oil level in the compressor has reached a certain minimum level. DOE understands that unit performance may vary with the oil level. Consequently, DOE is considering requiring all measurements to be made within a certain time after the last oil recovery to ensure repeatability between tests.

Issue VRF–4: DOE requests comment on the impact of oil recovery mode, including power input and heating/cooling provided to space during oil recovery mode. DOE also requests comment on whether any VRF multi-split systems operate in oil recovery mode more frequently than every two hours of continuous operation. For such systems, DOE requests comment on whether the test method should be modified to address the transient operation occurring during and after oil recovery, and how this should be done. In addition, DOE requests comment on the performance variation associated with oil level and whether all measurements should be made within a certain time after the last oil recovery. Lastly, DOE requests comment on how the energy use of oil recovery mode might be addressed in the test procedure without imposing excessive test burden.

b. Airflow Setting and Minimum External Static Pressure

DOE notes AHRI 1230–Draft contains one set of instructions for setting the indoor air flow rates for systems with capacities less than 65,000 Btu/h (section 6.3.3.1) and another set for systems with capacities larger than 65,000 Btu/h (section 6.4.1). It is not clear why alternate approaches are required for different systems because the indoor units generally do not differ by system capacity.

Issue VRF–5: DOE requests comment on whether there should be a consistent approach for setting indoor airflow across all capacity ranges of VRF multi-split systems.

c. Condenser Head Pressure Controls

Condenser head pressure controls regulate the flow of refrigerant through the condenser and/or adjust operation of condenser fans to prevent condenser pressures from dropping too low during low-ambient operation. When employed, these controls ensure that the refrigerant pressure is high enough to maintain adequate flow through refrigerant expansion devices such as thermostatic expansion valves. In the December 2015 CUAC test procedure final rule, DOE required that CUACs and CUHPs equipped with head pressure controls have these controls activated during testing. 80 FR 79655, 79660 (Dec. 23, 2015). For VRF multi-split systems equipped with heat recovery, it is unclear whether the head pressure would be elevated when one of the indoor units calls for heating during cooling-based operation. It is also not clear how the head pressure differs during cool outdoor conditions between units with and without heat recovery function.

Issue VRF–6: DOE requests comment on the appropriateness of requiring head pressure control activation during testing of VRF multi-split systems. In addition, DOE requests comment on any methods to control VRF multi-split systems during testing to ensure stable operation with head pressure controls activated. Further, DOE requests comment on any methods that could be added to the test procedure for calculation of system efficiency of VRF multi-split systems if head pressure controls prevent stable operation at low-ambient, part-load conditions.

d. Air Volume Rate for Non-Ducted Indoor Units

DOE notes the following issues associated with testing multi-split systems with free discharge air flow from the indoor unit (*i.e.,* airflow provided directly from the indoor unit to the conditioned space without the use of ducts). In testing, if a common duct is used for the combined discharge airflow of multiple individual units, the airflow for each individual unit cannot be verified. Second, even if the ESP is set to zero—which is intended to replicate operation without ducting—based on a measurement of downstream pressure in a discharge duct, this does not always guarantee that flow is identical to free discharge conditions, due to sensitivity of such in-duct pressure measurements to the air movement in the duct. Finally, specification of unusually high air flows for testing of free discharge in indoor units may boost measured performance inconsistent with field operation. Section 6.3.3.1.1.3 of AHRI 1230–Draft added an upper limit on air flow per capacity for non-ducted units for systems with capacity less than 65,000 Btu/h—the rated air volume for each indoor unit must not exceed 55 scfm per 1,000 Btu/h.[18]

Issue VRF–7: DOE requests comment on how to confirm air flow for each indoor unit individually when there is a common duct for each unit and when there is potential deviation from free-discharge operation if a discharge duct is connected. DOE also requests comment on whether there should be an upper limit of air flow per capacity for non-ducted units, such as the 55 scfm per 1,000 Btu/h limit in the AHRI 1230–Draft.

e. Secondary Test Method

In AHRI 1230–Draft, ASHRAE 37–2009 is referenced as the test procedure for both air-cooled and water-cooled units across all capacities. Section 7.2.1 in ASHRAE 37–2009 requires a secondary test method in addition to the primary method (*i.e.,* indoor air enthalpy method) for units having a total cooling capacity less than 135,000 Btu/h. ASHRAE 37–2009 provides multiple options for the secondary test method. For units with a cooling capacity larger than 135,000 Btu/h, section 7.2.2 of ASHRAE 37–2009 only requires a single method, but provides multiple test method options.

Section 11.1.1.7 of AHRI 1230–Draft indicates the redundant measurement verification method as an alternative to refrigerant enthalpy method or outdoor enthalpy method when they cannot be performed. However, the draft does not provide guidance on how to determine whether the refrigerant enthalpy method or outdoor enthalpy method can or cannot be performed. DOE is considering whether there are other alternatives to the refrigerant enthalpy method or outdoor enthalpy method (other than the duplicate measurement method), such as the cooling condensate and indirect airflow measurement method.

Issue VRF–8: DOE requests comment on the methods generally used for measurement of capacity when testing VRF multi-split systems and whether the selection of methods differs between cooling and heating tests. DOE requests comment on how to determine whether the refrigerant enthalpy method or outdoor air enthalpy method (for units having a total cooling capacity less than 135,000 Btu/h) can or cannot be performed. DOE also requests comment on how to standardize the selection of test methods for measuring the capacity of VRF multi-split systems. Finally, DOE requests comment on whether there are issues with achieving heat balance in part-load tests for VRF multi-split systems, similar to those cited for variable speed CAC/HP, and if so, whether there is sufficient assurance of proper measurement for all test points of VRF multi-split systems if the heat balance is verified only for full capacity.

f. Heat Recovery

VRF multi-split systems with heat recovery include a heat recovery unit (sometimes referred to as a branch circuit controller) that controls refrigerant flow between indoor units, allowing for simultaneous cooling and heating operation. However, DOE believes that VRF multi-split systems with the heat recovery capability may be able to operate without the heat recovery unit attached, although in such case, simultaneous heating and cooling would not be possible. It is not clear in AHRI 1230–Draft whether VRF multi-split systems capable of heat recovery must be tested with the heat recovery unit attached in tests for determining EER, IEER, and COP. DOE seeks clarification on industry practice for testing VRF multi-split systems with the heat recovery feature because attachment of the heat recovery unit may affect test results.

Issue VRF–9: DOE seeks comment on whether VRF multi-split systems with the heat recovery feature can be operated without the heat recovery unit attached, and if so, whether such systems are typically tested for determining EER, IEER, and COP with the heat recovery unit attached. Additionally, DOE seeks data showing the difference in test results between having the heat recovery unit attached or not.

4. Representations

a. Tested Combination

AHRI specified requirements for tested combinations for systems with capacities more than 65,000 Btu/h in section 6.2.2 of the AHRI 1230–Draft. The AHRI requirement specifies selecting standard 4-way ceiling cassette indoor units with the smallest coil volume per nominal capacity for non-ducted indoor units and selecting mid-static units for ducted indoor units. DOE is aware that there is a range of ductless indoor unit styles, which may have a range of efficiency characteristics. In

[18] DOE notes that test methods associated with the indoor units of systems with capacity <65,000 Btu/h are relevant for testing of systems with capacity ≥65,000 Btu/h because the capacities of the indoor units are comparable.

addition, ducted systems may serve a range of external static pressures.

A report by the Cadeo Group [19] indicates that 4-way ceiling cassettes are the most prevalent non-ducted indoor units. On the other hand, while DOE notes that ducted units can be classified by the amount of static pressure they produce as either low-static, mid-static, or conventional-static units, DOE has no data indicating which ducted unit style or static pressure classification is the most prevalent.

Issue VRF–10: DOE requests comment and data on variation of system efficiency related to indoor unit styles (both for ducted and non-ducted indoor units). For example, for a system tested with non-ducted units, what is the potential range of EER and/or IEER comparing the most-efficient indoor units with the most energy-intensive indoor units? DOE requests comment on its assumption that 4-way ceiling cassettes are the most prevalent non-ducted indoor unit style. DOE also requests data on the most prevalent style and static pressure classification (low-static, mid-static, or conventional-static) of ducted units.

b. Determination of Represented Values

DOE recognizes that non-ducted indoor units and ducted indoor units operate at different levels of ESP and have different limitations on ESP. The ESP affects the power consumed by the indoor fan, and, therefore, also affects the measured efficiency of a VRF multi-split system. DOE is considering requiring separate ratings for different ESP levels to account for differences between ducted indoor units, non-ducted indoor units, and possibly other distinctions in indoor units.

Issue VRF–11: DOE requests comment on how many distinctly identifiable ESP levels are generally represented in a family of VRF multi-split systems and what ESP levels are typical for VRF multi-split systems. DOE also requests data that demonstrate how different ESP levels affect measured efficiency for the system, both in terms of EER and IEER.

Issue VRF–12: DOE requests comment on what specific topics pertaining to the test procedure for VRF multi-split air conditioners and heat pumps, in addition to the topics discussed previously, are not fully or appropriately addressed in the docketed AHRI–1230–Draft.

[19] Cadeo Report. See docket: EERE–2017–BT–TP–0018. No. 2. The report presents market share by VRF multi-split system equipment class, based on confidential sales data given in interviews with several major manufacturers of VRF multi-split equipment and DOE's CCMS database.

E. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the existing test procedures for commercial package air conditioning and heating equipment that is the subject of this notice not already addressed by the specific areas identified in this document. DOE particularly seeks information that would improve the representativeness of the test procedures, as well as information that would help DOE create a procedure that would limit manufacturer test burden through streamlining or simplifying testing requirements. Comments regarding repeatability and reproducibility are also welcome.

DOE also requests feedback on any potential amendments to the existing test procedures that could be considered to address impacts on manufacturers, including small businesses. Regarding the Federal test methods, DOE seeks comment on the degree to which the DOE test procedures should consider and be harmonized with the most recent relevant industry standards for the commercial package air conditioning and heating equipment that is the subject of this notice, and whether there are any changes to the Federal test methods that would provide additional benefits to the public.

Additionally, DOE requests comment on whether the existing test procedures limit a manufacturer's ability to provide additional features to consumers on the commercial package air conditioning and heating equipment that is the subject of this notice. DOE particularly seeks information on how the test procedures could be amended to reduce the cost of new or additional features and make it more likely that such features are included on the equipment.

III. Submission of Comments

DOE invites all interested parties to submit in writing by August 24, 2017, comments, data, and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended test procedures for VRF multi-split systems, CRAC and DOAS equipment, and water-cooled, evaporatively-cooled, and air-cooled commercial unitary air conditioners (WCUACs, ECUACs, and ACUACs). These comments and information will aid in the development of a test procedure NOPR for the subject VRF multi-split systems, and CRAC, DOAS, WCUAC, ECUAC, and ACUAC equipment, if DOE determines that amended test procedures may be appropriate for these products.

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *https://www.regulations.gov*, including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the *https://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *https://www.regulations.gov/docket?D=EERE-2017-BT-TP-0018*. This Web page contains a link to the docket for this notice on the *https://www.regulations.gov* Web site. The *https://www.regulations.gov* Web page contains instructions on how to access all documents, including public comments, in the docket.

For information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance Standards Program at (202) 586–6636 or by email: *ApplianceStandardsQuestions@ee.doe.gov*. DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period at each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Appliance and Equipment Standards Program staff at (202) 586–6636 or by email at *ApplianceStandardsQuestions@ee.doe.gov*.

Submitting comments via https://www.regulations.gov. The *https://www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to

technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *https://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *https://www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *https://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *https://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *https://www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Appliance and Equipment Standards Program staff at (202) 586–6636 or via email at *ApplianceStandardsQuestions@ee.doe.gov*.

Issued in Washington, DC, on July 11, 2017.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2017–15580 Filed 7–24–17; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0707; Directorate Identifier 2016–NM–014–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318 series airplanes; Model A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321 series airplanes. This proposed AD was prompted by reports of fatigue damage in the structure for the door stop fittings on certain fuselage frames (FR). This proposed AD would require repetitive rototest inspections for cracking of the fastener holes in certain door stop fittings, and repair if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 8, 2017.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus, Airworthiness Office–EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0707; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0707; Directorate Identifier 2016–NM–014–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0238, dated December 2, 2016, corrected January 4, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A318 series airplanes; Model A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233; and Model A321 series airplanes. The MCAI states:

> During an A320 fatigue test campaign, it was determined that fatigue damage could appear at the door stop fitting holes of fuselage frame (FR) 66 and FR 68 on left hand (LH) and right hand (RH) sides.
>
> This condition, if not detected and corrected, could affect the structural integrity of the airframe.
>
> Two inspections, Airworthiness Limitations Item (ALI) tasks 534129 and 534130, were introduced in the Airworthiness Limitations Section (ALS) Part 2 with the April 2012 revision and with some compliance time changes with Revision 3 of ALS Part 2 of October 2014.
>
> Since these ALI tasks were implemented, a significant number of reports [were] received concerning non-critical damage and early crack findings. Prompted by these reports, Airbus published SB A320–53–1288 and SB A320–53–1290, providing inspection instructions to improve damage management and modification instructions.
>
> Consequently, EASA issued AD 2016–0015, requiring repetitive rototest inspections of the affected door stop fitting holes and, depending on findings, repair of any cracked area(s).
>
> Since that [EASA] AD was issued, ALS Part 2 Revision 04 and later on Revision 05 were published, introducing updated thresholds and/or intervals for some tasks as specified in Airbus SB A320–53–1288, introducing new configuration of aeroplane with RETRO WING having accomplished SB A320–57–1193 (mod 160080), and keeping the threshold or interval only in flight cycles (FC).
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2016–0015, which is superseded, but requires those actions within the updated thresholds and intervals. In addition, a corrected threshold for pre-mod 160021 A321 aeroplanes is introduced and the Applicability is reduced to exclude configurations that are not affected.
>
> This [EASA] AD is republished to clarify some requirements in Appendix 1 [in this EASA AD].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0707.

Related Service Information Under 1 CFR Part 51

We have reviewed the following Airbus service information.

- Airbus Service Bulletin A320–53–1288, Revision 01, including Appendixes 01, 02, and 03, dated October 3, 2016, provides procedures for rototest inspections for cracking of the fastener holes in the airframe structure for the door stop fittings installation in FR66 and FR68.
- Airbus Service Bulletin A320–53–1290, Revision 01, dated October 3, 2016, provides procedures for cold working the fastener holes in the airframe structure for the door stop fittings installation in FR66 and FR68.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Difference Between This Proposed AD and the MCAI

The MCAI includes an exception to the compliance times for ''post-mod 160080 aeroplanes for which a 'corrected' threshold or interval can be defined in accordance with the instructions of Airbus SB A320–57–1193.'' Airbus Service Bulletin A320–57–1193, Revision 04, dated September 30, 2016, and earlier revisions, do not contain corrected compliance times for doing the actions specified in this proposed AD. Therefore, this proposed AD does not include that exception. Operators may request approval of an alternative method of compliance (AMOC) for revised compliance times under the provisions of paragraph (q)(1) of this proposed AD.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, EASA has already issued regulations that require operators of airplanes in certain configurations to do a rototest inspection for cracking of the holes in certain door stop fittings to address an identified unsafe condition by certain dates. To provide for coordinated implementation of EASA's regulations and this proposed AD, we are using the same compliance dates in this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 1,084 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	23 work-hours × $85 per hour = $1,955 per inspection cycle.	$0	$1,955 per inspection cycle.	$2,119,220 per inspection cycle.

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this repair.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	27 work-hours × $85 per hour = $2,295	$610	$2,905

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2017–0707; Directorate Identifier 2016–NM–014–AD.

(a) Comments Due Date

We must receive comments by September 8, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers, except airplanes specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airplanes on which Airbus Modification (Mod) 157039 has been embodied in production.

(2) Model A319 series airplanes on which Mod 28238, Mod 28162, and Mod 28342 have been embodied in production.

(3) Model A318 series airplanes on which Mod 39195 has been embodied in production or Airbus Service Bulletin A320–00–1219 has been embodied in service.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of fatigue damage in the structure for the door stop fittings on certain fuselage frames (FR). We are issuing this AD to detect and correct cracking at the door stop fitting holes of fuselage FR66 and FR68. Such cracking could result in reduced structural integrity of the airplane due to the failure of structural components.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Rototest Inspections

Within the applicable compliance times specified in table 1 to paragraphs (g) and (j) of this AD and table 2 to paragraphs (g) and

(j) of this AD: Do a rototest inspection of all holes below each door stop fitting at fuselage FR66 and FR68, both left-hand (LH) and right-hand (RH) sides, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1288, Revision 01, including Appendixes 01, 02, and 03, dated October 3, 2016. Repeat the inspections thereafter at the applicable compliance times specified in table 1 to paragraphs (g) and (j) of this AD and table 2 to paragraphs (g) and (j) of this AD, until the modification specified in paragraph (i) of this AD is done. Where the ''Threshold'' column of table 1 to paragraphs (g) and (j) of this AD and table 2 to paragraphs (g) and (j) of this AD, specifies compliance times in ''FC'' (flight cycles), those compliance times are total flight cycles since the first flight of the airplane.

TABLE 1 TO PARAGRAPHS (g) AND (j) OF THIS AD—AFT PASSENGER/CREW DOOR CUT-OUT DOOR STOP FITTINGS HOLES AT FR66 WEB LH/RH

Airplanes affected	Threshold	Interval (not to exceed) (FC)
A318–PAX (A318-passenger)	Before 33,800 FC	5,900.
A319–PAX pre-mod 160001 and pre-mod 160080	Before 42,700 FC	7,500.
A319–PAX post-mod 160001 OR A319–PAX post-mod 160080.	Before 40,300 FC	7,200.
A320 pre-mod 160001 and pre-mod 160080	Before 48,000 FC	9,700.
A320 post-mod 160001 OR A320 post-mod 160080	Before 45,500 FC	7,800.
A321 pre-mod 160021	Before 34,500 FC or before November 30, 2017, whichever is later, without exceeding the accumulation of 42,300 FC since first flight.	17,000.
A321 post-mod 160021	39,400 FC	8,500.

TABLE 2 TO PARAGRAPHS (g) AND (j) OF THIS AD—AFT PASSENGER/CREW DOOR CUT-OUT DOOR STOP FITTINGS HOLES AT FR68 WEB LH/RH

Airplanes affected	Threshold	Interval (not to exceed) (FC)
A318–PAX	Before 30,800	5,900.
A319–PAX pre-mod 160001 and pre-mod 160080	Before 34,400	7,500.
A319–PAX post-mod 160001 OR A319–PAX post-mod 160080.	Before 33,500	7,200.
A320	Before 40,900	9,700.
A321 pre-mod 160021	Before 24,400 FC or before November 30, 2017, whichever is later, without exceeding the accumulation of 39,300 FC since first flight.	13,600.
A321 post-mod 160021	Before 39,300	8,500.

(h) Airworthiness Limitations Item (ALI) Inspections Accomplished Before the Effective Date of This AD

Inspections accomplished as specified in ALI task 534129 or ALI task 534130 before the effective date of this AD are acceptable for compliance with the inspection required by paragraph (g) of this AD. As of the effective date of this AD, repetitive inspections must be continued as required by paragraph (g) of this AD.

(i) Optional Modification

For airplanes on which no cracks were detected during any rototest inspection required by paragraph (g) of this AD: Modifying the affected area by cold working the fastener holes before further flight after no cracks were detected, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1290, Revision 01, dated October 3, 2016, terminates the repetitive inspections required by paragraph (g) of this AD for the modified area only.

(j) Post-Modification Repetitive Inspections

For airplanes on which the modification specified in paragraph (i) of this AD has been done: At the compliance time specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD, as applicable, accomplish a rototest inspection of all holes at the door stop fitting locations at fuselage FR66 and FR68, both LH and RH sides, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1288, Revision 01, including Appendixes 01, 02, and 03, dated October 3, 2016. Repeat the inspection thereafter at intervals not to exceed the applicable compliance times in table 1 to paragraphs (g) and (j) of this AD and table 2 to paragraphs (g) and (j) of this AD.

(1) For airplanes with less than 1,800 flight cycles accumulated since first flight of the airplane at the time of accomplishing the modification specified in paragraph (i) of this AD: At the applicable initial compliance time specified in table 1 to paragraphs (g) and (j) of this AD and table 2 to paragraphs (g) and (j) of this AD.

(2) For airplanes with 1,800 flight cycles or more and less than 13,800 flight cycles accumulated since first flight of the airplane at the time of accomplishing the modification specified in paragraph (i) of this AD: Before the accumulation of 48,000 flight cycles since first flight of the airplane.

(3) For airplanes with 13,800 flight cycles or more accumulated since first flight of the airplane at the time of accomplishing the modification specified in paragraph (i) of this AD: Before the accumulation of 60,000 flight cycles since first flight of the airplane.

(k) Repair

If, during any inspection required by paragraph (g) or (j) of this AD, any crack is detected, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). Repair of an airplane as required by this paragraph does not constitute terminating action for the repetitive inspections required by paragraph (g) or (j) of this AD for that airplane, unless specified otherwise in instructions approved using a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the EASA; or Airbus's EASA DOA.

(l) Post-Repair Actions for Certain Airplanes

For an airplane that has been inspected as specified in ALI task 534129 or task 534130 and repaired before the effective date of this AD as specified in the applicable structural repair manual or as specified in an Airbus repair design approval sheet (RDAS): Comply

with the requirements of paragraphs (l)(1) and (l)(2) of this AD.

(1) For all fastener holes where no damage or cracks were detected (*i.e.,* those not repaired), accomplish the actions required by paragraph (g) of this AD, unless the terminating action specified in paragraph (m) of this AD has been done.

(2) For all repaired fastener holes: Within 30 days after the effective date of this AD, or within a compliance time approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the EASA; or Airbus's EASA DOA, whichever occurs later, contact the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the EASA; or Airbus's EASA DOA; for inspection instructions and applicable corrective actions, and do the inspections and applicable corrective actions accordingly.

(m) Terminating Action for Certain Airplanes

For airplanes that have been inspected, as specified in ALI task 534129 or task 534130, and repaired before the effective date of this AD, as specified in the applicable structural repair manual, or as specified in an Airbus RDAS: Modification of the four fastener holes at door stop locations where no damage or crack was detected (*i.e.,* door stop locations not repaired) by cold working holes before further flight after no cracks were detected, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1290, Revision 01, dated October 3, 2016, constitutes terminating action for the repetitive inspections of those four fastener holes at those door stop locations as required by paragraph (g) or (l)(1) of this AD for that airplane.

(n) Actions for Airplanes With Certain Repairs

For an airplane that has been repaired before the effective date of this AD in the areas described in this AD using an Airbus RDAS unrelated to ALI task 534129 or task 534130: Before exceeding the compliance times specified in paragraph (g) of this AD, contact the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the EASA; or Airbus's EASA DOA; for corrective action instructions and accomplish those instructions accordingly. Accomplishment of corrective action(s) on an airplane, as required by this paragraph, does not constitute terminating action for the repetitive inspections as required by paragraph (g) or (j) of this AD for that airplane, as applicable, unless specified otherwise in the instructions.

(o) Terminating Action for ALI Tasks

(1) Accomplishment of inspections on an airplane, as required by paragraph (g), (j), or (l) of this AD, as applicable, constitutes terminating action for the inspection requirements of ALI task 534129 or task 534130, as applicable, for that airplane.

(2) Modification of the four fastener holes at a door stop location of an airplane as specified in paragraph (i) or (m) of this AD, as applicable, and subsequent initial inspection required by paragraph (j) of this AD, constitutes terminating action for the inspection requirements of ALI task 534129 or task 534130, as applicable, for those holes for that airplane. Subsequent repetitive inspections are required by paragraph (j) of this AD.

(p) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraphs (g) and (j) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1288, including Appendixes 01 and 02, dated October 10, 2014.

(2) This paragraph provides credit for actions required by paragraphs (i) and (m) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1290, dated October 10, 2014.

(q) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Branch, send it to the attention of the person identified in paragraph (r)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(r) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0238, dated December 2, 2016, corrected January 4, 2017, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0707.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office– EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 13, 2017.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–15485 Filed 7–24–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0709; Directorate Identifier 2016–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318 series airplanes; Model A319 series airplanes; and Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes. This proposed AD was prompted by a report indicating that the lower rib foot angle of the center wing box did not match with the bottom skin panel inner surface. This proposed AD would require repetitive inspections for cracking of the external bottom skin in certain areas on the left and right wings, and corrective actions if necessary. This proposed AD also provides an optional terminating modification for the repetitive inspections. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 8, 2017.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0709; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0709; Directorate Identifier 2016–NM–200–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0222, dated November 7, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A318 and A319 series airplanes; and Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes. The MCAI states:

> During installation in production of new wing box ribs on post-mod 39729 aeroplanes, it was discovered that the centre wing lower rib foot angle was not matching with the bottom skin panel inner surface.
>
> This condition, if not detected and corrected, could induce fatigue cracking of the skin panel at the rib foot attachment, with possible detrimental effect on wing structural integrity.
>
> This condition was initially addressed by Airbus on the production line through adaptation mod 152155, then through mod 152200. For affected aeroplanes in service, Airbus issued Service Bulletin (SB) A320–57–1205, providing instructions for repetitive detailed inspections (DET) or special detailed inspections (SDI), and SB A320–57–1207, providing modification instructions.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections (DET or SDI) of the wing bottom skin lower surface for crack detection and, depending on findings, the accomplishment of applicable corrective action(s). This [EASA] AD also includes reference to an optional modification (Airbus SB A320–57–1207), providing terminating action for the repetitive inspections required by this [EASA] AD.

The corrective action for cracking is to repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; EASA; or Airbus's EASA Design Organization Approval. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0709.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–57–1205, dated May 26, 2016. This service information describes procedures for inspecting the external bottom skin for cracking in the area of the rib 2 attachment between stringer 8 and stringer 11 on both wings, and repairing any cracks.

Airbus has also issued Service Bulletin A320–57–1207, including Appendix 01 and Appendix 02, dated May 26, 2016. This service information describes procedures for inspecting the lower rib feet (rib 2) and the bottom skin upper surface on both wings for cracking, modifying the wings by installing shims between the lower rib foot (rib 2) and the bottom skin upper surface, and repairing any cracks.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 10 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	5 work-hours × $85 per hour = $425 per inspection cycle.	$0	$425 per inspection cycle	$4,250 per inspection cycle.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Modification	32 work-hours × $85 per hour = $2,720	$5,750	$8,470

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

According to the manufacturer, some of the costs of the optional modification of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all 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

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2017–0709; Directorate Identifier 2016–NM–200–AD.

(a) Comments Due Date

We must receive comments by September 8, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all manufacturer serial numbers on which Airbus Modification 39729 was embodied in production, except those airplanes on which Airbus Modification 152155 or Modification 152200 was embodied in production.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, wings.

(e) Reason

This AD was prompted by a report indicating that the lower rib foot angle of the center wing box did not match with the bottom skin panel inner surface. Misalignment of the lower rib foot angle of the center wing box with the bottom skin panel inner surface could induce fatigue cracking of the skin panel at the rib foot attachment. We are issuing this AD to detect and correct cracking of the external bottom skin in the area of the rib 2 attachment of the wings, which could result in reduced structural integrity of the wing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections

Before exceeding the applicable compliance time specified in table 1 to paragraph (g) of this AD, or within 3 months after the effective date of this AD, whichever occurs later: Do a detailed inspection or a special detailed inspection for cracking of the external bottom skin in the area of the rib 2 attachment between stringer 8 and stringer 11 of the left and right wings, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1205, dated May 26, 2016. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at the applicable intervals, based on the method used for the most recent inspection, as specified in table 2 to paragraph (g) of this AD.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—INITIAL INSPECTION TIMES

Airplane model and configuration	Compliance time—whichever occurs first since first flight of the airplane
Model A318 series airplanes; Model A319 series airplanes; and Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; pre-Airbus Modification 155374; not used as VIP or Elite.	Before the accumulation of 14,500 total flight cycles or 29,000 total flight hours.
Model A318 series airplanes; Model A319 series airplanes; and Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; post-Airbus Modification 155374; not used as VIP or Elite.	Before the accumulation of 13,600 total flight cycles or 27,300 total flight hours.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—INITIAL INSPECTION TIMES—Continued

Airplane model and configuration	Compliance time—whichever occurs first since first flight of the airplane
Model A319 series airplanes; post-Airbus Modifications 28162, 28238, and 28342; used as VIP or CJ.	Before the accumulation of 7,400 total flight cycles or 32,000 total flight hours.
Model A318 series airplanes; post-Airbus Modification 39195; used as VIP or Elite.	Before the accumulation of 14,500 total flight cycles or 43,500 total flight hours.

TABLE 2 TO PARAGRAPH (g) OF THIS AD—REPETITIVE INSPECTION INTERVALS

Airplane model and configuration	Detailed inspection—whichever occurs first	Special detailed inspection—whichever occurs first
Model A318 series airplanes; Model A319 series airplanes; and Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; not used as VIP or Elite.	4,000 flight cycles or 8,000 flight hours ...	5,000 flight cycles or 10,000 flight hours.
Model A319 series airplanes; post-Airbus Modifications 28162, 28238, and 28342; used as VIP or CJ.	2,000 flight cycles or 8,600 flight hours ...	2,500 flight cycles or 11,000 flight hours.
Model A318 series airplanes; post-Airbus Modification 39195; used as VIP or Elite.	4,000 flight cycles or 12,000 flight hours	5,000 flight cycles or 15,000 flight hours.

Note 1 to paragraph (g) of this AD: Airbus Modification 155374 defines the minimum airplane configuration for operation on Commonwealth of Independent States runway profiles.

(h) Terminating Action Limitation

Repair of an airplane, as required by paragraph (g) of this AD, does not constitute terminating action for the repetitive inspections required by paragraph (g) of this AD unless otherwise specified in the instructions obtained using the procedures specified in paragraph (j)(2) of this AD.

(i) Optional Terminating Action

Modification of the wings including a detailed inspection of the lower rib feet (rib 2) and bottom skin upper surface of the wings for cracking and all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1207, including Appendix 01 and Appendix 02, dated May 26, 2016, constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD for that airplane. If, during modification of an airplane as specified in this paragraph, accomplishment of any modification instruction is not possible due to configuration difficulties, accomplish the modification using the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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 International Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0222, dated November 7, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0709.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 14, 2017.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–15481 Filed 7–24–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112800–16]

RIN 1545–BN42

Nuclear Decommissioning Funds; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of a public hearing on notice of proposed rulemaking.

SUMMARY: This document provides a notice of public hearing on proposed changes to the regulations under section 468A of the Internal Revenue Code of 1986 (Code) relating to deductions for contributions to trusts maintained for decommissioning nuclear power plants and the use of the amounts in those trusts to decommission nuclear plants.

DATES: The public hearing is being held on Wednesday, October 25, 2017 at

10:00 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Wednesday, October 11, 2017.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–112800–16), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–112800–16), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–112800–16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jennifer C. Bernardini (202) 317– 6853; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–112800–16) that was published in the **Federal Register** on Thursday, December 29, 2016 (81 FR 95929). The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by March 29, 2017, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Wednesday, October 11, 2017.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317–6901 (not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2017–15543 Filed 7–24–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 61

RIN 2900–AP54

VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations concerning the VA Homeless Providers Grant and Per Diem (GPD) Program. These amendments would provide GPD with increased flexibility to: respond to the changing needs of homeless veterans; repurpose existing and future funds more efficiently; and allow recipients the ability to add, modify, or eliminate components of funded programs. The proposed rule updates these regulations to better serve our homeless veteran population and the recipients who serve them.

DATES: Comments must be received by VA on or before September 25, 2017.

ADDRESSES: Written comments may be submitted through *www.regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AP54—VA Homeless Providers Grant and Per Diem Program.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Guy Liedke, Program Analyst, Grant/Per Diem Program, (673/GPD), VA National Grant and Per Diem Program Office, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617, (877) 332–0334, *guy.liedke@va.gov.* (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is proposing to amend its regulations for supportive housing benefits for homeless veterans at 38 CFR part 61. Currently, these regulations set forth the general provisions for the homeless grant and per diem program; capital grant application information; per diem payment criteria; special need grant requirements; technical assistance grant information; and the specifics on awarding, monitoring, and enforcing grant agreements. This proposed rulemaking would make additions, revisions, deletions, or technical changes to §§ 61.1, 61.5, 61.33, 61.61 and 61.80. Each of these proposed changes is described below in more detail. VA's authority for this rulemaking is 38 U.S.C. 501, 2001, 2011, 2012, 2061, and 2064.

§ 61.1—Definitions

VA proposes revisions to the definition of supportive housing in § 61.1 to remove the requirement for recipients to transition homeless veterans into permanent housing ''within a period that is not less than 90 days'' after the date the veteran has been placed into supportive housing. The ninety (90) day supportive housing requirement was intended to ensure that veterans have sufficient time to take full advantage of all supportive services, thereby enabling their successful transition to permanent housing. However, as each veteran has an individualized treatment plan, they may choose to exit the program before 90 days for a host of reasons (*e.g.,* availability of permanent housing, desire for different environment, family reconciliation, access to new financial resources, dislike of program rules). VA does not see the benefit of maintaining the 90-day requirement. Therefore, we would amend the regulation and propose requiring that recipients transition veterans into permanent housing ''as soon as possible but no later than 24 months.'' VA would intend for recipients to expedite the transition of veterans from supportive housing into permanent housing in a period far less than twenty-four (24) months, if possible. Transitional housing would still be subject to the requirements of § 61.80, which provides general operational requirements for transitional housing. These requirements, in our experience, would ensure successful transition into permanent housing better than the current requirement stipulating

that veterans remain in transitional housing for at least 90 days.

We also would add the term ''bridge housing'' to the definition of ''supportive housing'' in § 61.1 for consistency and clarity along with differentiating it from ''shelter care'' which is impermissible by law. Shelter care provides a temporary stay for an evening. At the end of the shelter stay, veterans are free to exit back to their surroundings the following morning. The current definition of supportive housing also includes other types of transitional housing (*e.g.,* transition-in-place, clinical treatment, service intensive transitional housing), which recipients receive information about in the Notice of Funding Availability (NOFA), as applicable.

VA would use ''bridge housing'' as a short-term, transitional housing option in a safe environment for veterans who have accepted a permanent housing placement, but access to the permanent housing is not immediately available for occupancy. The ''formal'' use of bridge housing is relatively new for VA Grant Per Diem (GPD) program. We undertook the program starting in February 2016. Typically, the bridge housing model length of stay is less than 90 days (*e.g.,* seven to fourteen calendar days), absent additional services, and devoid of a specific clinical care component. Contrast this with detoxification, respite care, and hospice care, which do have clinical components. The data VA collects through its Homeless Operations Management and Evaluation System (HOMES) detailed that homeless veterans used bridge housing with an average length of stay of approximately forty-one (41) days. VA uses this design model because it is intended to align with community goals of housing homeless veterans rapidly within 90 days or less on average. Utilizing this model allows VA to avoid placing veterans on the street while they wait for permanent housing.

Recipients seeking to provide bridge housing are provided the parameters for service when they request to offer the service. Our rationale for placing the term ''bridge housing'' in this rulemaking is to notify prospective recipients that it is one of many eligible activities they may undertake under supportive housing.

At its basis, bridge housing is a benefit to veterans and VA because it serves as a short-term preventive measure, reduces homelessness, and provides veterans with a safe and structured environment. Finally, ''bridge housing'' would prove cost effective since it utilizes existing transitional housing stock, and it eliminates the costs of having to re-engage the veteran and relocate suitable housing, particularly if VA had to discharge the veteran.

§ 61.5—Implementation of VA Limits on Payments Due to Funding Restrictions

VA would add a new § 61.5 to address the instances where VA needs to impose limits on per diem payments due to funding restrictions. Proposed § 61.5(a) would state that payments would generally continue for the time frame specified in the relevant federal award. It would also clarify that all payments are subject to the availability of funds and would continue as long as the recipient continues to provide the supportive services and housing described in its grant application, meets GPD performance goals, and meets the applicable requirements of part 61.

Proposed § 61.5(b)(1) would establish three (3) factors for VA to use in decisions regarding continuing per diem payments in the case of an anticipated or unanticipated limit on funding which may arise during the time frame specified in the federal award. The first factor has two (2) components, and it is required under 38 U.S.C. 2011(b)(4)(A)–(B). One component would involve consideration of the equitable distribution of the grant agreements across geographic regions in order to prevent a loss of service to homeless veterans. The other component would require that VA ensure that the grant agreements do not duplicate ongoing services.

The second factor would allow VA to consider and protect capital investments that have been made in the recipients. VA, on occasion, makes or facilitates substantial infusions of capital to recipients providing services congruent to VA's mission and goals through grant agreements and enhanced use leases (EUL). This is consistent with Title V of the McKinney-Vento Homeless Assistance Act allowing for the use of excess federal property. See 42 U.S.C. 11411–11412; 24 CFR 581. The number of these grant agreements and enhanced use leases although minimal (*i.e.,* eight (8) transitional housing EULs and four (4) that are a combination of transitional and permanent housing). Without consideration of this factor, VA may affect negatively the investment decisions that have previously been made and destabilize or even disrupt the recipients' ability to offer services. VA seeks to avoid this scenario.

Finally, VA's third factor would consider the performance of recipients with respect to GPD performance goals in an effort to continue quality services for homeless veterans. VA would prefer to continue funding recipients who demonstrate their ability to meet these goals. GPD's performance goals are developed by its VHA Homeless Programs Office, and they are evaluated annually. The goals are neither tied to the Office of Housing and Urban Development's (HUD) performance goals nor are they codified in statute or regulation. Although VA has made adjustments in its data collection to more closely reflect items in HUD's HMIS (Homeless Management Information System), current GPD performance metrics have three (3) major areas: focusing on exits to permanent housing, reducing negative exits, and increasing veteran employment at exit.

Proposed § 61.5(b)(2) would clarify that VA would refrain from applying the recapture provisions of 38 CFR 61.67 where termination of a grant agreement is due to no fault by the recipient. VA's rationale for employing this mechanism is to prevent penalizing recipients by applying the recapture provisions when VA lacks sufficient funding and the recipient is without fault. We believe it would be in VA's best interest to provide such relief to recipients rather than placing a financial burden upon community partners with whom we might wish to collaborate on future projects.

§ 61.33—Payment of Per Diem

VA is proposing revisions to multiple parts of the ''payment of per diem'' section at § 61.33. The revisions VA is proposing would make both minor cosmetic (*e.g.,* removal of a word, re-lettering) and major substantive changes (*e.g.,* inserting a new requirement) to the section.

In paragraph (a), we propose adding a requirement that homeless veterans be provided ''a bed day of care'' as a condition of payment for per diem. This is a clarifying change because we have always interpreted ''per diem'' to require that the recipient provide a bed day of care. Currently per diem is paid by totaling the current number of bed days of care. For example, if a recipient has ten (10) beds, then they multiply ten (10) beds times the thirty (30) day billing period. This equals 300 bed days of care. If the recipient has any empty beds on any given day, then the number of bed days of care drops while the number of available beds remains the same. VA pays for the total bed days of care, which is a fee for service relationship. We would also clarify the conditions under which VA would pay per diem for veterans referred to recipients. Proposed paragraph (a)

would provide notice to all recipients not to exceed their total obligated funding. It would prevent each of the providers of supportive housing from exceeding the agreed upon total bed days of care. It would also prevent each of the service centers from exceeding the total hours of service. VA would need this limitation to prevent a recipient from exceeding the negotiated limits. We have found that many recipients have requested or seek to increase their award(s) beyond the number of authorized bed days of care. By including this express limitation, VA seeks to clarify the boundaries of the recipient's award(s). Once VA sets its limits for total bed days of care, total hours of service, and/or total obligated funding, we may not revisit these limits at a later date without significant burden on the agency. This proposed revision provides current and future providers with adequate notice of VA's capabilities for paying per diem payments, thereby reducing the possibility that the provider will exhaust funds prior to the end of the period or that VA would exceed the authorization for the entire program.

In addition, we are proposing paragraph (a)(3), which would allow VA the opportunity to review whether supportive housing and services provided to veterans are still needed and appropriate. This proposed change is intended to ensure individual veterans remain on track with their service plans and move towards permanent housing as quickly as possible. VA's goal is to prevent recipients from keeping veterans in their care even if not needed or appropriate in order to continue receiving per diem payments from VA.

Proposed paragraphs (d), (f), and (h) restate, without substantive change, material that currently appears at § 61.33(e), (g), and (i).

Proposed paragraph (e) would revise material that currently appears at § 61.33(f). The current regulation authorizes per diem payments for absent veterans whether or not the absence was a scheduled absence. This is not a *de minimus* exception. Currently, the regulations allow for seventy-two (72) hours scheduled or unscheduled absence. There have been occurrences where providers were interpreting this as permission to add three (3) days of care to the discharge date of individuals who leave the program without notice (AWOL). Originally, the 72-hour provision covered providers who located a homeless veteran on a weekend when VA staff were unavailable to verify the veteran's eligibility status. The recipient could serve the veteran until the next duty day for VA and receive payment. It also covered 3-day program passes and short medical stays in the hospital. The rationale for these actions is to eliminate paying for unscheduled program departures such as AWOLs. We propose that payments for absent veterans be made only if recipients schedule with veterans their absences in advance. Under the proposed amendment, VA would not provide per diem payments to recipients unable to ensure that veterans are complying with the terms of their program (*i.e.,* veterans who in many cases have failed to continue with the program and therefore are absent).

Proposed paragraph (g) would revise material that currently appears at § 61.33(h) to make clear that where a veteran is receiving supportive housing and supportive services from the same per diem recipient, VA will not pay a per diem for supportive services.

We propose deleting current paragraph 61.33(d) on continuing payments because the rules on continuing payments would appear at § 61.5.

§ 61.61—Agreements and Funding Actions

Currently, § 61.61(a) is silent on VA's authority as the final arbiter on selecting applicants and the agency's ability to negotiate or re-negotiate grant applications and funding. It simply states that VA must incorporate the requirements of 38 CFR part 61 into a GPD grant agreement when selecting a recipient. We propose amending this section by inserting language that would expressly authorize VA to make the final decisions on applicant selection as well as negotiate with an applicant regarding the details of the agreement or funding, as necessary.

§ 61.80—General Operation Requirements for Supportive Housing and Service Centers

We propose removing and replacing in its entirety § 61.80(c). Proposed new § 61.80(c) would address: (1) Performance goals; (2) reporting requirements; and (3) conditions requiring a corrective action plan. Further, we would correct some terminology. The revised provision would help align data on recipient outcomes for comparison with VA national performance goals. VA developed the performance goals internally in VHA's Homeless Programs Office, and they are evaluated and calibrated annually, as needed. This data is stored at the VHA Support Service Center. The current VA homeless performance metrics focus on exits to permanent housing, reducing negative exits, and employment at exit. Presently, recipients are permitted to establish their own metrics to determine success. We are seeking uniformity among recipients with this rulemaking so they meet the same performance metrics VA has developed regardless of their individual program methodologies. We would include a detailed description of the performance metrics in the federal award and also obtain OMB approval under the Paperwork Reduction Act for all related collections of information.

We believe this would increase the likelihood of successful outcomes. In addition, it would allow for proper program evaluation and assist VA in identifying non-performing entities. Veterans would benefit from the quality changes that would be made by recipients in order to meet the new goals.

Current 61.80(c) requires recipients to conduct an ongoing assessment of the supportive services veterans need. Recipients must provide VA with evidence of this assessment regarding the plan as described in their grant application, including information on whether they have met the performance goals established in that grant application. Recipients can accomplish this by submitting a quarterly technical performance report to their VA liaison. If recipients deviate from their performance goals by more than fifteen percent on any goal, then they must initiate a corrective action plan (CAP). Depending upon the grant application there may be anywhere from ten (10) to twenty (20) goals and objectives on which the recipients must report. The goals and objectives developed by recipients serve as benchmarks for their grant applications. Essentially, the goals and objectives serve as the basis for the tactics recipients use to end homelessness for the veterans they serve. VA has six hundred-fifty active grant agreements, which makes outcome measurement difficult because each grant agreement has different goals and objectives. Therefore, it is difficult to compare the best practices and actual recipient performance as it relates to VA's homeless veteran mission.

Nationally, VA must meet its own set of performance goals for successful outcomes in its homeless initiatives. Previously, VA did not have a platform to accumulate data, review it, and assess subsequent performance. However, VA now has this capability. VA's current reporting system now tracks veterans in all homeless programs. In addition to capturing veteran demographics, VA can capture data indicating how

homeless programs are meeting specific performance goals for VA homeless outcomes. This provides VA with a portrait of recipient and contract performance of homeless initiatives. We believe this has the potential to increase oversight and performance measurement, and correct substandard performance.

Proposed 61.80(c) would change the performance goals that individual recipients must meet. VA would provide the performance goals to recipients in the federal award, initial NOFA, and annually. VA would initiate quarterly assessments with recipients. This would take the burden of developing performance goals off the recipient without VA losing any oversight capabilities. VA would also reduce the number of performance items recipients are responsible for from the range of ten (10) to twenty (20) per recipient project to a number that accurately captures acceptable performance (*e.g.,* currently there are three VA Homeless Programs goals). We believe this will reduce recipient burden and allow the recipients more flexibility in changing treatment/housing modalities to meet ever changing veteran needs. For example, VA measures the number of veterans ''permanently housed at discharge.'' Recipients possess the flexibility to meet this measure in any number of ways. However, the recipient must operationalize the methods they believe are best to measure it internally with their respective homeless veteran populations. VA provides recipients with this type of discretion to engage their respective homeless veteran populations because recipient possesses unique expertise in their geographic area.

With these proposed changes, recipients may continue to use their grant application measures internally, or they may submit changes of scope to add or eliminate services to best meet VA's goals. The condition for triggering CAPs would be not meeting GPD performance goals for two consecutive quarters, and CAPs would be triggered only for negative deviations from GPD performance goals. Additionally, VA would delineate specific timeframes in § 61.80(c)(3)(A)(i)–(iv),(F) for review of quarterly assessments and for submission of CAPs. Finally, in proposed § 61.80(c) we would make a distinction between the VA Liaison and VA National GPD Program Office. These are different entities, but current 61.80(c) refers to them both by using the term ''VA National GPD Program Liaison'' throughout.

In proposed paragraph (c), VA would make changes in an effort to make the review of GPD performance goals and recipient performance outcomes more collaborative. Previously, VA only required recipients to submit their quarterly reports for review. Under proposed paragraph (c)(3), VA would provide recipients with access to VA's National Performance Scoring. Additionally, VA would provide recipients with data on how they are meeting GPD performance goals. Under proposed paragraph (c)(1), all recipients would conduct their own monthly, ongoing assessment of the need for and availability of supportive housing and services for their residents. However, VA would still request quarterly assessments from recipients. Once they conduct this assessment, they would provide VA with the assessment as required under proposed paragraph (c)(2). Then, VA would examine these activities to ascertain whether they align with our performance goals. This is consistent with the federal initiative to use data-based, collaborative outcomes of performance as goals in VA's effort to end veteran homelessness.

In proposed paragraph (c)(2), each recipient would be required to submit sufficient evidence of the recipient's activities in providing supportive housing and services to veterans. With this information, VA and the recipient would be able to identify those activities that do and do not support GPD's performance goals. We believe this would permit recipients the opportunity to make targeted adjustments to improve veteran care.

In proposed subparagraph (c)(3)(A), we would clarify the dates of the quarterly assessment periods.

In proposed subparagraphs (c)(3)(B)(i)–(ii), VA would set forth what a valid assessment must include. Under proposed subparagraph (c)(3)(B)(i), the assessment would include a comparison of the recipient's actual performance with GPD's performance goals. We would use this comparison to ensure there are no inconsistencies between the recipient's stated projected plan and its actual activities. VA would require that the comparison address both quantifiable (*i.e.,* performance goals) and non-quantifiable (*i.e.,* community orientation and awareness activities) goals to ensure that the recipient's programming is all encompassing and meets veterans' needs. VA plans to examine these measures in concert with one another to ascertain whether the recipient, through its programs, is making an impact on the veteran homeless problem in that community. For VA, these measures provide the most reliable data on whether the recipient is meeting veterans' needs. Finally, in proposed subparagraph (c)(3)(B)(ii), VA would require the identification of administrative and program problems which may affect performance and proposed solutions. We believe this would permit VA to have the ability to identify these problems earlier and provide the recipient with time to develop solutions to prevent poor performance. VA believes this would improve outcomes.

Proposed subparagraph (c)(3)(C) would require recipients and VA GPD Liaisons to prepare and retain in their records summaries of the quarterly assessments, which would be used to provide a cumulative annual assessment. This comports with 2 CFR 200.333. VA believes this would provide an accurate portrait for continuous program performance and improvement.

VA is proposing in subparagraph (c)(3)(D) that recipients must immediately inform the VA GPD Liaison of any significant developments affecting the recipient's ability to accomplish the work. This comports with 2 CFR 200.328(d). We have determined that any actions interfering with the recipient's ability to perform require immediate notice, so VA can provide the necessary technical assistance to avoid service disruption.

VA is proposing subparagraph (c)(3)(E) to set forth possible consequences of falling below the established performance goals. VA has determined that scores falling more than five (5%) percent below the established measure are indicative of serious deficiencies and service issues for the veterans served. Proposed subparagraph (c)(3)(E) would reference possible enforcement actions where there is a failure to meet GPD performance goals to this degree. When there is such a failure, VA may by award revision either: (1) Withhold placements of veterans; (2) withhold payment; (3) suspend payment; or (4) terminate the grant agreement. See 2 CFR 200.338. The recipient would be provided with an opportunity to correct deficiencies. Continued failure to correct the deficiencies could ultimately result in termination of the grant agreements.

Proposed subparagraph (c)(3)(F) would require recipients who do not meet established GPD performance goals for two (2) consecutive quarters to submit a corrective action plan (CAP). This provision is intended to ensure that recipients provide services and maintain acceptable levels of performance. VA would use this requirement to prevent extended

periods of non-performance. Proposed subparagraphs (c)(3)(F)(i)–(ii) would identify what must be in a CAP and the process for VA review and approval. The CAP would identify the: (1) Activities falling below a performance measure; (2) reasons why the measure is unmet; (3) proposed corrective action (that may include modifying the grant agreement); and (4) a timetable for completion of the corrective action. Under proposed subparagraph (c)(3)(F)(ii), VA would review received CAPs at the national GPD Program Office. The program office would then either approve or disapprove the plan. If disapproved, the VA GPD Liaison would make suggestions to the recipient to improve the CAP. The recipient could then resubmit the CAP for approval. This subparagraph reflects a desire for a nationwide, standardized level of performance, while maintaining a collaborative relationship with recipients.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). OMB assigns control numbers to collections of information it approves. VA 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 two collection of information provisions in this proposed rule are located at §§ 61.33(h) and 61.80(c).

Both collections were previously approved by OMB under OMB control number 2900–0554, which expired on August 31, 2016, and is being considered for reinstatement by OMB. One of these collections will remain unchanged, and the other will update the procedures and thereby reduce the burden of this information collection on the public. A discussion of each collection follows.

The first collection provision, at proposed § 61.33(h), contains a collection that is being considered for reinstatement under OMB control number 2900–0554. This collection requires recipients to report to VA all sources of income it has received for the project for which VA has awarded a grant. This provision appears at § 61.33(g) of the current GPD regulations, and would simply be moved and renamed 61.33(h), due to a proposed re-numbering. The proposed rule makes no other changes to this collection.

The second collection provision, at proposed § 61.80(c), contains a collection that is being revised to reduce the burden collection, which has been submitted to OMB for approval and previously approved under OMB control number 2900–0554. Under current § 61.80(c), recipients are required to submit quarterly reports to VA Liaisons, who are VA staff members, about how the recipients are meeting the performance measures that are outlined in their grant applications. Both the grant application and the quarterly report are collections approved under OMB control number 2900–0554. The VA Liaisons document these quarterly reports on the internal-only VA Form 10–0361(c).

Consistent with current § 61.80(c), under proposed § 61.80(c)(1), recipients would continue to send VA a quarterly report, as well as conduct an ongoing assessment of capacity: *i.e.,* ''the supportive housing and services needed by their residents and the availability of housing and services to meet this need.'' VA would begin setting the performance measures for recipients under the proposed rule based on a set of uniform performance metrics that would be established annually by VA, rather than using the various measures established by recipients in their applications. VA would also reduce the number of performance measures from the current range of about ten to twenty per recipient project, to a number that more accurately captures acceptable performance—*e.g.,* currently there are three VA Homeless Programs goals. VA would announce these measures in the federal award, initial NOFA, and annually. These changes to the quarterly reports will reduce the burden of information collection on the recipients by removing from them the burden of developing the measures and reducing the number of measures they must report on.

Consistent with the current regulations, a VA Liaison will document the quarterly discussions on internal VA Form 10–0361(c) and put them in the VA Liaison's administrative file. Finally, the VA Liaison will use all of this information to complete VA Form 10–0361(c) when conducting the annual physical inspection of the recipient under § 61.65 to ensure compliance with regulatory, clinical, and housing requirements.

VA and recipients would benefit from these proposed information collection changes by having uniform performance metrics for reporting on and assessing project outcomes, which will be used in conjunction with improved regulatory requirements to allow grant recipients to change their activities as needed to accomplish the grant purposes and address corrective actions quickly to ensure program stability, while allowing recipients to maintain the same autonomy they have historically enjoyed under the GPD program to self-select their activities under the grant. These actions should enhance the likelihood of continued funding in option years.

Accordingly, under 44 U.S.C. 3507(d), VA will submit a copy of this rulemaking to OMB for review. At that time, VA will also publish a **Federal Register** notice describing the burden associated with these collections of information.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or through *www.Regulations.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AP54 VA Homeless Providers Grant and Per Diem Program.''

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after receipt by OMB of the related PRA package. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of the related **Federal Register** Notice. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;

• Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collections 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 collections of information contained in §§ 61.33 and 61.80 are described immediately following this paragraph, under their respective titles.

Title: VA Homeless Providers Grant and Per Diem Program.

Summary of collection of information: The proposed rule, at §§ 61.33 and 61.80, contains compliance reporting provisions for capital grant agreements, per diem, and special needs grant agreements.

Description of the need for information and proposed use of information: Determine eligibility for capital grant agreements and per diem and reporting requirements to determine grant agreement compliance.

Description of likely respondents: Grant Applicants: Non-Profit Agencies, State and Local Governments, and Indian Tribal Governments.

Estimated number of respondents per year: 1,450.

Estimated frequency of responses per year: 1 per year.

Estimated average burden per response: 13.17 hours.

Estimated total annual reporting and recordkeeping burden: 19,090 hours.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule directly affects only those entities that choose to apply for a grant under the GPD program. Many of these entities are state or local governments. On this basis, the Secretary certifies that the adoption of this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grant agreements, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm,* by following the link for ''VA Regulations Published.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on October 7, 2016, for publication.

Dated: July 18, 2017.

Michael Shores,

Director, Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

List of Subjects in 38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 61 as follows:

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2061, 2064.

■ 2. In § 61.1, amend the definition of ''Supportive housing'' by removing the phrase ''within a period that is not less than 90 days and does not exceed'' in paragraph (2)(i) and adding in its place ''as soon as possible but no later than''; and removing the phrase ''Provide specific medical treatment'' in paragraph (2)(ii) and adding in its place

''Provide bridge housing or specific medical treatment''.

■ 3. Add new § 61.5 to read as follows:

§ 61.5 Implementation of VA Limits on Payments due to Funding Restrictions.

(a) *Continuing payments.* Once a grant agreements is awarded, payments will continue for the time frame specified in the federal award, subject to the availability of funds and as long as the recipient continues to provide the supportive services and housing described in its grant application, meets GPD performance goals, and meets the applicable requirements of this part.

(b) Factors. (1) In cases of limited availability of funding during the time frame specified in the federal award, VA may terminate the payment of per diem payments to recipients after weighing the following factors:

(i) Non-duplication of ongoing services and equitable distribution of grant agreements across geographic regions, including rural communities and tribal lands;

(ii) Receipt by recipient of any capital investment from VA or others; and

(iii) Recipient's demonstrated compliance with GPD performance goals.

(2) Notwithstanding paragraph (b)(1) of this section, when an awarded grant agreement is terminated during the time frame specified in the federal award due to no fault by the recipient, VA shall refrain from applying the recapture provisions of 38 CFR 61.67.

■ 4. Remove the authority citation at § 61.33 and revise as follows:

§ 61.33 Payment of per diem.

(a) *General.* VA will pay per diem to recipients that provide a bed day of care:

(1) For a homeless veteran:

(i) Who VA referred to the recipient; or

(ii) For whom VA authorized the provision of supportive housing or supportive service; and

(2) When the referral or authorization of the homeless veteran will not result in the project exceeding:

(A) For providers of both supportive housing and services, the total number of bed days of care or total obligated funding as indicated in the grant agreement and funding action document; or

(B) For service centers, the total hours of service or total obligated funding as indicated in the grant agreement and funding action document.

(3) VA may at any time review the provision of supportive housing and services to individual veterans by the provider to ensure the care provided continues to be needed and appropriate.

(b) *Rate of payments for individual veterans.* The rate of per diem for each veteran in supportive housing shall be the lesser of:

(1) The daily cost of care estimated by the per diem recipient minus other sources of payments to the per diem recipient for furnishing services to homeless veterans that the per diem recipient certifies to be correct (other sources include payments and grants from other departments and agencies of the United States, from departments of local and State governments, from private entities or organizations, and from program participants); or

(2) The current VA state home program per diem rate for domiciliary care, as set by the Secretary under 38 U.S.C. 1741(a)(1).

(c) *Rate of payments for service centers.* The per diem amount for service centers shall be 118 of the lesser of the amount in paragraph (b)(1) or (b)(2) of this section, per hour, not to exceed 8 hours in any day.

(d) *Reimbursements.* Per diem may be paid retroactively for services provided not more than three (3) days before VA approval is given or where, through no fault of the recipient, per diem payments should have been made but were not made.

(e) *Payments for absent veterans.* VA will pay per diem up to a maximum of seventy-two (72) consecutive hours for the scheduled absence of a veteran.

(f) *Supportive housing limitation.* VA will not pay per diem for supportive housing bed days of care for any homeless veteran with three (3) or more previous episodes (*i.e.,* admission and discharge for each episode) of supportive housing services paid for under this part. VA may waive this limitation, if the services offered are different from those previously provided and may lead to a successful outcome.

(g) *Veterans receiving supportive housing and services.* For circumstances where a veteran is receiving supportive housing and supportive services from the same per diem recipient, VA will not pay a per diem for the supportive services.

(h) *Reporting other sources of income.* At the time of receipt, a per diem recipient must report to VA all other sources of income for the project for which per diem was awarded. The report provides a basis for adjustments to the per diem payment under paragraph (b)(1) of this section.

§ 61.61 [Amended]

■ 5. Amend § 61.61 paragraph (a) by adding the following after the first sentence: ''VA makes the final decision on applicant selection. VA may negotiate with an applicant regarding the details of the agreement and funding, as necessary.''

■ 6. Amend § 61.80 by revising paragraph (c) to read as follows:

* * * * *

(c) VA will provide performance goals to recipients in its initial federal award and update annually thereafter:

(1) Each recipient must conduct an ongoing assessment of the supportive housing and services needed by their residents and the availability of housing and services to meet this need. Recipients are expected to make adjustments to meet resident needs.

(2) The recipient will provide to the VA GPD Liaison evidence of its ongoing assessment of the plan described in the recipient's grant application. The recipient's assessment must show how it is using the plan to meet the GPD performance goals.

(3) The VA GPD Liaison will provide the GPD performance information to recipients. VA will incorporate this assessment information into the annual inspection report.

(i) The VA GPD Liaison will review the quarterly assessment with the recipient within thirty (30) days of the end of the following quarters:

(A) Quarter 1 (October–December) assessment completed not later than January 30;

(B) Quarter 2 (January–March) assessment completed not later than April 30;

(C) Quarter 3 (April–June) assessment completed not later than July 30; and,

(D) Quarter 4 (July–September) assessment completed not later than October 30.

(ii) A valid assessment must include the following:

(A) A comparison of actual accomplishments to established GPD performance goals for the reporting period addressing quantifiable as well as non-quantifiable goals. Examples include, but are not limited to a description of grant agreement-related activities, such as: Hiring and training personnel, community orientation/awareness activities, programmatic activities, or job development; and

(B) Identification of administrative and programmatic problems which may affect performance and proposed solutions.

(iii) Recipients and VA GPD Liaisons must include a summary of the quarterly assessment in their administrative records. These quarterly assessments shall be used to provide a cumulative assessment for the entire calendar year.

(iv) The recipient shall immediately inform the VA GPD Liaison of any significant developments affecting the recipient's ability to accomplish the work. VA GPD Liaisons will provide recipients with necessary technical assistance.

(v) If after reviewing a recipient's assessment, VA determines that it falls more than five (5%) percent below any performance goal, then VA may by award revision:

(A) Withhold placements;

(B) Withhold payment;

(C) Suspend payment; and

(D) Terminate the grant agreement, as outlined in this part or other applicable federal statutes and regulations.

(vi) Corrective Action Plans (CAP): If VA determines that established GPD performance goals have not been met for any two (2) consecutive quarters as defined in 38 CFR 61.80(c)(3)(A)(i) through (iv), the recipient will submit a CAP to the VA GPD Liaison within sixty (60) calendar days.

(A) The CAP must identify the activity which falls below the measure. The CAP must describe the reason(s) why the recipient did not meet the performance measure(s) and provide specific proposed corrective action(s) and a timetable for accomplishment of the corrective action. The recipient's plan may include the recipient's intent to propose modifying the grant agreement. The recipient will submit the CAP to the VA GPD Liaison.

(B) The VA GPD Liaison will forward the CAP to the VA National GPD Program Office. The VA National GPD Program Office will review the CAP and notify the recipient in writing whether the CAP is approved or disapproved. If disapproved, the VA GPD Liaison will make suggestions to the recipient for improving the proposed CAP and the recipient may resubmit the CAP to the VA National GPD Program Office.

[FR Doc. 2017–15338 Filed 7–24–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[LLWO300000 L13100000 PP0000 17X]

RIN 1004–AE52

Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: On March 26, 2015, the Bureau of Land Management (BLM) published in the **Federal Register** a final rule entitled, ''Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands'' (2015 final rule). The BLM is now proposing to rescind the 2015 final rule because we believe it is unnecessarily duplicative of state and some tribal regulations and imposes burdensome reporting requirements and other unjustified costs on the oil and gas industry. This proposed rule would return the affected sections of the Code of Federal Regulations (CFR) to the language that existed immediately before the published effective date of the 2015 final rule.

DATES: The BLM must receive your comments on this proposed rule or on the supporting Regulatory Impact Analysis or Environmental Assessment on or before September 25, 2017.

ADDRESSES: *Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE52.

Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134 LM, Washington, DC 20003, Attention: Regulatory Affairs.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Division Chief, Fluid Minerals Division, 202–912–7143, for information regarding the substance of this proposed rule or information about the BLM's Fluid Minerals program. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Public Comment Procedures
III. Background
IV. Discussion of Proposed Rule
V. Procedural Matters

I. Executive Summary

The process known as ''hydraulic fracturing'' has been used by the oil and gas industry since the 1950s to stimulate production from oil and gas wells. In recent years, public awareness of the use of hydraulic fracturing practices has grown. New horizontal drilling technology has allowed increased access to oil and gas resources in tight shale formations across the country, sometimes in areas that have not previously experienced significant oil and gas development. As hydraulic fracturing has become more common, public concern has increased about whether hydraulic fracturing contributes to or causes the contamination of underground water sources, whether the chemicals used in hydraulic fracturing should be disclosed to the public, and whether there is adequate management of well integrity and the ''flowback'' fluids that return to the surface during and after hydraulic fracturing operations.

In light of the public concern for and widespread use of hydraulic fracturing practices, in November 2010, the BLM prepared a rule that was intended to regulate the use of hydraulic fracturing in developing Federal and Indian oil and gas resources. Since that time, the BLM has published two proposed rules (77 FR 27691 and 78 FR 31636), held numerous meetings with the public and state officials, and conducted many tribal consultations and meetings. The final rule entitled, ''Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,'' was published in the **Federal Register** on March 26, 2015 (80 FR 16128). The 2015 final rule was intended to: Ensure that wells are properly constructed to protect water supplies, make certain that the fluids that flow back to the surface as a result of hydraulic fracturing operations are managed in an environmentally responsible way, and provide public disclosure of the chemicals used in hydraulic fracturing fluids.

On March 28, 2017, President Trump issued Executive Order 13783, entitled, ''Promoting Energy Independence and Economic Growth'' (82 FR 16093, Mar. 31, 2017), which directed the Secretary of the Interior to review four specific rules, including the 2015 final rule, for consistency with the order's objective ''to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth and prevent job creation'' and, as appropriate, take action to lawfully suspend, revise, or rescind those rules that are inconsistent with the policy set forth in Executive Order 13783. To implement Executive Order 13783, Secretary of the Interior Ryan K. Zinke issued Secretarial Order No. 3349 entitled, ''American Energy Independence'' on March 29, 2017, which, among other things, directed the BLM to proceed expeditiously in proposing to rescind the 2015 final rule. Upon further review of the 2015 final rule, as directed by Executive Order

13783, and Secretarial Order No. 3349, the BLM believes that the 2015 final rule unnecessarily burdens industry with compliance costs and information requirements that are duplicative of regulatory programs of many states and some tribes. As a result, we are proposing to rescind, in its entirety, the 2015 final rule.

II. Public Comment Procedures

If you wish to comment on the proposed rule or the supporting analyses (namely, the Environmental Assessment (EA) or the Regulatory Impact Analysis (RIA) prepared for this proposed rule), you may submit your comments by any of the methods described in the **ADDRESSES** section.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposed rule that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see ''**DATES**'') or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under ''**ADDRESSES**: Personal or messenger delivery'' during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

III. Background

Well stimulation techniques, such as hydraulic fracturing, are commonly used by oil and natural gas producers to increase the volume of oil and natural gas that can be extracted from oil and gas formations. Hydraulic fracturing techniques are particularly effective in enhancing oil and gas production from shale gas or oil formations. Hydraulic fracturing involves the injection of fluid under high pressure to create or enlarge fractures in the reservoir rocks. The fluid that is used in hydraulic fracturing is usually accompanied by proppants, such as particles of sand, which are carried into the newly fractured rock and help keep the fractures open once the fracturing operation is completed. The proppant-filled fractures become conduits for fluid migration from the reservoir rock to the wellbore and the fluid is subsequently brought to the surface. In addition to the water and sand (which together typically make up about 99 percent of the materials pumped into a well during a fracturing operation), chemical additives are also frequently used. These chemicals can serve many functions in hydraulic fracturing, including limiting the growth of bacteria and preventing corrosion of the well casing. The exact formulation of the chemicals used varies depending on the rock formations, the well, and the requirements of the operator.

In 2013, the BLM estimated that about 90 percent of the approximately 2,800 new wells on Federal and Indian lands were stimulated using hydraulic fracturing techniques. Over the past 15 years, there have been significant technological advances in horizontal drilling, which is now frequently combined with hydraulic fracturing. This combination, together with the discovery that these techniques can release significant quantities of oil and gas from large shale deposits, has led to production from geologic formations in parts of the country that previously did not produce significant amounts of oil or gas.

On May 11, 2012, the BLM published in the **Federal Register** the initial proposed rule entitled, ''Oil and Gas; Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands'' (77 FR 27691). The BLM received over 177,000 comments on the initial proposed rule from individuals, Federal and state governments and agencies, interest groups, and industry representatives.

After reviewing the comments on the proposed rule, the BLM published a supplemental notice of proposed rulemaking entitled, ''Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,'' on May 24, 2013 (78 FR 31636). The BLM received over 1.35 million comments on the supplemental proposed rule.

On March 26, 2015, the BLM published the final rule entitled, ''Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands'' in the **Federal Register** (80 FR 16128, codified as amendments to 43 CFR 3160.0–3, 3160.0–5, 3162.3–2, 3162.3–3, and 3162.5–2 (2015)). Although the 2015 final rule never went into effect, it nevertheless amended certain provisions in part 3160 of the 2015 edition of Title 43 of the Code of Federal Regulations (CFR), including the list of statutory authorities, the definitions section, and a provision requiring operators to isolate and protect certain waters. In addition, the 2015 final rule amended other provisions in part 3160 of the 2015 edition of Title 43 of the CFR, which, had they gone into effect, would have required an operator to:

- Obtain the BLM's approval before conducting hydraulic fracturing operations by submitting an application with information and a plan for the fracturing (43 CFR 3162.3–3(d)(4)).
- Include a hydraulic fracturing application in applications for permits to drill (APDs), or in a subsequent ''sundry notice'' (43 CFR 3162.3–3(c)).
- Include information about the proposed source of water in each hydraulic fracturing application so that the BLM can complete analyses required by the National Environment Policy Act (NEPA) (43 CFR 3162.3–3(d)(3)).
- Include available information about the location of nearby wells to help prevent ''frack hits'' (*i.e.,* unplanned surges of pressurized fluids into other wells that can damage the wells and equipment and cause surface spills) (43 CFR 3162.3–3(d)(4)(iii)(C)).
- Verify that the well casing is surrounded by adequate cement, and test the well to make sure it can withstand the pressures of hydraulic fracturing (43 CFR 3162.3–3(e)(1) and (2) and (f)).
- Isolate and protect usable water, while redefining ''usable water'' to expressly defer to classifications of groundwater by states and tribes, and the Environmental Protection Agency, 43 CFR 3160.0–7; and require demonstrations of only 200 feet of adequate cementing between the fractured formation and the bottom of the closest usable water aquifer, or cementing to the surface (43 CFR 3162.3–3(e)(2)(i) and (ii)).
- Monitor and record the annulus pressure during hydraulic fracturing operations, and report significant increases of pressure (43 CFR 3162.3–3(g)).
- File post-fracturing reports containing information about how the hydraulic fracturing operation actually occurred (43 CFR 3162.3–3(i)).
- Submit lists of the chemicals used (non-trade-secrets) to the BLM by sundry notice (Form 3160–5), to FracFocus (a public Web site operated by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission), or to another BLM-designated database (43 CFR 3162.3–3(i)(1)).

• Withhold trade secret chemical identities only if the operator or the owner of the trade secret submits an affidavit verifying that the information qualifies for trade secret protection (43 CFR 3162.3–3(j)).

• Obtain and provide withheld information to the BLM, if the BLM requests the withheld information (43 CFR 3162.3–3(j)(3)).

• Store recovered fluids in above-ground rigid tanks of no more than 500-barrel capacity, with few exceptions, until the operator has an approved plan for permanent disposal of produced water (as required by Onshore Oil and Gas Order No. 7) (43 CFR 3162.3–3(h)).

The 2015 final rule would have also authorized two types of variances:

• Individual operation variances to account for local conditions or new or different technology (43 CFR 3162.3–3(k)(1)).

• State or tribal variances to account for regional conditions or to align the BLM requirements with state or tribal regulations (43 CFR 3162.3–3(k)(2)).

Per the 2015 final rule, the standard for approval of either type of variance is that the variance would meet or exceed the purposes of a specific provision in the rule (43 CFR 3162.3–3(k)(3)).

Two industry associations filed suit opposing the 2015 final rule in the U.S. District Court for the District of Wyoming in March 2015. Four states and a tribe also challenged the rule in the same court.[1] The Court consolidated the cases. Six environmental groups intervened in the case in support of the rule.

The District Court stayed the 2015 final rule prior to its effective date. Subsequently, the District Court preliminarily enjoined the 2015 final rule. On June 21, 2016, the District Court issued an order setting aside the rule. The Court concluded that Congress revoked the BLM's authority over hydraulic fracturing operations by enacting the Safe Drinking Water Act of 1974 and the Energy Policy Act of 2005. *Wyoming* v. *Jewell,* No. 15-cv-41 (D. Wyo. June 21, 2016).

The District Court did not address a number of additional arguments that Petitioners raised against the 2015 final rule. Those unaddressed arguments focused primarily on allegations that the rule was not supported by sufficient facts or was otherwise arbitrary and capricious. The District Court also did not expressly address the argument of a Tribal petitioner that the BLM is precluded from regulating oil and gas operations on Indian lands.

The Department of the Interior (''the Department'') and environmental group intervenors appealed the District Court's decision. *Wyoming* v. *Zinke,* No. 16–8068 (10th Cir.). The appeal concerns only the statutory authority issues that the District Court decided. Briefing was completed in October 2016. Before oral argument, however, the Court of Appeals in a March 2017 order required the BLM to report whether it had changed its position in the appeal following the Presidential Inauguration.

Following the March 2017 order from the Court of Appeals, the Department accelerated its review of the 2015 final rule. As previously noted, pursuant to Executive Order 13783, the Department commenced a review of existing energy-related regulations, which included the 2015 final rule, to determine whether changes would be appropriate to support domestic energy production. Based upon this review, the Department identified the 2015 final rule as being duplicative and burdensome and, therefore, appropriate for rescission. On March 15, 2017, the Department informed the Court of Appeals that it was preparing a notice of proposed rulemaking to rescind the rule, which it intended to publish in the **Federal Register**. Shortly thereafter, the Court of Appeals postponed oral argument, and required further briefing on several issues regarding the effect of the present rulemaking effort on the appeal.

If the Court of Appeals were to reverse the District Court's order on statutory authority, the case would be remanded to the District Court to decide the remaining issues, primarily whether the BLM complied with the Administrative Procedure Act in the rulemaking that resulted in the 2015 final rule.

In sum, the 2015 final rule has never gone into effect, and was set aside by the District Court on June 21, 2016. The 2015 final rule would not go into effect unless and until the courts decide that the rule was properly promulgated.

In the Regulatory Impact Analysis (RIA) for the 2015 final rule, the BLM estimated that the requirements of the 2015 final rule would result in compliance costs to the industry of approximately $32 million per year (and potentially up to $45 million per year). The BLM had concluded that many of the requirements were consistent with industry practice and similar to the requirements found in existing state regulations, and therefore would not pose a significant new compliance burden to the industry. However, comments received by many oil and gas companies and trade associations representing members of the oil and gas industry suggested that the BLM's proposed and final rules were unnecessary and would cause substantial harm to the industry. The BLM recognizes that the 2015 final rule would pose a financial burden to industry if implemented.

As noted earlier, since January 2017, the President has issued Executive Orders that necessitate the review of the BLM's 2015 final rule. Section 7(b) of Executive Order 13783 directs the Secretary of the Interior to review four specific rules, including the 2015 final rule, for consistency with the policy set forth in section 1 of [the] Order and, if appropriate, to publish for notice and comment proposed rules to suspend, revise, or rescind those rules.

Section 1 of Executive Order 13783 states that it is in the national interest to promote clean and safe development of United States energy resources, while avoiding ''regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.'' Section 1 describes the prudent development of these natural resources as ''essential to ensuring the Nation's geopolitical security.'' Section 1 finds it in the national interest to ensure that electricity is affordable, reliable, safe, secure, and clean, and that coal, natural gas, nuclear material, flowing water, and other domestic sources, including renewable sources, can be used to produce it.

Accordingly, Section 1 of Executive Order 13783 declares it the policy of the United States that: (1) Executive departments and agencies immediately review regulations that potentially burden the development or use of domestically produced energy resources and, as appropriate, suspend, revise, or rescind those that unduly burden domestic energy resources development ''beyond the degree necessary to protect the public interest or otherwise comply with the law''; and (2) to the extent permitted by law, agencies should promote clean air and clean water, while respecting the proper roles of the Congress and the States concerning these matters; and (3) necessary and appropriate environmental regulations comply with the law, reflect greater benefit than cost, when permissible, achieve environmental improvements, and are developed through transparent processes using the best available peer-reviewed science and economics.

As directed by the aforementioned Executive Order, and by Secretarial Order No. 3349, the BLM conducted a review of the 2015 final rule. As a result of this review, the BLM believes that the

[1] A separate tribe filed a separate challenge to the rule in the U.S. District Court for the District of Colorado. That case has been settled.

compliance costs associated with the 2015 final rule are not justified and it now proposes to rescind the rule.

In the RIA for the 2015 final rule, while noting that many of the requirements of the 2015 final rule were consistent with industry practice and that some were duplicative of state requirements or were generally addressed by existing BLM requirements, the BLM asserted that the rule would provide additional assurance that operators are conducting hydraulic fracturing operations in an environmentally sound and safe manner, and increase the public's awareness and understanding of these operations.

It follows that the rescission of the 2015 final rule could potentially reduce those assurances or potentially reduce public awareness and understanding about hydraulic fracturing operations on Federal and Indian lands. However, considering state regulatory programs, the sovereignty of tribes to regulate operations on their lands, and the pre-existing authorities in other Federal regulations, the proposed rescission of the 2015 final rule would not leave hydraulic fracturing operations entirely unregulated.

The BLM's review of the 2015 final rule included a review of state laws and regulations which indicated that most states are either currently regulating or are in the process of regulating hydraulic fracturing. When the 2015 final rule was issued, 20 of the 32 states with currently existing Federal oil and gas leases had regulations addressing hydraulic fracturing. In the time since the promulgation of the 2015 final rule, an additional 12 states have introduced laws or regulations addressing hydraulic fracturing. As a result, all 32 states with Federal oil and gas leases currently have laws or regulations that address hydraulic fracturing operations.[2] In addition, some tribes with oil and gas resources have also taken steps to regulate oil and gas operations, including hydraulic fracturing, on their lands.

The BLM also now believes that disclosures of the chemical content of hydraulic fracturing fluids to state regulatory agencies and/or databases such as FracFocus is more prevalent than it was in 2015 and that there is no need for a Federal chemical disclosure requirement, since companies are already making those disclosures on most of the operations, either to comply with state law or voluntarily. There are 23 states that currently use FracFocus for chemical disclosures. These include six states where the BLM has major oil and gas operations, including Colorado, Montana, North Dakota, Oklahoma, Texas, and Utah.

In addition to state and tribal regulation of hydraulic fracturing, the BLM has several pre-existing authorities that it will continue to rely on if the 2015 final rule is rescinded, some of which are set out at 43 CFR subpart 3162 and in Onshore Oil and Gas Orders 1, 2, and 7. These authorities reduce the risks associated with hydraulic fracturing by providing specific requirements for well permitting; construction, casing, and cementing; and disposal of produced water.[3] By reverting to 43 CFR subpart 3162 as it existed prior to the 2015 final rule, the BLM would continue to require prior approval for ''nonroutine fracturing jobs''; however, ''nonroutine fracturing jobs'' would not be defined in 43 CFR subpart 3162 since the term was not defined before the 2015 final rule. The BLM also possesses discretionary authority allowing it to impose site-specific protective measures reducing the risks associated with hydraulic fracturing.

The BLM's review of the 2015 final rule also included a review of incident reports from Federal and Indian wells since December 2014. This review indicated that resource damage is unlikely to increase by rescinding the 2015 final rule because of the rarity of adverse environmental impacts that occurred from hydraulic fracturing operations before the 2015 final rule, and after its promulgation while the 2015 final rule was not in effect. The BLM now believes that the appropriate framework for mitigating these impacts exists through state regulations, through tribal exercise of sovereignty, and through BLM's own pre-existing regulations and authorities (pre-2015 final rule 43 CFR subpart 3162 and Onshore Orders 1, 2, and 7).

The BLM is seeking comments on the specific regulatory changes that would be made by this proposed rule and is interested particularly in information that would improve BLM's understanding of state and tribal regulatory capacity in this area. Further, the BLM is seeking specific comments on approaches that could be used under existing Federal authorities, including what additional information could be collected during the APD process or through sundry notices, to further minimize the risks from hydraulic fracturing operations, particularly in states or on tribal lands where the corresponding regulations or enforcement mechanisms may be less comprehensive.

IV. Discussion of Proposed Rule

As previously discussed in this preamble, the BLM proposes to revise 43 CFR part 3160 to rescind the 2015 final rule. Although the 2015 final rule never went into effect, this proposed rule would restore the regulations in part 3160 of the CFR to exactly as they were before the 2015 final rule, except for any changes to those regulations that were made by other rules published between March 26, 2015 (the date of publication of the 2015 final rule) and now. This proposed rule would not result in any change from current requirements because the 2015 final rule never went into effect. The following section-by-section analysis reviews the specific changes that would be required to return to the pre-2015 final rule regulations.

Section 3160.0–3 Authority

The BLM proposes to amend § 3160.0–3 by removing the reference to the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701). The 2015 final rule added this reference as an administrative matter. This proposed rule would return this section to the language it contained before the 2015 final rule and would not have any substantive impact.

Section 3160.0–5 Definitions

The BLM proposes to amend this section by removing several terms that were added by the 2015 final rule and by restoring the definition of ''fresh water'' that the 2015 final rule had removed. The proposed rule would

[2] The reference to 32 states with existing Federal oil and gas leases includes the following states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming. The State of Oregon regulates hydraulic fracturing operations by way of its regulations addressing ''Water Injection and Water Flooding of Oil and Gas Properties'' (Oregon Administrative Rules [Or. Admin. R.] sec. 632–010–0194). The State of Arizona may regulate hydraulic fracturing operations by way of its regulations addressing ''Artificial Stimulation of Oil and Gas Wells'' (Arizona Administrative Code [A.A.C.] sec. R12–7–117). The State of Indiana issued ''emergency rules'' in 2011 and 2012 that incorporated new legislation addressing hydraulic fracturing (Pub. L. 140–2011 and Pub. L. 16–2012) into Indiana's oil and gas regulations at 312 Indiana Administrative Code (IAC) Article 16. For further information about the state regulatory programs, see § 2.12 of the RIA and Appendix 1 of the EA prepared for this proposed rulemaking action.

[3] Additional discussion regarding Onshore Oil and Gas Orders 1, 2, and 7, and 43 CFR subpart 3162, is provided in § 2.11 of the RIA and the EA prepared for this proposed rulemaking action.

remove the definitions of ''annulus,'' ''bradenhead,'' ''Cement Evaluation Log (CEL),'' ''confining zone,'' ''hydraulic fracturing,'' ''hydraulic fracturing fluid,'' ''isolating or to isolate,'' ''master hydraulic fracturing plan,'' ''proppant,'' and ''usable water.'' The 2015 final rule used those terms in the operating regulations. If those operating regulations are rescinded, as proposed, these terms would no longer be necessary in this definitions section. The BLM is proposing to restore the previous definition of ''fresh water'' to the regulations.

Section 3162.3–2 Subsequent Well Operations

This proposed rule would amend § 3162.3–2 by making non-substantive changes to paragraph (a), which include replacing the word ''must'' with the word ''shall'', replacing the word ''combine'' with the word ''commingling'', replacing the word ''convert'' with the word ''conversion'', and removing the language from the first sentence of paragraph (a) that the 2015 final rule only added to more fully describe Form 3160–5.

The proposed rule would also make non-substantive changes to paragraph (b) of § 3162.3–2, which include replacing ''using a Sundry Notice and Report on Well (Form 3160–5)'' with ''on Form 3160–5''.

The proposed rule would also restore ''perform nonroutine fracturing jobs'' to the list of activities that require the authorized officer's prior approval in § 3162.3–2. The 2015 final rule removed those words from the list because it amended § 3162.3–3 to require all hydraulic fracturing operations to be approved by the authorized officer. This proposed rule would remove that requirement from § 3163.3–3, which is discussed below.

Section 3162.3–3 Other Lease Operations

The BLM proposes to revise this section by removing language that was added by the 2015 final rule and returning this rule to the exact language it contained previously. The 2015 final rule made substantial changes to this section and revised the title to read as ''Subsequent well operations; Hydraulic fracturing.''

Paragraph (a) of this section in the 2015 final rule, as reflected in the 2015 edition of the CFR, includes an implementation schedule that the BLM would have followed to phase in the requirements of the rule, had the rule gone into effect. Paragraph (b) of this section contains the performance standard referencing § 3162.5–2(d). Paragraph (c) of this section would have required prior approval of hydraulic fracturing operations. Paragraph (d) of this section lists the information that an operator would have been required to include in a request for approval of hydraulic fracturing. Paragraph (e) of this section specifies how an operator would have had to monitor and verify cementing operations prior to hydraulic fracturing. Paragraph (f) of this section would have required mechanical integrity testing of the wellbore prior to hydraulic fracturing. Paragraph (g) of this section would have required monitoring and recording of annulus pressure during hydraulic fracturing. Paragraph (h) of this section specifies the requirements that would have applied for managing recovered fluids until approval of a permanent water disposal plan. Paragraph (i) of this section specifies information that an operator would have been required to provide to the authorized officer after completion of hydraulic fracturing operations. Paragraph (j) of this section specifies how an operator could have withheld information from the BLM and the public about the chemicals used in a hydraulic fracturing operation. Paragraph (k) of this section describes how the BLM would have approved variances from the requirements of the 2015 final rule.

For the reasons discussed earlier in this preamble, the BLM believes this section of the 2015 final rule is unnecessarily duplicative and would impose costs that would not be clearly exceeded by its benefits and, therefore, proposes to remove these 2015 final rule provisions and to restore the previous language of the section.

Section 3162.5–2 Control of Wells

The BLM proposes to amend paragraph (d) of this section by restoring the term ''fresh water-bearing'' and the phrase ''containing 5,000 ppm or less of dissolved solids.'' The proposed rule would also restore other non-substantive provisions that appeared in the previous version of the regulations.

IV. Procedural Matters

Regulatory Planning and Review (E.O. 12866, E.O. 13563, E.O. 13771)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs within the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this proposed rule is significant because it would raise similarly novel legal or policy issues.

Executive Order 13563 reaffirms the principles of Executive Order 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. Executive Order 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.

Executive Order 13771 (82 FR 9339, Feb. 3, 2017) requires Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations. Consistent with Executive Order 13771, we have estimated the cost savings for this proposed rule to be $14–$34 million per year from the 2015 final rule. Therefore, this proposed rule is expected to be a deregulatory action under Executive Order 13771.

After reviewing the requirements of this proposed rule, we have determined that it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities (*See* 5 U.S.C. 601–612). Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the Small Business Administration (SBA) size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the Economic Census. The BLM concluded that the vast majority of entities operating in the relevant sectors are small businesses as defined by the SBA. As such, the proposed rule would likely affect a substantial number of small entities.

Although the proposed rule would likely affect a substantial number of small entities, the BLM does not believe that these effects would be economically significant. The proposed rule is a deregulatory action that would remove all of the requirements placed on operators by the 2015 final rule. Operators would not have to undertake the compliance activities, either operational or administrative, that are outlined in the 2015 final rule, except to the extent the activities are required by state or tribal law, or by other pre-existing BLM regulations.

The BLM conducted an economic analysis which estimates that the average reduction in compliance costs would be a small fraction of a percent of the profit margin for small companies, which is not a large enough impact to be considered significant. For more detailed information, see section 5.3 of the Regulatory Impact Analysis (RIA) prepared for this proposed rule. The current draft RIA has been posted in the docket for the proposed rule on the *Federal eRulemaking Portal: http://www.regulations.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule is a deregulatory action that would remove all of the requirements placed on operators by the 2015 final rule. Operators would not have to undertake the compliance activities, either operational or administrative, that would have been required solely by the 2015 final rule. The screening analysis conducted by the BLM estimates the average reduction in compliance costs would be a small fraction of a percent of the profit margin for companies, which is not large enough to: have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises; cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have an annual effect on the economy of $100 million or more.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed rule is a deregulatory action, which contains no requirements that would apply to State, local, or tribal governments or to the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*) is not required for the rule. This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations upon them.

Takings (E.O. 12630)

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. This rule is a deregulatory action that would remove all of the requirements placed on operators solely by the 2015 final rule and therefore would impact some operational and administrative requirements on Federal and Indian lands. All such operations are subject to lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and regulations. This rule conforms to the terms of those leases and applicable statutes and, as such, the rule is not a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the proposed rule would not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism impact statement is not required.

The proposed rule will not have a substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the levels of government. It would not apply to states or local governments or state or local governmental entities. The rule would affect the relationship between operators, lessees, and the BLM, but it does not directly impact the states. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. More specifically, this rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and we have found that this proposed rule includes policies that could have tribal implications.

If the proposed rule is implemented, oil and gas operations on tribal and allotted lands would not be subject to the procedures or standards in the 2015 final rule. The BLM believes that rescinding the 2015 final rule will assist in preventing Indian lands from being viewed by oil and gas operators as less attractive than non-Indian lands due to unnecessary and burdensome compliance costs, thereby preventing economic harm to Indian tribes and

allottees that could have resulted from implementation of the 2015 final rule. However, other resources on those lands might have benefited from the risk reduction intended by the 2015 final rule.

Although the states with significant Federal oil and gas resources have regulatory programs addressing hydraulic fracturing operations, the oil and gas producing Indian tribes have not as uniformly promulgated regulatory programs to address hydraulic fracturing.

In light of this, the BLM is seeking comments regarding the effects of the proposed rescission of the 2015 final rule on tribes, individual allottees, and Indian resources. As discussed below, the BLM will be consulting with interested tribes on those topics, but also requests comments providing information about existing or proposed tribal regulation of hydraulic fracturing operations, the economic and environmental impacts of the proposed rescission of the 2015 final rule as it would apply to Indian lands, and whether all or any parts of the 2015 final rule should continue to apply on Indian lands.

The BLM is engaging potentially interested tribes to consult on a government-to-government basis and discuss the proposed rule. Initial tribal outreach letters for the proposed rule invite tribes to provide written comments and/or discuss, either during in-person meeting(s) or by other means, the proposed rule. The responses to the aforementioned initial tribal outreach letters will help to identify what future actions the BLM will take as part of its tribal consultation efforts for the proposed rule.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) 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 control number (44 U.S.C. 3512). Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency (44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k)). If this proposed rule is promulgated and the 2015 final rule is rescinded, there will be no need to continue the information collection activities that the OMB has pre-approved under control number 1004–0203. Accordingly, if the 2015 final rule is rescinded, the BLM will request that the OMB discontinue that control number.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) to determine whether this rule would have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). If the final EA supports the issuance of a Finding of No Significant Impact (FONSI) for the rule, the preparation of an environmental impact statement pursuant to the NEPA would not be required.

The current draft of the EA and a draft FONSI have been placed in the file for the BLM's Administrative Record for the proposed rule at the BLM 20 M Street address specified in the ''ADDRESSES'' section. The current draft EA and draft FONSI have also been posted in the docket for the proposed rule on the *Federal eRulemaking Portal: http://www.regulations.gov.* The BLM invites the public to review these documents and suggests that anyone wishing to submit comments on the draft EA and FONSI should do so in accordance with the instructions contained in the ''Public Comment Procedures'' section above.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required. Section 4(b) of Executive Order 13211 defines a ''significant energy action'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of rulemaking, and notices of rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of [OIRA] as a significant energy action.''

Since the proposal is a deregulatory action and would reduce compliance costs, it is likely to have a positive effect, if any, on the supply, distribution, or use of energy, and not a significant adverse effect. As such, we do not consider the proposed rule to be a ''significant energy action'' as defined in Executive Order 13211.

Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Author

The principal authors of this rule are Justin Abernathy, Senior Policy Analyst, BLM, Washington Office; James Tichenor, Economist, BLM, Washington Office; Ross Klein, (Acting) Natural Resource Specialist, BLM, Washington Office; Subijoy Dutta, Lead Petroleum Engineer, BLM, Washington Office; Jeffrey Prude, Petroleum Engineer/Oil and Gas Program Lead, BLM, Bakersfield Field Office; and James Annable, Petroleum Engineer, BLM, Royal Gorge Field Office; assisted by Charles Yudson of the BLM's division of Regulatory Affairs and by the Department of the Interior's Office of the Solicitor.

Dated: July 21, 2017.

Katharine S. MacGregor,

Acting Assistant Secretary, Land and Minerals Management.

List of Subjects in 43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authorities stated below, the Bureau of Land Management proposes to amend 43 CFR part 3160 as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C.

1732(b), 1733, and 1740; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

Subpart 3160—Onshore Oil and Gas Operations: General

■ 2. Revise § 3160.0–3 to read as follows:

§ 3160.0–3 Authority.

The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. § 441 (43 U.S.C. 1457), the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (40 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (94 Stat. 2964), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701), the Indian Mineral Development Act of 1982 (25 U.S.C. 2102), and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983) under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the responsibility for leasing of restricted Indian lands, to the Bureau of Land Management.

■ 3. Amend § 3160.0–5 by removing the definitions of ''annulus,'' ''bradenhead,'' ''Cement Evaluation Log (CEL),'' ''confining zone,'' ''hydraulic fracturing,'' ''hydraulic fracturing fluid,'' ''isolating or to isolate,'' ''master hydraulic fracturing plan,'' ''proppant,'' and ''usable water,'' and by adding the definition of ''fresh water'' in alphabetical order to read as follows:

§ 3160.0–5 Definitions.

* * * * *

Fresh water means water containing not more than 1,000 ppm of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant or aquatic life, unless otherwise specified in applicable notices or orders.

* * * * *

Subpart 3162—Requirements for Operating Rights Owners and Operators

■ 4. Amend § 3162.3–2 by revising the first sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 3162.3–2 Subsequent well operations.

(a) A proposal for further well operations shall be submitted by the operator on Form 3160–5 for approval by the authorized officer prior to commencing operations to redrill, deepen, perform casing repairs, plug-back, alter casing, perform nonroutine fracturing jobs, recomplete in a different interval, perform water shut off, commingling production between intervals and/or conversion to injection. * * *

(b) Unless additional surface disturbance is involved and if the operations conform to the standard of prudent operating practice, prior approval is not required for routine fracturing or acidizing jobs, or recompletion in the same interval; however, a subsequent report on these operations must be filed on Form 3160–5.

* * * * *

■ 5. Revise § 3162.3–3 to read as follows:

§ 3162.3–3 Other lease operations.

Prior to commencing any operation on the leasehold which will result in additional surface disturbance, other than those authorized under § 3162.3–1 or § 3162.3–2, the operator shall submit a proposal on Form 3160–5 to the authorized officer for approval. The proposal shall include a surface use plan of operations.

■ 6. Amend § 3162.5–2 by revising the heading and first sentence of paragraph (d) to read as follows:

§ 3162.5–2 Control of wells.

* * * * *

(d) *Protection of fresh water and other minerals.* The operator shall isolate freshwater-bearing and other usable water containing 5,000 ppm or less of dissolved solids and other mineral-bearing formations and protect them from contamination. * * *

[FR Doc. 2017–15696 Filed 7–24–17; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 10–51 and 03–123; DA 17–656]

Petition for Partial Reconsideration, or in the Alternative, Suspension of Action in Rulemaking Proceeding

Correction

In proposed rule 2017–15302, appearing on page 33856, in the issue of Friday, July 21, 2017, make the following correction:

On page 33856, in the second column, in the **DATES** section, in the fourth line, ''July 31, 2017'' should read ''August 17, 2017''.

[FR Doc. C1–2017–15302 Filed 7–24–17; 8:45 am]

BILLING CODE 1301–00–D

Notices

Federal Register

Vol. 82, No. 141

Tuesday, July 25, 2017

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

Office of the Secretary

USDA Increases the Fiscal Year 2017 Raw Sugar Tariff-Rate Quota

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The Office of the Secretary of the U.S. Department of Agriculture is providing notice of an increase in the fiscal year (FY) 2017 raw cane sugar tariff-rate quota (TRQ) of 244,690 metric tons raw value (MTRV).

DATES: Applicable July 25, 2017.

FOR FURTHER INFORMATION CONTACT: Souleymane Diaby, Import Policies and Export Reporting Division, Foreign Agricultural Service, AgStop 1021, U.S. Department of Agriculture, Washington, DC 20250–1021; or by telephone (202) 720–2916; or by fax to (202) 720–8461; or by email to *Souleymane.Diaby@fas.usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of the U.S. Department of Agriculture is providing notice of an increase in the fiscal year (FY) 2017 raw cane sugar tariff-rate quota (TRQ) of 244,690 MTRV. On May 6, 2016, the Office of the Secretary established the FY 2017 TRQ for raw cane sugar at 1,117,195 MTRV (1,231,497 short tons raw value, STRV *), the minimum to which the United States is committed under the World Trade Organization (WTO) Uruguay Round Agreements. Pursuant to Additional U.S. Note 5 to Chapter 17 of the U.S. Harmonized Tariff Schedule (HTS) and Section 359k of the Agricultural Adjustment Act of 1938, as amended, the Secretary of Agriculture gives notice of an increase in the quantity of raw cane sugar eligible to enter at the lower rate of duty during FY 2017 by 244,690 MTRV (269,724 STRV). With this increase, the overall FY 2017 raw sugar TRQ is now 1,361,885 MTRV (1,501,221 STRV). Raw cane sugar under this quota must be accompanied by a certificate for quota eligibility and may be entered until September 30, 2017. The Office of the U.S. Trade Representative will allocate this increase among supplying countries and customs areas.

USDA also today announced that all sugar entering the United States under the FY 2017 raw sugar TRQ will be permitted to enter U.S. Customs territory through October 31, 2017, a month later than the usual last entry date. Additional U.S. Note 5(a)(iv) to Chapter 17 of the HTS authorizes the Secretary of Agriculture to permit sugar allocated under a given quota year to be entered in previous or subsequent quota year.

This action is being taken after a determination that additional supplies of raw cane sugar are required in the U.S. market. USDA will closely monitor stocks, consumption, imports and all sugar market and program variables on an ongoing basis, and may make further program adjustments during FY 2017 if needed.

* Conversion factor: 1 metric ton = 1.10231125 short tons.

Jason Hafemeister,

Acting Deputy Under Secretary, Trade and Foreign Agricultural Affairs.

Dated: July 17, 2017.

Robert Johannson,

Acting Under Secretary, Farm Production and Conservation.

[FR Doc. 2017–15572 Filed 7–24–17; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0058]

Notice of Request for Extension of Approval of an Information Collection; National Animal Health Monitoring System; Emergency Epidemiologic Investigations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval for emergency epidemiologic investigations, an information collection to support the National Animal Health Monitoring System.

DATES: We will consider all comments that we receive on or before September 25, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0058.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0058, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0058* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on emergency epidemiologic investigations contact Mr. Bill Kelley, Supervisory Management and Program Analyst, Center for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B, MS 2E6, Fort Collins, CO 80526; (970) 494–7270. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION: *Title:* National Animal Health Monitoring System; Emergency Epidemiologic Investigations.

OMB Control Number: 0579–0376.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to protect the health of U.S. livestock and poultry populations

by preventing the introduction and interstate spread of serious diseases and pests of livestock and by eradicating such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects nationally representative, statistically valid, and scientifically sound data on the prevalence and economic importance of livestock diseases and associated risk factors.

APHIS NAHMS officials are often asked by State and local animal health officials to carry out epidemiological investigations as diseases impact animal health populations. Emergency epidemiological investigations will be used to collect information on:

- Outbreaks of animal diseases with unknown etiology and transmission, that are highly contagious, and that have high case fatality.
- Outbreaks of known animal diseases that are highly contagious, virulent, and have unknown source of infection or mode of transmission.
- Outbreaks of emerging, zoonotic, or foreign animal diseases within the United States.
- Outbreaks in which a delay in data collection could result in the loss of epidemiologic information essential to assist laboratory investigations and/or disease control efforts.

These investigations will normally consist of an on-farm questionnaire administered by APHIS-designated data collectors. The information collected through emergency epidemiologic investigations will be analyzed and used to:

- Identify the scope of the problem.
- Define and describe the affected population and susceptible population.
- Predict or detect trends in disease emergence and movement.
- Understand the risk factors for disease.
- Estimate the cost of disease control and develop intervention options.
- Make recommendations for disease control.
- Provide parameters for animal disease spread models.
- Provide lessons learned and guidance on the best ways to avoid future outbreaks based on thorough analysis of data from current outbreak(s).
- Identify areas for further research, *e.g.* mechanisms of disease transfer, vaccine technology, and diagnostic testing needs.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, such as electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.72 hours per response.

Respondents: Livestock owners, individuals, and State and local animal health officials.

Estimated annual number of respondents: 8,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 8,000.

Estimated total annual burden on respondents: 5,798 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 19th day of July 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–15575 Filed 7–24–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Broadband Access Loan and Loan Guarantee Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funds Availability (NOFA).

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the second application window for fiscal year (FY) 2017 for the Rural Broadband Access Loan and Loan Guarantee Program (the Broadband Program). Announcing a second application window within the current FY is a statutory requirement of the 2014 Farm Bill. This new procedure amends previous announcements related to this application window and is designed to improve loan application processing, better manage work flow, and encourage infrastructure investment and job creation in rural communities in need of improved broadband service.

In addition to announcing this application window, RUS revises the minimum and maximum amounts for broadband loans for the second window for FY 2017.

The agency has $115.2 million available in FY 2017 appropriated and carryover funds, and of this amount the agency expects that at least $60 million is available to fund applications received in this window. Further, the RUS typically solicits applications to under a Notice of Solicitation of Applications (NOSA) during the fiscal year. However, since a full year Appropriation Act for FY 2017 has been enacted, RUS is announcing the amount of funding currently available.

DATES: Applications under this NOFA will be accepted immediately through September 30, 2017. RUS will review, evaluate and begin to process loan applications as they are received. After September 30, 2017, RUS will evaluate all applications that have been deemed to be complete and shall give priority to applications in accordance with 7 CFR 1738.203 if the total amount of funding sought by eligible applicants with completed applications submitted by September 30, 2017, exceeds the funding that is available to RUS for the Broadband Program.

If the total amount of funding sought by eligible applicants with completed applications submitted by September 30, 2017, does not exceed the funding that is available to the RUS for the Broadband Program, applications will be processed and reviewed in the order received. Loan offers are limited to the funds available at the time of the agency's decision to approve an application. RUS reserves the option of using the queue created in this round by the priority or first-come, first-served method as applicable to fund projects in the event additional funding becomes available.

Applications can only be submitted through the agency's online application system through September 30, 2017.

Although applications that are incomplete once the September 30, 2017 deadline has passed will not be considered for FY 2017 funding, applicants may continue working on their applications in the online system beyond that date in order to prepare for additional funding opportunities that may be announced in future fiscal years.

FOR FURTHER INFORMATION CONTACT: For further information contact Richard Anderson, Acting Deputy Assistant Administrator, Loan Originations and Approval Division, Rural Utilities Service, Room 2844, STOP 1597, 1400 Independence Avenue SW., Washington, DC 20250–1597, Telephone: (202) 720–0800, or email: *Richard.Anderson@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

General Information

The Rural Broadband Access Loan and Loan Guarantee Program (the ''Broadband Program'') is authorized by the Rural Electrification Act (7 U.S.C. 901 *et seq.*), as amended by the Agricultural Act of 2014 (P. L. 113–79), also referred to as the 2014 Farm Bill.

During FY 2017, loans will be made available for the construction, improvement, and acquisition of facilities and equipment to provide service at the broadband lending speed for eligible rural areas. Applications are subject to the requirements of 7 CFR part 1738.

Application Assistance

RUS offers pre-application assistance, in which National Office staff as well as the General Field Representative assigned to the project will review the draft application, provide detailed comments, and identify when an application is not meeting eligibility requirements for funding. The online application system will allow RUS staff to assist an applicant with completing every part of an application as it is being developed. Application assistance will be available schedule permitting, generally on a first-come, first-served basis through September 22, 2017.

Once an application is formally submitted, RUS will begin reviewing an application for conformance with the broadband regulation with respect to eligibility and technical and financial feasibility as soon as practical after it has been determined to be complete. The submission of an application will establish the receipt date of the application and its place in the first-come, first-served queue. In addition, once an application is formally submitted through the online system, the applicant may be asked for additional information which would assist the agency in the underwriting process or help clarify aspects of an otherwise complete application. If an application is ultimately found to be incomplete or inadequate, a detailed explanation will be provided to the applicant.

To further assist in the preparation of applications, an application guide is available online at: *http://www.rd.usda.gov/programs-services/farm-bill-broadband-loans-loan-guarantees.* Application guides may also be requested from the RUS contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Application requirements: All requirements for submission of an application under the Broadband Program are subject to 7 CFR part 1738.

Application Materials/Submission: Applications must be submitted through the agency's online application system located at *https://www.rd.usda.gov/programs-services/rd-apply.* All materials required for completing an application are included in the online system.

Minimum and Maximum Loan Amounts

Loans under this authority will not be made for less than $100,000. The maximum loan amount that will be considered for the second round for FY 2017 is now raised to $20,000,000.

Required Definitions for Broadband Program Regulation

The regulation for the Broadband Program requires that certain definitions affecting eligibility be revised and published from time to time by the agency in the **Federal Register.** For the purposes of this NOFA, the agency is revising the definition of ''Broadband Service'', such that for applications submitted under this window, existing Broadband Service, the rate used to determine if an area is eligible for funding, shall mean the minimum rate-of-data transmission of twenty-five megabits downstream and three megabits upstream for both mobile and fixed service. With respect to the ''Broadband Lending Speed'', the rate at which applicants must propose to offer new broadband service is a minimum bandwidth of twenty-five megabits downstream and three megabits upstream for both mobile and fixed service to the customer.

Priority for Approving Loan Applications

Applications for the second application window in FY 2017 will be accepted from the publication date of this NOFA through September 30, 2017. Unfunded applications from the first application window will not automatically be considered in the second application window; applicants would need to reapply within the second application window. Although review of applications will start when they are submitted, after the closing date of the window, all applications will be evaluated and ranked together based on the percentage of unserved households in the proposed funded service area. Subject to available funding, eligible applications that propose to serve the highest percentage of unserved households will receive funding offers before other eligible applications that have been submitted. The amount available will be published on the agency Web page once all budgetary allocations have been completed.

If the total amount of funding sought by eligible applicants with completed applications submitted within this application window does not exceed the funding that is available to the RUS for this program, applications will be processed and reviewed in the order received. Loan offers are limited to the funds available at the time of the agency's decision to approve an application. The agency reserves the option of using the queue created in this round by the priority or first-come, first-served method as applicable to fund projects in the event additional funding becomes available.

Applications will not be accepted after September 30, 2017, until a new application opportunity has been opened with the publication of an additional NOFA in the **Federal Register.**

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with Broadband loans, as covered in this NOFA, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0130.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a

public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Stop 9410,Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Christopher McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2017–15497 Filed 7–24–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Delaware Advisory Committee to the Commission will convene by conference call, on Monday, August 21 at 10:00 a.m. (EDT). The purpose of the meeting is to make preparations for a briefing meeting on Policing and Implicit Bias in Delaware, including selecting the meeting date and venue and determining the list of invited expert presenters.

DATES: Monday, August 21, 2017, at 10:00 a.m. (EDT).

Public Call–In Information: Conference call number: 1–888–737–3705 and conference call ID: 5272563.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–737–3705 and conference call ID: 5272563. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call number: 1–888–737–3705 and conference call ID: 5272563.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=240;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

I. Welcome and Introductions
Rollcall
II. Planning Meeting
—Discuss Project Planning
III. Other Business
IV. Adjournment

Dated: July 20, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–15560 Filed 7–24–17; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–110–2017]

Foreign-Trade Zone 18—San Jose, California; Application for Subzone Expansion; Lam Research Corporation; Livermore, California

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of San Jose, grantee of FTZ 18, requesting expanded subzone status for the facilities of Lam Research Corporation (Lam), located in Livermore, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on July 20, 2017.

Subzone 18F consists of the following sites in Fremont and Livermore: *Site 1* (29 acres) 4650 Cushing Parkway, Fremont; *Site 4* (14.82 acres) 1 and 101 Portola Avenue, Livermore (7.82 acres located at 101 Portola Avenue expiring on 9/30/2017); *Site 5* (4.4 acres)—7364 Marathon Drive and 7150 Patterson Pass Road, Unit G, Livermore; *Site 7* (0.91 acres)—6757 Las Positas Road, Livermore; *Site 8* (0.44 acres)—7888 Marathon Drive, Livermore; *Site 9* (1.6 acres)—41707 Christy Street, Fremont; *Site 11* (1.19 acres)—4050 Starboard Drive, Fremont; and, *Site 12* (0.98 acres)—7650 Marathon Drive, Livermore. The applicant is now requesting authority to expand the subzone to include the temporary 7.82 acres of *Site 4* mentioned above on a permanent basis. The expanded subzone would be subject to the existing activation limit of FTZ 18.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be

addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is September 5, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 18, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: July 20, 2017.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2017–15570 Filed 7–24–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–816]

Certain Steel Nails From Malaysia: Final Results of the Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On December 6, 2016, the Department of Commerce (Department) published a notice of preliminary results of a changed circumstance review (CCR) of the antidumping duty order on certain steel nails (nails) from Malaysia. Based on our analysis of the comments from interested parties, we continue to find that Inmax Sdn. Bhd. (Inmax Sdn) and Inmax Industries Sdn. Bhd. (Inmax Industries) (collectively, Inmax Companies) should be collapsed. The combined entity's antidumping duty cash deposit rate is the current antidumping duty cash deposit rate assigned to Inmax Sdn for purposes of determining antidumping duty liability.

DATES: July 25, 2017.

FOR FURTHER INFORMATION CONTACT: Moses Song, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5041.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this CCR on November 17, 2015, and published the *Preliminary Results* on December 6, 2016.[1] For a description of events that have occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Order

The merchandise covered by the *Order*[3] is certain steel nails having a nominal shaft length not exceeding 12 inches.[4] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. A complete description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[5]

Analysis of Comments Received

All issues raised by interested parties in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is appended to this notice.

Final Results of the Changed Circumstances Review

Upon review of the comments received and the record evidence, the Department continues to find that the Inmax Companies meet the criteria to be collapsed into a single entity and should be collapsed for purposes of antidumping duty liability in this proceeding. While, historically, the Department has not applied 19 CFR 351.401(f) in the context of CCRs, the Department finds that for purposes of this particular segment of the proceeding, the criteria in the regulation are relevant to ensure that the administration and effect of the underlying antidumping duty order are not undermined.[6]

Specifically, we determine that: (1) Inmax Sdn and Inmax Industries have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and, (2) there is a ''significant potential for the manipulation of price or production,'' if we do not collapse the companies. We conclude that allowing a company to avoid paying the cash deposits, specifically determined for it as a result of an investigation, through use of affiliated production facilities, is an evasion of the antidumping duty order, thereby warranting a CCR.

Accordingly, as discussed further in the Issues and Decision Memorandum, we find, in sum, that: (1) There were sufficient changed circumstances which established good cause to initiate and conduct this review; (2) the Inmax Companies should be collapsed; (3) the collapsed entity of the Inmax Companies is subject to the cash deposit rate assigned to Inmax Sdn in the investigation; and, (4) the results of this review are applied prospectively, from the date of the publication of the *Final Results.*[7]

Instructions to U.S. Customs and Border Protection

As a result of this determination, the Department finds that both Inmax Sdn

[1] *See Certain Steel Nails from Malaysia: Initiation of Antidumping Duty Changed Circumstances Review,* 80 FR 71772 (November 17, 2015) (''*Initiation Notice*''); *see also Certain Steel Nails from Malaysia: Preliminary Results of the Changed Circumstances Review,* 81 FR 87907 (December 6, 2016) (''*Preliminary Results*'').

[2] *See* ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Changed Circumstances Review of Certain Steel Nails from Malaysia,'' dated concurrently with and hereby adopted in this notice (''Issues and Decision Memorandum'').

[3] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015) (the *Order*).

[4] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

[5] *See* Issues and Decision Memorandum.

[6] *See, Hontex Enters.* v. *United States,* 342 F. Supp. 2d 1225, 1234 (CIT 2004) (upholding Commerce's going beyond the traditional regulatory analysis to address significant potential for manipulation through criteria other than those listed in the regulations); *see also, Certain Carbon Steel Cut-To-Length Plate from Austria,* 82 FR 16366 (April 4, 2017) and accompanying Issues and Decision Memorandum, at Comment 5 (''While the regulations only addresses certain types of entities, 'the Department has found it to be instructive' in determining whether other types of entities should be collapsed.'').

[7] *See* the *Order,* 80 FR 39994; *see also* Issues and Decision Memorandum.

and Inmax Industries are subject to the cash deposit rate currently assigned to Inmax Sdn (*i.e.,* 39.35 percent).[8] Therefore, the Department will instruct U.S. Customs and Border Protection to continue suspension of liquidation and to collect estimated antidumping duties for all shipments of subject merchandise produced and exported by Inmax Sdn and/or Inmax Industries at the current cash deposit rate currently applicable to such entries, *i.e.,* the cash deposit rate of 39.35 percent assigned to Inmax Sdn, from the date of the publication of the *Final Results.*[9] This cash deposit requirement shall remain in effect until further notice.

Notification to Parties

This notice is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

The Department is issuing and publishing these results in accordance with sections 751(b)(1) and (4) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 19 CFR 351.221(c)(3)(i).

Dated: July 14, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of Issues
V. Recommendation

[FR Doc. 2017–15518 Filed 7–24–17; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See* the *Order,* 80 FR 39994 (July 13, 2015).

[9] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–894]

Certain Tapered Roller Bearings From the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Issued July 18, 2017.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse at 202–482–6345, or Manuel Rey at 202–482–5518, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On June 28, 2017, the U.S. Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of certain tapered roller bearings (TRBs) from the Republic of Korea (Korea), filed in proper form, on behalf of the Timken Company (the petitioner).[1] The petitioner is a domestic producer of TRBs.[2]

On July 3, 2017, the Department requested supplemental information pertaining to certain areas of the Petition.[3] The petitioner filed its response to this request, including corrections to the margin calculations and revised scope language, on July 6, 2017.[4] On July 11, 2017, the petitioner filed an additional amendment to the Petition.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of TRBs are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing TRBs in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

The Department finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigation that the petitioner is requesting.[6]

Period of Investigation

Because the Petition was filed on June 28, 2017, the period of investigation (POI) is April 1, 2016, through March 31, 2017.

Scope of the Investigation

The product covered by this investigation is TRBs from Korea. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[7]

As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[8] The Department will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Monday,

[1] *See* Petition for the Imposition of Antidumping Duties on Imports of Certain Tapered Roller Bearings from the Republic of Korea, dated June 28, 2017 (the Petition).

[2] *See* Volume I of the Petition, at 1 and Exhibit I–1.

[3] *See* Department Letter re: Petition for the Imposition of Antidumping Duties on Imports of Certain Tapered Roller Bearings from the Republic of Korea: Supplemental Questions, dated July 3, 2017.

[4] *See* Letter from the petitioner re: Petitioner's Response to the Department of Commerce's July 3, 2017 Supplemental Questionnaire Regarding the Petition for the Imposition of Antidumping Duties on Imports of Tapered Roller Bearings from the Republic of Korea, dated July 6, 2017 (Petition Supplement).

[5] *See* Letter from the petitioner re: Petitioner's Scope Clarification Regarding the Antidumping Investigation on Certain Tapered Roller Bearings from the Republic of Korea, dated July 11, 2017 (Scope Clarification).

[6] *See* ''Determination of Industry Support for the Petition'' section, below.

[7] *See* Petition Supplement, at 1–5 and Exhibit SQ–1; *see also* Scope Clarification.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

August 7, 2017, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Thursday, August 17, 2017, which is 10 calendar days from the initial comments deadline.[10]

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[11] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadline.

Comments on Product Characteristics for AD Questionnaires

The Department will provide interested parties an opportunity to comment on the appropriate physical characteristics of TRBs to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics used by manufacturers to describe TRBs, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on August 1, 2017. Any rebuttal comments must be filed by 5:00 p.m. ET on August 8, 2017. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that TRBs, as defined in the scope of the investigation, constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of

[10] *See* 19 CFR 351.303(b).

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx and a handbook can be found at https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] For a discussion of the domestic like product analysis, *see* Antidumping Duty Investigation Initiation Checklist: Tapered Roller Bearings from the Republic of Korea (Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering Tapered Roller Bearings from the Republic of Korea, (Attachment II). This checklist is dated concurrently with, and hereby adopted by, this notice and on file electronically *via* ACCESS. Access to documents filed *via* ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

Investigation'' section above. To establish industry support, the petitioner provided its net sales in 2015 and compared its net sales to the estimated total shipments of the domestic like product in 2015 for the entire domestic industry.[15] Because data regarding total production of the domestic like product are not reasonably available to the petitioner, and the petitioner has established that shipments are a reasonable proxy for production, we relied on the shipment data for purposes of measuring industry support.[16]

On July 5, 2017, we received a submission from RBC Oklahoma, Inc. (RBC), a domestic producer of TRBs. In the submission, RBC states that it supports the AD petition on TRBs from Korea. In addition, RBC provided its 2015 shipments of the domestic like product.[17]

We have relied upon information provided in the Petition, Petition Supplement, and the letter provided by RBC for purposes of measuring industry support.[18]

Based on information provided in the Petition, Petition Supplement, the letter from RBC, and other information readily available to the Department, we determine that the petitioner has met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total shipments [19] of the domestic like product.[20] Based on the information above, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act for the Petition because the domestic producers (or workers) who support the Petition account for more than 50 percent of the shipments of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. In addition, the information above establishes that the domestic producers and workers who support the Petition account for more than 50 percent of total shipments of the domestic like product, pursuant to section 734(c)(4)(D) of the Act. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[21]

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigation that it is requesting the Department initiate.[22]

Allegation and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

The petitioner contends that the industry's injured condition is illustrated by the impact on the domestic industry's reduced market share; underselling and price depression or suppression; lost sales and revenues; decline in wages, hours, and employment; declines in production, capacity utilization, and shipments; decreases in capital expenditures; plant closure and declines in financial performance.[24] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[25]

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate an AD investigation of imports of TRBs from Korea. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Initiation Checklist.

Export Price and Constructed Export Price

The petitioner based the U.S. price on: (1) Average unit values (AUVs) of publicly-available import data for Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8482.20.00.40, 8482.20.00.70, 848220.00.81, and 848299.15.50, covering the period April 2016 through March 2017; [26] and (2) price quotes for sales of TRBs produced in, and exported from, Korea and offered for sale in the United States.[27]

With respect to the AUVs, the petitioner used export price (EP) methodology. The petitioner conservatively made no deductions from EP. With respect to the price quotes, the petitioner used constructed export price (CEP) methodology because it had reason to believe that sales are made through U.S. affiliates.[28] Where applicable, the petitioner made deductions from CEP for movement expenses, consistent with the terms of sale.[29]

Normal Value

The petitioner was unable to obtain home market prices for TRBs and, therefore, calculated NV based on constructed value (CV).[30]

Normal Value Based on CV

Pursuant to 773(e) of the Act, CV consists of the cost of manufacturing (COM); selling, general and administrative (SG&A) expenses; financial expenses; and packing expenses. The petitioner calculated COM during the POI, adjusted for known differences based on information available to the petitioner.[31] Because publicly available information pertaining to the cost of raw materials in Korea was not reasonably available to it, the petitioner based its raw material cost calculations on its own

[15] *See* Volume I of the Petition, at I–8 and I–9 and Exhibit I–2. The petitioner states that there are no publicly available sources of data for U.S. production of the domestic like product in 2016. Therefore, the petitioner contends that shipment data from the U.S. Census Bureau's Annual Survey of Manufacturers provides the best available and reasonable proxy for U.S. production. The latest year for which such data are available is 2015. *Id.,* at I–8, I–9 and Exhibit I–2; *see also* Petition Supplement, at SQ–10 and SQ–11.

[16] *See* Initiation Checklist, at Attachment II.

[17] *See* Letter from RBC Oklahoma, Inc., dated July 5, 2017, at 1–2.

[18] *See* Initiation Checklist, at Attachment II.

[19] As mentioned above, the petitioner established that shipments are a reasonable proxy for production data. Section 351.203(e)(1) of the Department's regulations states ''production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels.''

[20] *See* Initiation Checklist, at Attachment II.

[21] *Id.*

[22] *Id.*

[23] *See* Volume I of the Petition, at I–20 and Exhibit I–10.

[24] *Id.,* at I–20—I–32, Exhibit I–7, Exhibit I–8, and Exhibits I–11 to I–16; *see also* Supplemental Response, at SQ–6.

[25] *See* Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering Certain Tapered Roller Bearings from the Republic of Korea.

[26] *See* Initiation Checklist.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

experience.[32] The petitioner valued labor, electricity, and natural gas inputs using publicly available data multiplied by the product-specific usage rates.[33] Because publicly-available information pertaining to the cost of factory overhead in Korea was not reasonably available it, the petitioner based its factory overhead cost calculations on its own experience.[34] To calculate the SG&A expense rate, the petitioner relied on the fiscal year end (FYE) December 31, 2016, audited financial statements of Iljin Global Co., Ltd. (Iljin), a Korean producer of comparable merchandise.[35] To calculate the financial expense rate, the petitioner relied on the FYE December 31, 2016, audited financial statements of Iljin.[36] Because Iljin's financial statements showed net financial income for FY 2016, the petitioner set the financial expense rate to zero and did not include financial expenses in its CV calculations.

Because, as noted above, the petitioner was unable to obtain information pertaining to home market prices, the petitioner calculated NV based on CV.[37] Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A, financial expenses, packing expenses, and profit. The petitioner calculated CV using the same COP described above, adding an amount for profit.[38] The petitioner calculated the profit rate based on the FYE December 31, 2016, audited financial statements of Iljin.[39] The profit rate was applied to the corresponding total COM, SG&A, and financial expenses calculated above to derive CV.[40]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of TRBs from Korea, are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP and CEP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margins for TRBs from Korea are between 46.28 and 132.24 percent.[41]

Initiation of Less-Than-Fair-Value Investigation

Based upon our examination, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of TRBs from Korea are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and countervailing duty (CVD) law were made.[42] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[43] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation.[44]

Respondent Selection

The petitioner named 49 companies in Korea[45] as producers/exporters of TRBs. Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of companies is large, the Department intends to review U.S. Customs and Border Protection (CBP) data for U.S. imports of TRBs during the POI under the appropriate HTSUS subheadings, and if it determines that it cannot individually examine each company based upon the Department's resources, then the Department will select respondents based on those data. We intend to release CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of the announcement of the initiation of this investigation. Comments regarding the CBP data and respondent selection should be submitted seven calendar days after the placement of the CBP data on the record of this investigation. Interested parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for initial comments.

Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to make our decision regarding respondent selection within 20 days of publication of this notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://enforcement.trade.gov/apo.*

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the government of Korea *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of TRBs from Korea are materially injuring or threatening material injury to a U.S. industry.[46] A negative ITC determination will result in this investigation being terminated.[47] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is

[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *See* Initiation Checklist.

[42] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).
[43] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015).
[44] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*
[45] *See* Volume I of the Petition, at Exhibit I–6.

[46] *See* section 733(a) of the Act.
[47] *Id.*

being submitted[48] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[49] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[50] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of a petition filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[51] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: July 18, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation is certain tapered roller bearings. The scope covers all tapered roller bearings with a nominal outside cup diameter of eight inches and under, regardless of type of steel used to produce the bearing, whether of inch or metric size, and whether the tapered roller bearing is a thrust bearing or not. Certain tapered roller bearings include: Finished cup and cone assemblies entering as a set, finished cone assemblies entering separately, and finished parts (cups, cones, and tapered rollers). Certain tapered roller bearings are sold individually as a set (cup and cone assembly), as a cone assembly, as a finished cup, or packaged as a kit with one or several tapered roller bearings, a seal, and grease. The scope of the investigation includes finished rollers and finished cones that have not been assembled with rollers and a cage. Certain tapered roller bearings can be a single row or multiple rows (*e.g.,* two- or four-row), and a cup can handle a single cone assembly or multiple cone assemblies.

Finished cups, cones, and rollers differ from unfinished cups, cones, and rollers in that they have undergone further processing after heat treatment, including, but not limited to, final machining, grinding, and/or polishing. Mere heat treatment of a cup, cone, or roller (without any further processing after heat treatment) does not render the cup, cone, or roller a finished part for the purpose of this investigation. Finished tapered roller bearing parts are understood to mean parts which, at the time of importation, are ready for assembly (if further assembly is required) and require no further finishing or fabrication, such as grinding, lathing, machining, polishing, heat treatment, *etc.* Finished parts may require grease, bolting, and/or pressing as part of final assembly, and the requirement that these processes be performed, subsequent to importation, does not remove an otherwise finished tapered roller bearing from the scope.

Tapered roller bearings that have a nominal outer cup diameter of eight inches and under that may be used in wheel hub units, rail bearings, or other housed bearings, but entered separately, are included in the scope to the same extent as described above. All tapered roller bearings meeting the written description above, and not otherwise excluded, are included, regardless of coating.

Excluded from the scope of this investigation are:

(1) Unfinished parts of tapered roller bearings (cups, cones, and tapered rollers);

(2) cages, whether finished or unfinished;

(3) the non-tapered roller bearing components of subject kits (*e.g.,* grease, seal); and

(4) tapered roller bearing wheel hub units, rail bearings, and other housed tapered roller bearings (flange, take up cartridges, and hanger units incorporating tapered rollers).

Tapered roller bearings subject to this investigation are primarily classifiable under subheadings 8482.20.0040, 8482.20.0061, 8482.20.0070, 8482.20.0081, 8482.91.0050, 8482.99.1550, and 8482.99.1580 of the Harmonized Tariff Schedule of the United States (HTSUS).[52] Parts may also enter under 8482.99.4500. While the HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2017–15563 Filed 7–24–17; 8:45 am]

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[48] *See* 19 CFR 351.301(b).

[49] *See* 19 CFR 351.301(b)(2).

[50] *See* section 782(b) of the Act.

[51] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* Frequently Asked Questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[52] Prior to July 2016, products entering under 8482.20.0061 entered under 8482.20.0060, products entering under 8482.20.0081 entered under 8482.20.0080, and products entering under 8482.99.1550 entered under 8482.99.1540.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Preliminary Results of Countervailing Duty Administrative Review; 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 countervailing duty (CVD) order on certain pasta from Italy. The period of review (POR) is January 1, 2015, through December 31, 2015. We preliminarily find that the sole respondent under review, Liguori Pastificio dal 1820 S.p.A. (Liguori), received countervailable subsidies during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Issued July 25, 2017.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1785.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 2016, the Department published a notice of an opportunity to request an administrative review of the countervailing duty order on certain pasta from Italy.[1] We received review requests from the following eight producers/exporters of the subject merchandise: (1) GR.A.M.M. S.R.L. (GR.A.M.M.); (2) La Fabbrica Della Pasta Di Gragnano S.A.S. di Antonio Moccia (La Fabbrica); (3) Liguori Pastificio dal 1820 S.p.A. (Liguori); (4) Pastificio Andalini S.p.A. (Andalini); (5) Pastificio Labor S.r.L.(Labor); (6) Pastificio Zaffiri S.r.l (Zaffiri); (7) Premiato Pastificio Afeltra S.r.l (Premiato); (8) Tesa SrL (Tesa).[2] On September 12, 2016, we initiated a review of the eight producers/exporters.[3] On November 7, 2016, Tesa SrL withdrew its request for review.[4] On October 27, 2016, we selected Liguori and Andalini as mandatory respondents in this review.[5] On December 12, 2016, Andalini, GR.A.M.M., La Fabbrica, Labor, Premiato, and Zaffiri, withdrew their requests for administrative review.[6] As a result of the timely withdrawals of their requests for review, we rescinded the administrative review with respect to these seven companies.[7]

Scope of the Order

The merchandise covered by this order is certain pasta from Italy and is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.[8]

Methodology

We are conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[9] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and 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 on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated the following individual countervailable subsidy rate for the mandatory respondent, Liguori, for the period January 1, 2015 through December 31, 2015:

Producer/exporter	Net subsidy rate (percent)
Liguori Pastificio dal 1820 S.p.A. (Liguori)	1.62

Disclosure and Public Comment

We will disclose to parties in this review the calculations performed in reaching the preliminary results within five days of publication of these preliminary results.[10] Interested parties may submit written comments (case briefs) on the preliminary results no later than 30 days from the date of publication of this **Federal Register** notice, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[11] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the

[1] On July 5, 2016, we published a notice of ''Opportunity to Request Administrative Review of the CVD *Order.*

[2] *See* Letter from Pastificio Zaffiri S.r.l. to the Department, ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by Pastificio Zaffiri S.r.l.,'' (July 29, 2016); Letter from Pastificio Andalini, S.p.A., ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by Pastificio Andalini, S.p.A.,'' (July 29, 2016); Letter from Premiato Pastificio Afeltra S.r.l.,''Certain Pasta from Italy, C–475–819; Request for Administrative Review by Premiato Pastificio Afeltra S.r.l.,'' (July 29, 2016); Letter from La Fabbrica della Pasta di Gagnano S.A.S., ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by La Fabbrica della Pasta di Gragnano S.A.S.; Letter from Labor S.R.L., ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by Labor S.R.L.,'' (July 29, 2016); Letter from GR.A.M.M. S.R.L., ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by GR.A.M.M. S.R.L.,'' (July 29, 2016); Letter from Liguori Pastificio dal 1820 S.p.A., ''Certain Pasta from Italy: Countervailing Duty Administrative Review Request,'' (August 1, 2016); letter from Tesa SrL, ''Pasta from Italy; Request for Administrative Review,'' (August 1, 2016).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 62720 (September 12, 2016).

[4] *See* Letter from Tesa SrL to the Department, ''Pasta from Italy; Withdrawal of request for Administrative Review,'' dated November 7, 2016.

[5] *See* Letter to James Maeder, Senior Office Director, AD/CVD Operations, Office I, ''Countervailing Duty Administrative Review of Certain Pasta from Italy: Respondent Selection,'' dated October 27, 2016.

[6] *See* Letter from Andalini to the Department, ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by Pastificio Andalini, S.p.A.,'' dated December 12, 2016; Letter from GR.A.M.M., ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by GR.A.M.M. Srl,'' (December 12, 2016); Letter from Premiato, ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by Premiato Pastificio Afeltra S.r.l'' (December 12, 2016); Letter from Labor, ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by Labor Srl'' (December 12, 2016); Letter from La Fabbrica, ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by La Fabbrica della Pasta di Gragnano S.AS.'' (December 12, 2016); Letter from Zaffiri, ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by Pastificio Zaffiri S.r.l'' (December 12, 2016).

[7] *See Certain Pasta from Italy: Partial Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 820 (January 4, 2017).

[8] For a complete description of the scope of the order, *see* ''Decision Memorandum for Preliminary Results of the Countervailing Duty Administrative Review: Certain Pasta from Italy,'' from James Maeder, Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, dated concurrently with this notice (Preliminary Decision Memorandum).

[9] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

argument; and (3) a table of authorities.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[13] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[14] The Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), unless this deadline is extended.

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we have preliminarily assigned a subsidy rate to the sole producer/exporter subject to this administrative review. Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, the Department intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Liguori on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

[12] 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310(d).

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: July 18, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum:

I. Summary
II. Background
III. Scope of the Order
IV. Partial Rescission of the Order
V. Subsidies Valuation Information
VI. Analysis of Programs
VII. Recommendation

[FR Doc. 2017–15562 Filed 7–24–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; the NIST Summer Institute for Middle School Science Teachers (NIST Summer Institute) and the NIST Research Experience for Teachers (NIST RET) Application Requirements

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice, agency information collection activities.

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 September 25, 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 *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to *Susan Heller-Zeisler: (301) 975–3111; Susan.Heller-Zeisler@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request to revise and extend the expiration date of this currently approved information collection.

The NIST Summer Institute and the NIST RET are competitive financial assistance (cooperative agreement) programs designed to support middle school science teachers to participate in hands-on workshops, lectures, tours, visits, or in scientific research with scientists and engineers in NIST laboratories in Gaithersburg, Maryland. The workshops provide teachers with instructional information and ideas to use in their teaching, and emphasize the measurement science done at NIST. The Program provides a world-class opportunity for those teaching our nation's next generation of scientists to learn more about the subjects they teach and the research in those subjects at NIST, and to offer a platform from which teachers can inspire their students to pursue careers in science, technology, engineering, and mathematics (STEM).

To receive funding, nominated teachers must submit applications through their U.S. public school districts or U.S. accredited private educational institutions for potential selection to participate in the NIST Summer Institute or the NIST RET This request is for the information collection requirements associated with applying for funding. The information is used to perform the requisite reviews of the application to determine if an award should be granted.

II. Method of Collection

Applications may be submitted electronically via *http://www.grants.gov.*

III. Data

OMB Control Number: 0693–0059.
Form Number: NIST–1103.
Type of Review: Revision and Extension of a currently approved information collection.
Affected Public: Households and individuals.
Estimated Number of Respondents: 100.
Estimated Time per Response: 1 hour.
Estimated Total Annual Burden Hours: 100.
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,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2017–15507 Filed 7–24–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice; prospective grant of exclusive patent license.

SUMMARY: The National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent Application No. 15/596,243, titled ''Linear Absorption Spectrometer to Optically Determine an Absolute Mole Fraction of Radiocarbon in a Sample'' (NIST Docket 17–011) to Planetary Emissions Management, Inc. The grant of the license would be for determination of carbon-14 isotope concentration in samples in all fields.

DATES: The prospective exclusive license may be granted unless NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 by August 9, 2017.

ADDRESSES: Information related to this license may be submitted to NIST, Technology Partnerships Office, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899, or emailed to *donald.archer@nist.gov*.

FOR FURTHER INFORMATION CONTACT: Donald G. Archer, National Institute of Standards and Technology, Technology Partnerships Office, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899, (301) 975–2522, *donald.archer@nist.gov*.

SUPPLEMENTARY INFORMATION: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that NIST is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent Application No. 15/596,243, titled ''Linear Absorption Spectrometer to Optically Determine an Absolute Mole Fraction of Radiocarbon in a Sample'' (NIST Docket 17–011) to Planetary Emissions Management, Inc. The grant of the license would be for determination of carbon-14 isotope concentration in samples in all fields.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The Patent Application was filed on May 16, 2017 and describes systems and methods for determining a quantity of carbon-14 in a sample.

Phillip Singerman,

Associate Director for Innovations and Industry Services.

[FR Doc. 2017–15491 Filed 7–24–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Safety and Health Data

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 25, 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 *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Stephen Banovic, Office of Safety, Health, and Environment, National Institute of Standards and Technology, 100 Bureau Drive, MS 1730, Gaithersburg, MD 20899, (301) 975–8822 or *stephen.banovic@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is to seek generic clearance for the collection of routine information requested of individuals (including but not limited to visitors, contractors, associates) who utilize Department of Commerce health units as well as various other health and safety related records.

The information is collected for the following purposes:

1. For medical treatment, testing, or recording of medical or safety equipment or incidents.
2. For recording of potential radiation exposure to track and assure ''As Low as Reasonably Achievable'' minimization of risks associated with occupational exposure to radiation and to demonstrate regulatory compliance and reporting requirements to the Nuclear Regulatory Commission.
3. With individual's written permission, release of records for research purposes to medical personnel.
4. To refer information required by applicable law to be disclosed to a Federal, State, or local public health service agency, concerning individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition.
5. To disclose information to the appropriate Federal, State, or local agencies responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority.
6. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is

responsible for the care of the individual, to the extent necessary.

7. To evaluate and report on the effectiveness of health, safety and wellness programs by agency staff or third parties under contract with the agency to conduct such evaluations.

8. To disclose to the Office of Workers' Compensation Programs about a claim for benefits filed.

II. Method of Collection

Information will be collected in paper format, electronically via internal web applications, and through interviews.

III. Data

OMB Control Number: 0693–XXXX.

Form Number(s): None.

Type of Review: Regular submission, new information collection.

Affected Public: Some associates, volunteers, and visitors to NIST.

Estimated Number of Respondents: 450.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 37.5 hours.

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,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2017–15508 Filed 7–24–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; the NIST Summer Institute for Middle School Science Teachers (NIST Summer Institute) and the NIST Research Experience for Teachers (NIST RET) Application Requirements

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice, agency information collection activities.

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 September 25, 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 *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to *Susan Heller-Zeisler: (301) 975–3111; Susan.Heller-Zeisler@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request to revise and extend the expiration date of this currently approved information collection.

The NIST Summer Institute and the NIST RET are competitive financial assistance (cooperative agreement) programs designed to support middle school science teachers to participate in hands-on workshops, lectures, tours, visits, or in scientific research with scientists and engineers in NIST laboratories in Gaithersburg, Maryland. The workshops provide teachers with instructional information and ideas to use in their teaching, and emphasize the measurement science done at NIST. The Program provides a world-class opportunity for those teaching our nation's next generation of scientists to learn more about the subjects they teach and the research in those subjects at NIST, and to offer a platform from which teachers can inspire their students to pursue careers in science, technology, engineering, and mathematics (STEM).

To receive funding, nominated teachers must submit applications through their U.S. public school districts or U.S. accredited private educational institutions for potential selection to participate in the NIST Summer Institute or the NIST RET This request is for the information collection requirements associated with applying for funding. The information is used to perform the requisite reviews of the application to determine if an award should be granted.

II. Method of Collection

Applications may be submitted electronically via *http://www.grants.gov*.

III. Data

OMB Control Number: 0693–0059.

Form Number: NIST–1103.

Type of Review: Revision and Extension of a currently approved information collection.

Affected Public: Households and individuals.

Estimated Number of Respondents: 100.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 100.

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,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2017–15513 Filed 7–24–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF444

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Pile Driving Activities for the Restoration of Pier 62, Seattle Waterfront, Elliot Bay

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the Seattle Department of Transportation (Seattle DOT) for authorization to take marine mammals incidental to pile driving activities for the restoration of Pier 62, Seattle Waterfront, Elliot Bay in Seattle, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities.

DATES: Comments and information must be received no later than August 24, 2017.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.egger@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

Summary of Request

On January 27, 2017, NMFS received a request from the Seattle DOT for an IHA to take marine mammals incidental to pile driving activities for the restoration of Pier 62, Seattle Waterfront, Elliot Bay in Seattle, Washington. Seattle DOT's request is for take of 11 species of marine mammals, by Level A and Level B harassment. Neither Seattle DOT nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate.

This proposed IHA would cover one year of a larger project for which Seattle DOT intends to request take authorization for subsequent facets of the project. The 2-year project involves pile driving the remainder of piles for Pier 62 and Pier 63.

Description of Specified Activities

Overview

The proposed project will replace Pier 62 and make limited modifications to Pier 63 on the Seattle waterfront of Elliot Bay, Seattle, Washington. The existing piers are constructed of creosote-treated timber piles and treated timber decking, which are failing. The proposed project would demolish and remove the existing timber piles and decking of Pier 62, and replace them with concrete deck planks, concrete pile caps, and steel piling.

The footprint of Pier 62 will remain as it currently is, with a small amount of additional over-water coverage (approximately 3,200 square feet) created by a new float system added to the south side of Pier 62. This float system is intended for moorage of transient, small-boat traffic, and will not be designed to accommodate mooring or berthing for larger vessels. This includes removing 815 timber piles, and will require installation of 180 steel piles for

Pier 62. To offset the additional over-water coverage associated with the new float system, approximately 3,700 square feet of Pier 63 will be removed. This includes removing 65 timber piles, and will require installation of nine steel piles to provide structural support for the remaining portion of Pier 63. In addition, approximately 5,900 square feet of grated decking will be installed to replace solid timber decking in the nearshore environment of both piers.

In-water noise from pile driving activities will result in the take, by Level A and Level B harassment only, of 11 species of marine mammals. Pile driving activities for this project will occur from September 2017 through February 2018.

Dates and Duration

In-water construction for this application is proposed from September 1, 2017 to February 28, 2018. It is assumed that a second season of in-water pile driving will be required to finish the pile installation. The specific scope of the second season of work will depend on work accomplished during the first season. A separate IHA application will be prepared for the second season of work. In-water work will occur within a modified or shortened work window (September through February) to reduce or minimize effect on juvenile salmonids.

Seattle DOT estimates 49 days will be needed to remove the old timber piles and 64 days for installation of steel piles for a total of 113 in-water construction days for both Pier 62 and Pier 63. It is likely some of these installation days for Pier 62 will be carried over into a second season of work (which will have a separate IHA application). Pile driving (removal and installation activities) will occur approximately eight hours a day during daylight hours only.

Specified Geographic Region

Pier 62 and Pier 63 are located on the downtown Seattle waterfront on Elliot Bay in King County, Washington just north of the Seattle Aquarium (see Figure 1 from the Seattle DOT application). The project will occur between Pike Street and Lenora Street, an urban embayment in central Puget Sound. This is an important industrial region and home to the Port of Seattle, which ranked 8th in the top 10 metropolitan port complexes in the U.S. in 2015. The region of the specified activity is the area in which elevated sound levels from pile-related activities could result in the take of marine mammals. This area includes the proposed construction zone, Elliott Bay, and a portion of Puget Sound.

Detailed Description of Specific Activities

The 14-inch (in) timber piles will be removed with a vibratory hammer or pulled with a clamshell bucket. The 30-in steel piles will be installed with a vibratory hammer to the extent possible. An impact hammer will be used for proofing steel piles or when encountering obstructions or difficult ground conditions. Vibratory hammers are commonly used for pile removal and installation where sediments allow. The pile is placed into position using a choker and crane, and then vibrated between 1,200 and 2,400 vibrations per minute (Washington State Ferries (WSF) 2016). The vibrations liquefy the sediment surrounding the pile, allowing it to penetrate to the required seating depth, or to be removed (WSF 2016).

Impact hammers are typically used to install plastic/steel core, wood, concrete, or steel piles. An impact hammer is a steel device that works like a piston (WSF 2016). To drive the pile, the pile is first moved into position and set in the proper location using a choker cable or vibratory hammer. Once the pile is set in place, installation can take less than 15 minutes under good conditions, to over an hour under poor conditions, such as glacial till and bedrock, or exceptionally loose material in which the pile repeatedly moves out of position (WSF 2016).

The project includes vibratory removal of 14-in timber piles and vibratory and impact pile driving of 30-in steel piles. The maximum extent of pile removal and installation activities are described in Table 1.

TABLE 1—IN-WATER PILE REMOVAL AND INSTALLATION TOTALS

Structure	Pile type and number
Pier 62	815 Timber Piles (14-in) Removed. Up to 180 Steel Piles (30-in) Installed.
Pier 63	65 Timber Piles (14-in) Removed. Up to 9 Steel Piles (30-in) Installed.

The contractor may elect to operate multiple pile crews for the Pier 62 Project. As a result, more than one vibratory or impact hammer may be active at the same time. Operating multiple noise sources at the same time results in a louder noise than one source alone, so the noises are added together to provide a more realistic source level of the sound for calculating the potential effects on marine mammals. Decibels cannot be added by standard addition because they are measured on a logarithmic scale. Washington State Department of Transportation (WSDOT) provides guidance for adding decibel values from multiple noise sources (WSDOT 2015a). For example, based on guidance used by WSDOT (2015a), when more than one impact or vibratory hammer is being used close enough to another hammer to create overlapping noise fields, the physical area of potential effects on marine mammals is larger, and must be accounted for through a multiple-source ''decibel addition'' rule. The increased noise generated by multiple impact hammers would potentially create a larger zone of influence (ZOI). For the Pier 62 Project, there is a low likelihood that multiple impact hammers would operate in a manner that piles would be struck simultaneously; however, as a conservative approach we used multiple-source decibel rule when determining the Level A and B harassment zones for this project. Table 2 provides guidance on adding decibels to account for multiple sources (WSDOT 2015a):

TABLE 2—MULTIPLE SOURCE DECIBEL ADDITION

When two decibel values differ by:	Add the following to the higher decibel value: (dBA)
0 or 1 dBA	3.
2 or 3 dBA	2.
4 to 9 dBA	1.
10 dBA or more	0.

It is not possible to know in advance the location of the crews and hammers on a given day, nor how many crews will be working each day. The multiple-source decibel addition method does not result in significant increases in the noise source when an impact hammer and vibratory hammer are working at the same time, because the difference in noise sources is greater than 10 dBA. For periods when two vibratory hammers are operating simultaneously, an increase in noise level could be generated, and this will be accounted for when determining PTS isopleths and Level B Harassment Zones for all marine mammal hearing groups (Table 3).

TABLE 3—SUMMARY OF THE PROPOSED IN-WATER PILE INSTALLATION AND REMOVAL PLAN AND THE ASSOCIATED SOUND SOURCE LEVELS

Construction phase	Type	Number of piles	Anticipated duration (days)	Maximum hours per day	Installation/ removal method	Single source sound levels	Additive source sound levels
Removal	Creosote-treated Timber 14-in [1].	880	49	8	Vibratory	152 dB_{rms} [2] (at 16 m)	155 dB_{rms}. [3]
Installation	Steel Pile 30-in	189	53	8	Vibratory	177 dB_{rms}. [2] (at 10 m)	180 dB_{rms}. [4]
			[5] 11	4	Impact	189 dB_{rms} [2] (at 14 m)	189 dB_{rms}. [6]
Totals		189 Installed 880 Removed	113				

[1] Assumed to be 14-in diameter.
[2] Source sound level obtained from Washington State Ferries Request for an Incidental Harassment Authorization under the Marine Mammal Protection Act—Seattle Multimodal Project at Colman Dock (WSDOT 2016b).
[3] Up to two vibratory hammers removing timber piles, operating simultaneously. Value based on identical single source level dB_{rms}, adding 3 dB, based on WSDOT Additive noise model.
[4] For simultaneous operation of two vibratory hammers installing steel pipe piles, the 180 dB_{rms} value is based on identical single source levels, adding 3 dB, based on WSDOT rules for decibel addition (2016a).
[5] Approximately 20 percent of the pile driving effort is anticipated to require an impact hammer.
[6] For simultaneous operation of one impact hammer and one vibratory hammer installing 30-in piles, the original dB_{rms} estimates differ by more than 10 dB, so the higher value, 189 dB_{rms}, is used, based on WSDOT rules for decibel addition.
dB—decibels.
rms—root mean square: the square root of the energy divided by the impulse duration. This level is the mean square pressure level of the pulse.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'').

Description of Marine Mammals in the Area of Specified Activities

The marine mammal species under NMFS's jurisdiction that have the potential to occur in the proposed construction area include Pacific harbor seal (*Phoca vitulina*), northern elephant seal (*Mirounga angustirostris*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), long-beaked common dolphin (*Delphinus capensis*), both southern resident and transient killer whales (*Orcinus orca*), humpback whale (*Megaptera novaengliae*), gray whale (*Eschrichtius robustus*), and minke whale (*Balaenoptera acutorostrata*) (Table 4). Of these, the southern resident killer whale (SRKW) and humpback whale are protected under the Endangered Species Act (ESA). Pertinent information for each of these species is presented in this document to provide the necessary background to understand their demographics and distribution in the area.

TABLE 4—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-; N	20,990 (0.05; 20,125; 2011).	624	132
Family Balaenidae						
Humpback whale	*Megaptera novaeangliae novaeangliae.*	California/Oregon/Washington.	E; D	1,918 (0.03; 1,855; 2011).	11.0	≥5.5
Minke whale	*Balaenoptera acutorostrata scammoni.*	California/Oregon/Washington.	-; N	636 (0.72, 369, 2014)	3.5	≥1.3
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Killer whale	*Orcinus orca*	Eastern North Pacific Offshore.	-; N	240 (0.49, 162, 2008)	1.6	0
Killer whale	*Orcinus orca*	Eastern North Pacific Southern Resident.	E; D	78 (na, 78, 2014)	0.14	0
Long-beaked common dolphin.	*Dephinus capensis*	California	-; N	101,305 (0.49; 68,432, 2014).	657	≥35.4
Family Phocoenidae (porpoises)						
Harbor Porpoise	*Phocoena phocoena*	Washington Inland Waters.	-; N	11,233 (0.37; 8,308; 2015).	66	≥7.2

TABLE 4—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY—Continued

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Dall's Porpoise	*Phocoenoides dalli*	California/Oregon/Washington.	-; N	25,750 (0.45, 17,954, 2014).	172	≥0.4
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	*Zalophus californianus*	U.S	-; N	296,750 (na, 153,337, 2011).	9,200	389
Steller sea lion	*Eumetopias jubatus*	Eastern DPS	-; N	60,131–74,448 (–; 36,551; 2013).	1,645	Insig.
Family Phocidae (earless seals)						
Harbor seal	*Phoca vitulina*	Washington Northern Inland Waters stock.	-; N	11,036 (0.15, –, 1999)	Undet.	9.8
Northern elephant seal	*Mirounga angustirostris*	California breeding	-; N	179,000 (na; 81,368, 2010).	4,882	8.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's Web site (*www.nmfs.noaa.gov/pr/species/mammals/*).

Table 4 lists all species with expected potential for occurrence in Elliot Bay and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2015 SARs (Carretta *et al.* 2016). All values presented in Table 4 are the most recent available at the time of publication and are available in the 2015 SARs (Carretta *et al.* 2016). Additional information may be found in the 2015 Pacific Navy Marine Species Density Database (U.S. Department of the Navy (U.S. Navy) 2015) and can also be accessed online at: *http://nwtteis.com/Portals/NWTT/files/supporting_technical/REVISED_NWTT_FINAL_NMSDD_Technical_Report_04_MAY_2015.pdf.*

All species that could potentially occur in the proposed survey areas are included in Table 4. As described below, all 11 species temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

Harbor Seal

Individual harbor seals occur along the Elliott Bay shoreline. There is one documented harbor seal haulout area near Bainbridge Island, approximately 6 miles (9.66 km) from Pier 62. The haulout, which is estimated at less than 100 animals, consists of intertidal rocks and reef areas around Blakely Rocks and is within the area of potential effects but at the outer extent near Bainbridge Island (Jefferies *et al.* 2000), though harbor seals also make use of docks, buoys and beaches in the area. The level of use of this haulout during the fall and winter is unknown, but is expected to be much less than during the spring and summer, as air temperatures become colder than water temperatures, resulting in seals in general hauling out less. Harbor seals are perhaps the most commonly observed marine mammal in the area of potential effects.

Marine mammal monitoring occurred on 158 days during Seasons 1, 2, and 3 of the Elliot Bay Seawall Project (EBSP), during which 267 harbor seals were documented as takes in the Pier 62 Project area (Anchor QEA 2014, 2015, and 2016). Additional marine mammal monitoring results in the vicinity of the projects, are as follows:

- *2012 Seattle Slip 2 Batter Pile Project:* Six harbor seals were observed during this one-day project in the area

that corresponds to the upcoming project ZOIs (WSF 2012).

▪ *2016 Seattle Test Pile Project:* 56 harbor seals were observed over 10 days in the area that corresponds to the upcoming project ZOIs. The maximum number sighted during one day was 13 (WSF 2016).

▪ *2012 Seattle Aquarium Pier 60 Project:* 281 harbor seals were observed over 29 days in the area that corresponds to the upcoming project ZOIs (HiKARI 2012).

Northern Elephant Seal

Marine mammal monitoring occurred on 158 days during Seasons 1, 2, and 3 of the EBSP, during which no elephant seals were observed in the project area (Anchor QEA 2014, 2015, and 2016). Similarly, no elephant seals were observed during monitoring for the 2012 Seattle Slip 2 Batter Pile Project, the 2016 Seattle Test Pile Project, or the 2012 Seattle Aquarium Pier 60 Project (WSF 2016).

California Sea Lion

California sea lions are often observed in the area of potential effects. The nearest documented California sea lion haulout sites are 3 km (2 miles) southwest of Pier 62, although sea lions also make use of docks and buoys in the area. Marine mammal monitoring occurred on 158 days during Seasons 1, 2, 3, and 4 of the EBSP, during which 937 California sea lions were documented as takes in the project area (Anchor QEA 2014, 2015, 2016, and unpublished data). California sea lions were frequently (average seven per day and a maximum of 15 over a day) observed hauled out on two navigational buoys within the project area (near Alki Point) and swimming along the shoreline. Additional marine mammal monitoring results in the vicinity of the projects, are as follows:

▪ During the 2012 Seattle Slip 2 Batter Pile project, 15 California sea lions were observed during this one-day project in the area that corresponds to the upcoming project ZOIs (WSF 2012).

▪ During the 2016 Seattle Test Pile project, 12 California sea lions were observed over 10 days in the area that corresponds to the upcoming project ZOIs. The maximum number sighted during one day was four (WSF 2016).

▪ During the 2012 Seattle Aquarium Pier 60 project, 382 California sea lions were observed over 29 days in the area that corresponds to the upcoming project ZOIs. The maximum number sighted during one day was 37; however seals, may have been double counted during these observations (HiKARI 2012).

Steller Sea Lion

Steller sea lions are a rare visitor to the Pier 62 area of potential effects. Steller sea lions use haulout locations in Puget Sound. The nearest haulout to the project area is located approximately six miles away (9.66 km). This haulout is composed of net pens offshore of the south end of Bainbridge Island. The population of Steller sea lions at this haulout has been estimated at less than 100 individuals (Jeffries *et al.* 2000).

Marine mammal monitoring occurred on 158 days during Seasons 1, 2, and 3 of the EBSP, during which three Steller sea lions were observed and documented as takes in the project area (Anchor QEA 2014, 2015, and 2016).

No Steller sea lions were observed during monitoring for the 2012 Seattle Slip 2 Batter Pile Project or the 2016 Seattle Test Pile Project (WSF 2016).

Killer Whale

The Eastern North Pacific Southern Resident (SRKW) and West Coast Transient (transient) stocks of killer whale may be found near the project site. The SRKW live in three family groups known as the J, K and L pods. Transient killer whales generally occur in smaller (less than 10 individuals), less structured pods (NMFS 2013). According to the Center for Whale Research (CWR) (2015), they tend to travel in small groups of one to five individuals, staying close to shorelines, often near seal rookeries when pups are being weaned. The transient killer whale sightings have become more common since mid-2000. Unlike the SRKW pods, transients may be present in an area for hours or days as they hunt pinnipeds.

A long-term database maintained by the Whale Museum contains sightings and geospatial locations of SRKWs, among other marine mammals, in inland waters of Washington State (Osborne 2008). Data are largely based on opportunistic sightings from a variety of sources (*i.e.,* public reports, commercial whale watching, Soundwatch, Lime Kiln State Park land-based observations, and independent research reports), but the database is regarded as a robust but difficult to quantify inventory of occurrences. The data provide the most comprehensive assemblage of broad-scale habitat use by the SRKW in inland waters.

Based on reports from 1990 to 2008, the greatest number of unique killer whale sighting-days near or in the area of potential effects occurred from November through January, although observations were made during all months except May (Osborne 2008). Most observations were of SRKWs passing west of Alki Point (82 percent of all observations), which lies on the edge or outside the area of potential effects; this pattern is potentially due to the high level of human disturbance or highly degraded habitat features currently found within Elliott Bay. J Pod, with an estimated 24 members, is the pod most likely to appear year-round near the San Juan Islands, in the lower Puget Sound near Seattle, and in Georgia Strait at the mouth of the Fraser River. J Pod tends to frequent the west side of San Juan Island in mid to late spring (CWR 2011).

An analysis of sightings in 2011 described an estimated 93 sightings of SRKWs near the area of potential effects (Whale Museum 2011). During this same analysis period, 12 transient killer whales were also observed near the area of potential effects. The majority of all sightings in this area are of groups of killer whales moving through the main channel between Bainbridge Island and Elliott Bay and outside the area of potential effects (Whale Museum 2011). The purely descriptive format of these observations makes it impossible to discern what proportion of the killer whales observed entered the area of potential effects; however, it is assumed that individuals do enter this area on occasion.

Marine mammal monitoring occurred on 158 days during Seasons 1, 2, and 3 (2014, 2015, and 2016) of the EBSP, during which two killer whales were documented as takes in the project area (unknown if SRKW or transient), and one pod of six whales was also observed in Elliott Bay more than 30 minutes before or after pile driving activity (no take documented; Anchor QEA 2014, 2015, and 2016).

During the 2016 Seattle Test Pile project, 0 SRKW were observed over 10 days in the area that corresponds to the upcoming project ZOIs (WSF 2016). During the 2012 Seattle Slip 2 Batter Pile project, 0 SRKW were observed during this one day project in the area that corresponds to the upcoming project ZOIs (WSF 2012). On February 5, 2016, a pod of up to 7 transients were reported in the area (Orca Network Archive Report 2016a).

Long-Beaked Common Dolphin

Marine mammal monitoring occurred on 158 days during Seasons 1, 2, and 3 (2014, 2015, and 2016) of the EBSP, during which no long-beaked common dolphins were observed in the project area (Anchor QEA 2014, 2015, and 2016).

No long-beaked common dolphins were observed during monitoring for the

2012 Seattle Slip 2 Batter Pile Project, the 2016 Seattle Test Pile Project, or the 2012 Seattle Aquarium Pier 60 project. However, there were reported sightings in the Puget Sound in the summer of 2016. Beginning on June 16, long-beaked common dolphins were observed near Victoria, British Columbia. Over the following weeks, a pod of 15 to 20 (including a calf) was observed in central and southern Puget Sound. They were positively identified as long-beaked common dolphins (Orca Network 2016a). This is the first confirmed observation of a pod of long-beaked common dolphins in Washington waters—NMFS states that as of 2012, long-beaked common dolphins had not been observed during surveys in Washington waters (Carretta *et al.* 2016). Two individual long-beaked common dolphins were observed in 2011, one in August and one in September (Whale Museum 2015).

Gray Whale

Gray whale sightings are typically reported in February through May and include an observation of a gray whale off the ferry terminal at Pier 52 heading toward the East Waterway in March 2010 (CWR 2011). Three gray whales were observed near the project area during 2011 (Whale Museum 2011), but the narrative format of the observations make it difficult to discern whether these individuals entered the area of potential effects. It is assumed that gray whales might rarely occur in the area of potential effects.

No gray whales were observed during monitoring for the EBSP, the 2012 Seattle Slip 2 Batter Pile Project, the 2016 Seattle Test Pile Project, or the 2012 Seattle Aquarium Pier 60 Project (Anchor QEA 2014, 2015, 2016; WSF 2016a).

Humpback Whale

Humpbacks are only rare visitors to Puget Sound. There is evidence of increasing numbers in recent years (Falcone *et al.* 2005). A rare encounter with one and possibly two humpbacks occurred in Hood Canal (well away from the area of potential effects) as recently as February 2012 (Whale Museum 2012). Humpbacks do not visit Puget Sound every year and are considered rare in the area of potential effects (Whale Museum 2011); however, they have the potential to occur at least during the Pier 62 Project construction period.

Marine mammal monitoring occurred on 158 days during Seasons 1, 2, and 3 (2014, 2015, and 2016) of the EBSP, during which two humpback whales were observed in the project area (Anchor QEA 2014, 2015, and 2016).

No humpback whales were observed during monitoring for the 2012 Seattle Slip 2 Batter Pile Project, the 2016 Seattle Test Pile Project, or the 2012 Seattle Aquarium Pier 60 Project (WSF 2016a).

Minke Whale

Minke whales are relatively common in the San Juan Islands and Strait of Juan de Fuca (especially around several of the banks in both the central and eastern Strait), but are relatively rare in Puget Sound (WSF 2016a). No minke whales were observed during monitoring for the EBSP, the 2012 Seattle Slip 2 Batter Pile Project, the 2016 Seattle Test Pile Project, or the 2012 Seattle Aquarium Pier 60 Project (Anchor QEA 2014, 2015, 2016; WSF 2016).

Harbor Porpoise and Dall's Porpoise

Marine mammal monitoring occurred on 158 days during Seasons 1, 2, and 3 (2014, 2015, and 2016) of the EBSP, during which one harbor porpoise was observed and documented as a take in the project area; no Dall's porpoises were observed (Anchor QEA 2014, 2015, and 2016).

During the 2012 Seattle Aquarium Pier 60 Project, five harbor porpoises and one Dall's porpoise were observed over 29 days in the area that corresponds to the upcoming project ZOIs, with a maximum of three observed in one day (HiKARI 2012). Neither harbor porpoise nor Dall's porpoise were observed during monitoring for the 2012 Seattle Slip 2 Batter Pile Project or the 2016 Seattle Test Pile Project (WSF 2016).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.* 1995; Wartzok and Ketten 1999; Au and Hastings 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016a) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 hertz (Hz) and 35 kilohertz (kHz), with best hearing estimated to be from 100 Hz to 8 kHz;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz.
- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz, with best hearing between 1–50 kHz;
- Pinnipeds in water; Otariidae (eared seals and sea lions): Generalized hearing is estimated to occur between 60 Hz and 39 kHz, with best hearing between 2–48 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.* 2006; Kastelein *et al.* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016a) for a review of available information. Eleven marine mammal species (7 cetacean and 4 pinniped (2 otariid and 2 phocid)

species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 4. Of the cetacean species that may be present, three are classified as low-frequency cetaceans (*i.e.,* all mysticete species), two are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species), and two are classified as high-frequency cetaceans (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

The Seattle DOT's Pier 62 Project using in-water pile driving and pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift (TS)—an increase in the auditory threshold after exposure to noise (Finneran *et al.* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.* 2007).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as TS. An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.* 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.* 2009; Mooney *et al.* 2009a, 2009b; Popov *et al.* 2011a, 2011b; Kastelein *et al.* 2012a; Schlundt *et al.* 2000; Nachtigall *et al.* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.* 1999, 2005; Kastelein *et al.* 2012b).

Lucke *et al.* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received SPL at 200.2 dB (peak-to-peak) re: 1 μPa, which corresponds to a sound exposure level (SEL) of 164.5 dB re: 1 μPa^2 s after integrating exposure. NMFS currently uses the rms of received SPL at 180 dB and 190 dB re: 1 μPa as the threshold above which PTS could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of rms SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley *et al.* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. However, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran and Schlundt 2010; Finneran *et al.* 2002; Kastelein and Jennings 2012).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Masking—In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band that the animals utilize. Therefore, since noise generated from vibratory pile driving activity is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009) and cause increased stress levels (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales,

can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). For Seattle DOT's Pier 62 Project, noises from vibratory pile driving and pile removal contribute to the elevated ambient noise levels in the project area, thus increasing potential for or severity of masking. Baseline ambient noise levels in the vicinity of project area are high due to ongoing shipping, construction and other activities in the Puget Sound.

Behavioral disturbance—Finally, marine mammals' exposure to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007). Currently NMFS uses a received level of 160 dB re 1 μPa (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re 1 μPa (rms) for continuous noises (such as vibratory pile driving). For the Seattle DOT's Pier 62 Project, both of these noise levels are considered for effects analysis because Seattle DOT plans to use both impact and vibratory pile driving, as well as vibratory pile removal.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

Habitat—The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by pile driving and removal associated with marine mammal prey species. However, other potential impacts to the surrounding habitat from physical disturbance are also possible. Prey species for the various marine mammals include marine invertebrates and fish species. Short-term effects would occur to marine invertebrates during removal of existing piles. This effect is expected to be minor and short-term on the overall population of marine invertebrates in Elliott Bay. Construction will also have temporary effects on salmonids and other fish species in the project area due to disturbance, turbidity, noise, and the potential resuspension of contaminants. All in-water work will occur during the designated in-water work window, to minimize effects on juvenile salmonids with the exception of some Chinook salmon that may be found along the seawall into October. Additionally, marine resident fish species are only present in limited numbers along the seawall during the in-water work season and primarily occur during the summer months, when work would not be occurring (Anchor QEA 2012).

SPLs from impact pile driving has the potential to injure or kill fish in the immediate area. These few isolated fish mortality events are not anticipated to have a substantial effect on prey species population or their availability as a food resource for marine mammals.

Studies also suggest that larger fish are generally less susceptible to death or injury than small fish. Moreover, elongated forms that are round in cross section are less at risk than deep-bodied forms. Orientation of fish relative to the shock wave may also affect the extent of injury. Open water pelagic fish (*e.g.,* mackerel) seem to be less affected than reef fishes. The results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors.

The huge variation in fish populations, including numbers, species, sizes, and orientation and range from the detonation point, makes it very difficult to accurately predict mortalities at any specific site of detonation. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the Seattle DOT's impact pile driving will likely be insignificant to the population as a whole.

For non-impulsive sound such as that of vibratory pile driving, experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993).

During construction activity of the Pier 62 Project, only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on the abilities of marine mammals to feed in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species between March and July.

Short-term turbidity is a water quality effect of most in-water work, including pile driving. Cetaceans are not expected to be close enough to the Pier 62 Project to experience turbidity, and any pinnipeds will be transiting the terminal area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals.

For these reasons, any adverse effects to marine mammal habitat in the area from the Seattle DOT's proposed Pier 62 would not be significant.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS's consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment);

or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as exposure to pile driving activities has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species due to larger predicted auditory injury zones. Auditory injury is unlikely to occur for mid-frequency species and most pinnipeds. The proposed mitigation and monitoring measures (*i.e.,* exclusion zones, use of a bubble curtain, etc. as discussed in detail below in ''Proposed Mitigation'' section), are expected to minimize the severity of such taking to the extent practicable. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.* 2007, Ellison *et al.* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) sources and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Seattle DOT's proposed activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS's Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 2016a) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Seattle DOT's proposed activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in Table 5 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (Lpk) has a reference value of 1 μPa, and cumulative sound exposure level (LE) has a reference value of 1 μPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Background noise is the sound level that would exist without the proposed activity (pile driving and removal, in this case), while ambient sound levels are those without human activity (NOAA 2009). The marine waterway of Elliott Bay is very active, and human factors that may contribute to background noise levels include ship traffic and fishing-boat depth sounders. Natural actions that contribute to ambient noise include waves, wind,

rainfall, current fluctuations, chemical composition, and biological sound sources (*e.g.,* marine mammals, fish, and shrimp; Carr *et al.* 2006). Background noise levels will be compared to the NOAA/NMFS threshold levels designed to protect marine mammals to determine the Level B Harassment Zones for noise sources. Based on work completed by WSDOT for Washington State Ferries (WSF) to determine background noise in the vicinity of Elliott Bay, specifically at the Seattle Ferry terminal, the background level of 124 dB rms was used to calculate the attenuation for vibratory pile driving and removal (WSDOT 2015b). Although NMFS's harassment threshold is typically 120 dB for continuous noise, based on multiple measurements, the data collected by WSDOT (2015b) indicate that ambient sound levels are typically higher than this sound level and ranged from 124 dB to 141 dB; therefore, we accepted the 124 dB rms as a proxy for the relevant threshold for the Seattle DOT Pier 62 project.

The sound source levels for installation of the 30-in steel piles are based on surrogate data compiled by WSDOT. The source level of vibratory removal of 14-in timber piles were based on measurements conducted at the Port Townsend Ferry Terminal during vibratory removal of 12-in timber piles by WSDOT (Laughlin 2011). The recorded source level is 152 decibels (dB) re 1 micropascal (μPa) at 16 meters (m) from the pile. This value was also used for other pile driving projects (WSDOT Seattle Multimodal Construction Project—Colman Dock IHA RIN 0648–XF250) in the same area as the proposed Seattle Pier 62 project. In February of 2016, WSDOT conducted a test pile project at Colman Dock and the measured results from that project were used for that project and here to provide source levels for the prediction of isopleths ensonified over thresholds for the Seattle Pier 62 project. The results showed that the sound pressure level (SPL) root-mean-square (rms) for impact pile driving of 36-in steel pile is 189 dB re 1 μPa at 14 m from the pile (WSDOT 2016b). This value is also used for impact driving of the 30-in steel piles, which is a precautionary approach. Source level of vibratory pile driving of 36-in steel piles is based on test pile driving at Port Townsend in 2010 (Laughlin 2011). Recordings of vibratory pile driving were made at a distance of 10 m from the pile. The results show that the SPLrms for vibratory pile driving of 36-in steel pile was 177 dB re 1 μPa (WSDOT 2016a).

The method of incidental take requested is Level B acoustical harassment of any marine mammal occurring within the 160 dB rms disturbance threshold during impact pile driving of 30-in pipe piles; the 120 dB rms disturbance threshold for vibratory pile driving of 30-in pipe piles; and the 120 dB rms disturbance threshold for vibratory removal of 14-in timber piles have been established as the three different Level B ZOIs that will be in place during active pile removal or installation of the different types of piles (Table 6). However, measured ambient noise levels in the area are 124 dB; therefore, NMFS only considers take likely to occur in the area ensonified above 124 dB, as pile driving noise below 124 dB would likely be masked or their impacts diminished such that any reactions would not be considered take as a result of the high ambient noise levels.

For the Level B ZOI's, sound waves propagate in all directions when they travel through water until they dissipate to background levels or encounter barriers that absorb or reflect their energy, such as a landmass. Therefore, the area of the Level B ZOIs was determined using land as the boundary on the north, east and south sides of the project. On the west, land was also used to establish the zone for vibratory driving. From Alki on the south and Magnolia on the north, a straight line of transmission was established out to Bainbridge Island. For impact driving (and vibratory removal), sound dissipates much quicker and the impact zone stays within Elliott Bay. Pile-related construction noise would extend throughout the nearshore and open water environments to just west of Alki Point and a limited distance into the East Waterway of the Lower Duwamish River, a highly industrialized waterway. Because landmasses block in-water construction noise, a ''noise shadow'' created by Alki Point is expected to be present immediately west of this feature (refer to Seattle DOT's application for maps depicting the Level B ZOIs).

TABLE 6—LEVEL B ZONE DESCRIPTIONS AND DURATION OF ACTIVITY

Sound source	Activity	Construction method	Level B threshold (m)	Level B ZOI (km^2)	Days of Activity
1	Removal of 14-in Timber Piles	Vibratory	1,865	4.9	49
2	Installation of 30-in Steel Piles	Vibratory	54,117	91	53
3	Installation of 30-in Steel Piles	Impact	1,201	2.3	11

When NMFS Technical Guidance (NMFS 2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as vibratory and impact pile driving, NMFS's User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

The PTS isopleths were identified for each hearing group for impact and vibratory installation and removal methods that will be used in the Pier 62 Project. The PTS isopleth distances were calculated using the NMFS acoustic threshold calculator (NMFS 2016), with inputs based on measured and surrogate noise measurements taken during the EBSP construction and from WSDOT, and estimating conservative working durations (Table 7 and Table 8).

TABLE 7—NMFS TECHNICAL ACOUSTIC GUIDANCE USER SPREADSHEET INPUT TO PREDICT PTS ISOPLETHS

User Spredsheet Input			
	Sound source 1	Sound source 2	Sound source 3
Spreadsheet Tab Used	(A)Vibratory pile driving (removal).	(A)Vibratory pile driving (installation).	(E.1) Impact pile driving (installation)
Source Level (rms SPL)	155 dB	180 dB.	
Source Level (Single Strike/shot SEL)			176 dB.
Weighting Factor Adjustment (kHz)	2.5	2.5	2.
a) Number of strikes in 1 h			20.
a) Activity Duration (h) within 24-h period	8	8	4.
Propagation (xLogR)	15	15	15.
Distance of source level measurement (meters)	16	10	14.

TABLE 8—NMFS TECHNICAL ACOUSTIC GUIDANCE USER SPREADSHEET OUTPUT FOR PREDICTED PTS ISOPLETHS AND LEVEL A DAILY ENSONIFIED AREAS

User Spreadsheet Output					
Sound source type	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
PTS Isopleth (meters)					
1—Vibratory (pile removal)	17.4	1.5	25.7	10.6	0.7
2—Vibratory (installation)	504.8	44.7	746.4	306.8	21.5
3—Impact (installation)	88.6	3.2	105.6	47.4	3.5
Daily ensonified area (km^2)*					
Vibratory (pile removal)	0.000476	0.000004	0.001037	0.000176	7.70E–13
Vibratory (installation)	0.400275	0.003139	0.875111	0.147853	0.000726
Impact (installation)	0.012331	0.000016	0.017517	0.003529	1.92423E–05

* Daily ensonified areas were divided by two to only account for the ensonified area within the water and not over land.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculation and we describe how the marine mammal occurrence information is brought together to produce a quantitative take estimate. In all cases we demonstrated take estimates using the species density data from the 2015 Pacific Navy Marine Species Density Database (U.S. Navy 2015), to estimate take for marine mammals.

Take estimates are based on average marine mammal density in the project area multiplied by the area size of ensonified zones within which received noise levels exceed certain thresholds (*i.e.,* Level A and B harassment) from specific activities, then multiplied by the total number of days such activities would occur.

Unless otherwise described, incidental take is estimated by the following equation:

Incidental take estimate = species density * zone of influence * days of pile-related activity

However, adjustments were made for nearly every marine mammal species, whenever their local abundance is known through other monitoring efforts. In those cases, the local abundance data are used for take calculations for the proposed authorized take instead of general animal density (see below).

Harbor Seal

Based on U.S. Navy species density estimates (U.S. Navy 2015) for the inland waters of Puget Sound, potential take of harbor seal is requested as shown in Table 9. Based on these calculations, Level A take is estimated at 10 harbor seals from vibratory pile driving and Level B take is estimated at 6,193 harbor seals from all sound sources. However, observational data from previous projects on the Seattle waterfront have documented only a fraction of what is calculated using the Navy density estimates for Puget Sound. For example, between zero and seven seals were observed daily for the EBSP and 56 harbor seals were observed over 10 days in the area with the maximum number of 13 harbor seals sighted during the 2016 Seattle Test Pile project (WSF 2016).

Therefore, NMFS proposes to authorize Level B harassment of 1,469 harbor seals that could be exposed to noise levels associated with ''take.'' The harbor seal take estimate is based on local seal abundance information using the maximum number of seals (13) sighted in one day during the 2016 Seattle Test Pile project multiplied by a total of 113 pile driving days for the Seattle DOT Pier 62 Project. Fifty-three days would involve installation by vibratory pile driving, which has a much larger Level A zone (306.8 m) than the Level A zones for vibratory removal (10.6 m) and impact pile driving (47.4 m). Harbor seals may be difficult to observe at greater distances, therefore, during vibratory pile driving, it may not be known how long a seal is present in the Level A zone. We estimate that 4 harbor seals may experience Level A harassment during these 53 days. Four seals were considered to have the potential to be taken by Level A harassment based on the local observational data for harbor seals, the larger ensonified area during vibratory pile driving for installation, and our best professional judgment that an animal would remain within the injury zone for prolonged exposure of intense noise. The number of Level B takes was adjusted to exclude those already counted for Level A takes, so the proposed authorized Level B take is 1,465 harbor seals.

TABLE 9—HARBOR SEAL ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A ZOI (km^2)	Level B ZOI (km^2)	Days of activity	Estimated take Level A	Estimated take Level B
1	1.219	0.000176	4.9	49	0	293.
2	1.219	0.147853	91	53	10	5,879 (*Adjusted 5,869).
3	1.219	0.003529	2.3	11	0	31.

Note:
km^2—square kilometers.
* Number of Level B takes was adjusted to exclude those already counted for Level A takes.

Northern Elephant Seal

Based on U.S. Navy species density estimates (U.S. Navy 2015), potential take of northern elephant seal is expected to be zero. However, The Whale Museum (as cited in WSDOT 2016a) reported one sighting in the relevant area between 2008 and 2014. Therefore, the Seattle DOT is requesting authorization for Level B harassment of one northern elephant seal.

California Sea Lion

Based on U.S. Navy species density estimates (U.S. Navy 2015) for the inland waters of Washington, including Eastern Bays and Puget Sound, potential take of California sea lion is requested as shown in Table 10. Since the calculated Level A zones of otariids are all very small (Table 8), we do not consider it likely that any sea lions would be taken by Level A harassment. All California sea lion takes estimated here are expected to be takes by Level B harassment. The estimated Level B take is 644 California sea lions. However, the Seattle DOT believes that this estimate is unrealistically low, based on local marine mammal monitoring. Therefore, NMFS proposes to authorize Level B harassment of 1,695 California sea lions. The California sea lion take estimate is based on four seasons of local sea lion abundance information from the EBSP. Marine mammal visual monitoring during the EBSP indicates that a maximum of 15 sea lions were observed in a day during four-year project monitoring (Anchor QEA 2014, 2015, 2016). Based on a total of 113 pile driving days for the Seattle Pier 62 project, it is estimated that up to 1,695 California sea lions could be exposed to noise levels associated with ''take.''

TABLE 10—CALIFORNIA SEA LION ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A ZOI (km^2)	Level B ZOI (km^2)	Days of activity	Estimated Level A take	Estimated Level B take
1	0.1266	7.70E–13	4.9	49	0	30
2	0.1266	0.000726	91	53	0	611
3	0.1266	1.92423E–05	2.3	11	0	3

Note:
km^2—square kilometers.

Steller Sea Lion

Based on U.S. Navy species density estimates (U.S. Navy 2015), potential take of Steller sea lion is requested as shown in Table 11. Since the calculated Level A zones of otariids are all very small (Table 8), we do not consider it likely that any Steller sea lions would be taken by Level A harassment. The Seattle DOT is requesting authorization for Level B harassment of 188 Steller sea lions.

TABLE 11—STELLER SEA LION ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A ZOI (km^2)	Level B ZOI (km^2)	Days of activity	Estimated Level A take	Estimated Level B take
1	0.0368	7.70E–13	4.9	49	0	9
2	0.0368	0.000726	91	53	0	178
3	0.0368	1.92423E–05	2.3	11	0	1

Note:
km^2—square kilometers.

Southern Resident Killer Whale

Based on the U.S. Navy species density estimates (U.S. Navy 2015) the density for the SRKW is variable across seasons and across the range. The inland water density estimates vary from 0.001461 to 0.004760/km^2 in fall and 0.004761–0.020240/km^2 in winter. Therefore, the take request as shown in Table 12 is based on the highest density estimated during the winter season (0.020240/km^2) for the SRKW population.

With the variable winter density, the Level B take estimate can range from 24 to 104 SRKW, with the upper take estimate greater than the estimated population size and the lower estimated take still greater than 20 percent of the population. NMFS proposes to authorize Level B harassment of 24 SRKW based on a single occurrence of one pod (*i.e.,* J Pod—24 individuals) that would be most likely to be seen near Seattle. The Seattle DOT will coordinate with The Orca Network in an attempt to avoid all take of SRKW, but it may be possible that a group may enter the Level B ZOI before Seattle DOT could shut down due to the larger size of the Level B ZOI, particularly during vibratory pile driving (installation). Since the Level A zones of

mid-frequency cetaceans are small (Table 8), we do not consider it likely that any SRKW would be taken by Level A harassment.

TABLE 12—SOUTHERN RESIDENT KILLER WHALE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A ZOI (km^2)	Level B ZOI (km^2)	Days of activity	Estimated Level A take	Estimated Level B take
1	0.020240	0.000004	4.9	49	0	5
2	0.020240	0.003139	91	53	0	98
3	0.020240	0.000016	2.3	11	0	1

Note:
km^2—square kilometers.

Transient Killer Whale

Based on U.S. Navy species density estimates (U.S. Navy 2015), potential take of transient killer whale is requested as shown in Table 13. As with the SRKW, the density estimate of transient killer whales is variable between seasons and regions. In fall, density estimates range from 0.001583 to 0.002373/km^2 and in winter they range from 0.000575 to 0.001582/km^2. The winter density estimate, when most of the work is being conducted, will be used for estimating density and take. For Level B harassment, this results in a take estimate of eight individuals. However, the Seattle DOT believes that this estimate is low based on local data of 7 transients that were reported in the area (Orca Network Archive Report 2016a). Therefore, NMFS proposes to authorize Level B harassment of 42 transient killer whales, which would cover up to two groups of up to seven transient whales entering into the project area and remaining there for three days. Since the Level A zones of mid-frequency cetaceans are small (Table 8), we do not consider it likely that any transient killer whales would be taken by Level A harassment.

TABLE 13—TRANSIENT KILLER WHALE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A ZOI (km^2)	Level B ZOI (km^2)	Days of activity	Estimated Level A take	Estimated Level B take
1	0.001582	0.000004	4.9	49	0	0
2	0.001582	0.003139	91	53	0	8
3	0.001582	0.000016	2.3	11	0	0

Note:
km^2—square kilometers.

Long-Beaked Common Dolphin

Based on U.S. Navy species density estimates (U.S. Navy 2015), potential take of long-beaked common dolphin is expected to be zero. However, in 2016, the Orca Network (2016c) reported a pod of up to 20 long-beaked common dolphins. Therefore, the Seattle DOT is requesting authorization for Level B harassment of 20 long-beaked common dolphins. Since the Level A zones of mid-frequency cetaceans are all very small (Table 8), we do not consider it likely that the long-beaked common dolphin would be taken by Level A harassment.

Harbor Porpoise

Based on species density estimates from Jefferson *et al.* (2016), potential take of harbor porpoise is requested as shown in Table 14. Take by Level A harassment is estimated at 32 harbor porpoises and take by Level B harassment is estimated at 3,512 exposures to harbor porpoises. NMFS proposes to authorize take by Level A harassment of 32 harbor porpoises and take by Level B harassment of 3,480 harbor porpoises.

TABLE 14—HARBOR PORPOISE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A ZOI (km^2)	Level B ZOI (km^2)	Days of activity	Estimated Level A take	Estimated Level B take
1	0.69	0.001037	4.9	49	0	166.
2	0.69	0.875111	91	53	32	3,328 (* Adjusted 3,296).
3	0.69	0.017517	2.3	11	0	18.

Note:
km^2—square kilometers.
* Number of Level B takes was adjusted to exclude those already counted for Level A takes. Take is instances not individuals.

Dall's Porpoise

Based on U.S. Navy species density estimates (U.S. Navy 2015), potential take is requested as shown in Table 15. Based on these calculations, the Seattle DOT is requesting take for Level A harassment of 2 Dall's porpoise and take for Level B harassment of 199 Dall's porpoise.

TABLE 15—DALL'S PORPOISE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A ZOI (km^2)	Level B ZOI (km^2)	Days of activity	Estimated Level A take	Estimated Level B take
1	0.039	0.001037	4.9	49	0	10.
2	0.039	0.875111	91	53	2	190 (* Adjusted 188).
3	0.039	0.017517	2.3	11	0	1.

Note:
km^2—square kilometers.
* Number of Level B takes was adjusted to exclude those already counted for Level A takes.

Humpback Whales

Based on U.S. Navy species density estimates (U.S. Navy 2015), potential take of humpback whale is requested as shown in Table 16. Although the standard take calculations would result in an estimated take of less than one humpback whale, to be conservative, the Seattle DOT is requesting authorization for Level B harassment of five humpback whales based on take during previous work in Elliott Bay where two humpback whales were observed, including one take, during the 175 days of work during the previous four years (Anchor QEA 2014, 2015, 2016, and 2017). Since the Level A zones of low-frequency cetaceans are smaller during vibratory removal (17.4 m) or impact installation (88.6 m) compared to the Level A zone for vibratory installation (504.8 m) (Table 8), we do not consider it likely that any humpbacks would be taken by Level A harassment during removal or impact installation. We also do not believe any humpbacks would be taken during vibratory installation due to the ability to see humpbacks easily during monitoring and additional coordination with The Orca Network and The Center for Whale Research, which would enable the work to be shut down before a humpback would be taken by Level A harassment.

TABLE 16—HUMPBACK WHALE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A ZOI (km^2)	Level B ZOI (km^2)	Days of activity	Estimated Level A take	Estimated Level B take
1	0.00001	0.000476	4.9	49	0	0
2	0.00001	0.400275	91	53	0	0
3	0.00001	0.012331	2.3	11	0	0

Note:
km^2—square kilometers.

Gray Whale

Based on U.S. Navy species density estimates (U.S. Navy 2015), potential take of gray whale is requested as shown in Table 17. The Seattle DOT is requesting authorization for Level B harassment of three gray whales. Since the Level A zones of low-frequency cetaceans are smaller during vibratory removal (17.4 m) or impact installation (88.6 m) compared to the Level A zone for vibratory installation (504.8 m) (Table 8), we do not consider it likely that any gray whales would be taken by Level A harassment during removal or impact installation. We also do not believe any gray whales would be taken during vibratory installation due to the ability to see gray whales easily during monitoring and additional coordination with The Orca Network and The Center for Whale Research, which would enable the work to be shut down before a gray whale would be taken by Level A harassment.

TABLE 17—GRAY WHALE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A ZOI (km^2)	Level B ZOI (km^2)	Days of activity	Estimated Level A take	Estimated Level B take
1	0.00051	0.000476	4.9	49	0	0
2	0.00051	0.400275	91	53	0	3
3	0.00051	0.012331	2.3	11	0	0

Note:
km^2—square kilometers.

Minke Whale

Based on U.S. Navy species density estimates (U.S. Navy 2015), potential take of minke whales is expected to be zero (Table 18). However, between 2008 and 2014, the Whale Museum (as cited in WSDOT 2016a) reported one sighting in the relevant area. Although the take calculations would result in an estimated take of less than one minke whale, the Seattle DOT is requesting authorization for Level B harassment of two minke whales, based on previous sightings in the construction area by the Whale Museum. Based on the low probability that a minke whale would be observed during the project and then also enter into a Level A zone, we do not consider it likely that any minke whales would be taken by Level A harassment.

TABLE 18—MINKE WHALE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Level B zone	Species density	Level A ZOI (km^2)	Level B ZOI (km^2)	Days of activity	Estimated Level A take	Estimated Level B take
1	0.00003	0.000476	4.9	49	0	0
2	0.00003	0.400275	91	53	0	<1
3	0.00003	0.012331	2.3	11	0	0

Note:
km^2—square kilometers.

The summary of proposed authorized take by Level A and Level B Harassment is described below in Table 19.

TABLE 19—SUMMARY OF REQUESTED INCIDENTAL TAKE BY LEVEL A AND LEVEL B HARASSMENT

Species	Stock size	Proposed authorized Level A take	Proposed authorized Level B take	Proposed authorized total take	% of Population
Pacific harbor seal (*Phoca vitulina*)	11,036	4	1,465 [a]	1,469	13.31.
Northern elephant seal (*Mirounga angustirostris*)	179,000	0	1 [b]	1	Less than 1.
California sea lion (*Zalophus californianus*)	296,750	0	1,695 [c]	1,695	Less than 1.
Steller sea lion (*Eumetopias jubatus*)	60,131–74,448	0	188	188	Less than 1.
Southern resident killer whale DPS (*Orcinus orca*)	78	0	24 (single occurrence of one pod) [d].	24 (single occurrence of one pod).	30.77.
Transient killer whale (*Orcinus orca*)	240	0	42 [e]	42	20.
Long-beaked common dolphin (*Dephinus capensis*)	101,305	0	20 [f]	20	Less than 1.
Harbor porpoise (*Phocoena phocoena*)	11,233	32	3,480	3,512	31.26.
Dall's porpoise (*Phocoenoides dalli*)	25,750	2	199	201	Less than 1.
Humpback whale (*Megaptera novaengliae*)	1,918	0	5 [g]	5	Less than 1.
Gray whale (*Eschrichtius robustus*)	20,990	0	3	3	Less than 1.
Minke whale (*Balaenoptera acutorostrata*)	636	0	2 [h]	2	Less than 1.

Note:
[a] The take estimate proposed is based on a maximum of 13 seals observed on a given day during the 2016 Seattle Test Pile project. The number of Level B takes was adjusted to exclude those already counted for Level A takes.
[b] The take estimate proposed is based on The Whale Museum (as cited in WSDOT 2016a) reporting one sighting of a Northern Elephant seal in the area between 2008 and 2014.
[c] The take estimate proposed is based on a maximum of 15 California sea lions observed on a given day during 4 monitoring seasons of the EBSP project.
[d] The take estimate proposed is based on a single occurrence of one pod of SRKW (*i.e.,* J-pod of 24 SRKW) that would be most likely to be seen near Seattle.
[e] The take estimate proposed is based on local data which is greater than the estimates produced using the Navy density estimates. Therefore, the take proposed is 20 percent of the transient killer whale stock.
[f] The take estimate proposed is based on The Orca Network (2016c) reporting a pod of up to 20 long-beaked common dolphins.
[g] The take estimate proposed is based on take during previous work in Elliott Bay, where two humpback whales were observed and is greater than what was calculated using 2015 Navy density estimates.
[h] The take estimate proposed is based on The Whale Museum (as cited in WSDOT 2016a) reporting one sighting in the relevant area. Although the take calculations would result in an estimated take of less than one minke whale, to be conservative the Seattle DOT is requesting take of two minke whales.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking'' for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Several measures are proposed for mitigating effects on marine mammals from the pile installation and removal activities at Pier 62 and are described below.

Timing Restrictions

All work would be conducted during daylight hours.

Bubble Curtain

A bubble curtain will be used during pile driving activities with an impact hammer to reduce sound levels.

Exclusion Zones

Exclusion Zones calculated from the PTS isopleths will be implemented to protect marine mammals from Level A

harassment (refer to Table 8). Outside of any Level A take authorized, if a marine mammal is observed at or within the Exclusion Zone, work will shut down (stop work) until the individual has been observed outside of the zone, or has not been observed for at least 15 minutes for pinnipeds and small cetaceans and 30 minutes for large whales.

Additional Shutdown Measures

Seattle DOT will implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

Level B Harassment Zones

Seattle DOT will implement the Level B harassment ZOIs as described in Table 6.

Soft-Start for Impact Pile Driving

For impact pile installation, contractors will provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a one-minute waiting period, then two subsequent three-strike sets. Each day, Seattle DOT will use the soft-start technique at the beginning of impact pile driving, or if impact pile driving has ceased for more than 30 minutes.

Additional Coordination

The project team will monitor and coordinate with local marine mammal sighting networks (*i.e.,* Orca Network and/or the CWR) to gather information on the location of whales prior to initiating pile removal. Marine mammal monitoring will be conducted to collect information on the presence of marine mammals within the Level B Harassment Zones for this project. The project team will also coordinate with Washington State Ferries (WSF) to discuss marine mammal sightings on days when vibratory or impact removal is occurring on their nearby projects. In addition, reports will be made available to interested parties upon request.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Marine mammal monitoring will be conducted at all times during in-water pile driving and removal in strategic locations around the area of potential effects as described below:

- During pile removal or installation with a vibratory hammer, a three-monitor protocol would be used, positioned such that each monitor has a distinct view-shed and the monitors collectively have overlapping view-sheds.
- During pile driving activities with an impact hammer, one monitor, based at or near the construction site, will conduct the monitoring.
- In the case(s) where visibility becomes limited, additional land-based monitors and/or boat-based monitors may be deployed.
- Monitors will record take when marine mammals enter the relevant Level B Harassment Zones based on type of construction activity.
- If a marine mammal approaches an Exclusion Zone, the observation will be reported to the Construction Manager and the individual will be watched closely. If the marine mammal crosses into an Exclusion Zone, a stop-work order will be issued. In the event that a stop-work order is triggered, the observed marine mammal(s) will be closely monitored while it remains in or near the Exclusion Zone, and only when it moves well outside of the Exclusion Zone or has not been observed for at least 15 minutes for pinnipeds and 30 minutes for whales will the lead monitor allow work to recommence.

Protected Species Observers

Seattle DOT shall employ NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its Pier 62 Project. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required.
2. At least one observer must have prior experience working as an observer.
3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience.
4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.
5. NMFS will require submission and approval of observer CVs.
6. PSOs will monitor marine mammals around the construction site using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power) and/or spotting scopes. Due to the different sizes of the Level B Zones from different pile sizes, several different Level B Zones and different monitoring protocols

corresponding to a specific pile size will be established.

7. If marine mammals are observed, the following information will be documented:

(A) Date and time that monitored activity begins or ends;

(B) Construction activities occurring during each observation period;

(C) Weather parameters (*e.g.,* percent cover, visibility);

(D) Water conditions (*e.g.,* sea state, tide state);

(E) Species, numbers, and, if possible, sex and age class of marine mammals;

(F) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

(G) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(H) Locations of all marine mammal observations; and

(I) Other human activity in the area.

Acoustic Monitoring

In addition, acoustic monitoring will occur on up to six days per in-water work season to evaluate, in real time, sound production from construction activities (minimum of two days for each type of pile-related activity: Vibratory removal of timber pile, vibratory installation of 30-in steel, and impact installation of 30-in steel). Acoustic monitoring will follow NMFS's 2012 Guidance Documents: Sound Propagation Modeling to Characterize Pile Driving Sounds Relevant to Marine Mammals and Data Collection Methods to Characterize Underwater Background Sound Relevant to Marine Mammals in Coastal Nearshore Waters and Rivers of Washington and Oregon.

Background noise recordings (in the absence of pile-related work) will also be made during the study to provide a baseline background noise profile. The results and conclusions of the acoustic monitoring will be summarized and presented to NOAA/NMFS with recommendations on any modifications to this proposed plan or Exclusion Zones.

Proposed Reporting Measures

Marine Mammal Monitoring Report

Seattle DOT would be required to submit a draft marine mammal monitoring report within 90 days after completion of the in-water construction work or the expiration of the IHA (if issued), whichever comes earlier. The report would include data from marine mammal sightings as described: Date, time, location, species, group size, and behavior, any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting and environmental data for the period (*i.e.,* wind speed and direction, sea state, tidal state, cloud cover, and visibility). The marine mammal monitoring report will also include total takes, takes by day, and stop-work orders for each species. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, Seattle DOT would address the comments and submit a final report to NMFS within 30 days.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury, or mortality, Seattle DOT would immediately cease the specified activities and immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS' West Coast Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hrs preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hrs preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Seattle DOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Seattle DOT may not resume their activities until notified by NMFS via letter, email, or telephone.

Reporting of Injured or Dead Marine Mammals

In the event that Seattle DOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Seattle DOT would immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS' West Coast Stranding Coordinator. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with Seattle DOT to determine whether modifications in the activities are appropriate.

In the event that Seattle DOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Seattle DOT would report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS Stranding Hotline and/or by email to the NMFS' West Coast Stranding Coordinator within 24 hrs of the discovery. Seattle DOT would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Acoustic Monitoring Report

Seattle DOT will submit an Acoustic Monitoring Report that will provide details on the monitored piles, method of installation, monitoring equipment, and sound levels documented during monitoring. NMFS will review the acoustic monitoring report and suggest any changes in monitoring as needed.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature

of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

No serious injury or mortality is anticipated or proposed to be authorized for the Pier 62 Project. Takes that are anticipated and proposed to be authorized are expected to be limited to short-term Level A and Level B harassment (behavioral). Marine mammals present in the vicinity of the action area and taken by Level A and Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal and the implosion noise. However, many marine mammals showed no observable changes during similar project activities for the EBSP.

There are two endangered species that may occur in the project area, humpback whales and SRKW. However, few humpbacks are expected to occur in the project area and few have been observed during previous projects in Elliot Bay. SRKW have occurred in small numbers in the project area. Seattle DOT will shut down in the Level B ZOI should they meet or exceed the proposed take of one occurrence of one pod (J-pod, 24 whales).

There is ESA-designated critical habitat in the vicinity of Seattle DOT's proposed Pier 62 Project for SRKW. However, this proposed IHA is authorizing the harassment of marine mammals, not the production of sound, which is what would result in adverse effects to critical habitat for SRKW. There is one documented harbor seal haulout area near Bainbridge Island, approximately 6 miles (9.66 km) from Pier 62. The haulout, which is estimated at less than 100 animals, consists of intertidal rocks and reef areas around Blakely Rocks and is at the outer edge of potential effects at the outer extent near Bainbridge Island (Jefferies *et al.* 2000). The level of use of this haulout during the fall and winter is unknown, but is expected to be much less than in the spring and summer, as air temperatures become colder than water temperatures resulting in seals in general hauling out less. Similarly, the nearest Steller sea lion haulout to the project area is located approximately six miles away (9.66 km) and is also on the outer edge of potential effects. This haulout is composed of net pens offshore of the south end of Bainbridge Island.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the ''Potential Effects of Specified Activities on Marine Mammals and their Habitat'' section. Project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Therefore, given the consideration of potential impacts to marine mammal prey species and their physical environment, Seattle DOT's proposed Pier 62 Project would not adversely affect marine mammal habitat.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized.
- Takes that are anticipated and proposed to be authorized are expected to be limited to short-term Level B harassment (behavioral).
- The project also is not expected to have significant adverse effects on affected marine mammals' habitat.
- There are no known important feeding or pupping areas. There are two haulouts (harbor seals and Steller sea lions). However, they are at the most outer edge of the potential effects and approximately 6.6 miles from Pier 62. There are no other known important areas for marine mammals.
- For eight of the eleven species, take is less than one percent of the stock abundance. Instances of take for the other three species (harbor seals, killer whales, and harbor porpoise) range from about 13–31 percent of the stock abundance. However, when the fact that a fair number of these instances are expected to be repeat takes of the same animals is considered, the number of individual marine mammals taken is significantly lower.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Take of eight of the eleven species is less than one percent of the stock abundance. Instances of take for the SRKW and transient killer whales, harbor seals, and harbor porpoise ranges from about 13–31 percent of the stock abundance. However, when the fact that a fair number of these instances are expected to be repeat takes of the same animals is considered, the number of individual marine mammals taken is significantly lower. Specifically, for example, Jefferson *et al.* 2016 conducted harbor porpoise surveys in eight regions of Puget Sound, and estimated an abundance of 147 harbor porpoise in the Seattle area (1,798 porpoise in North Puget Sound and 599 porpoise in South Puget Sound). While individuals do move between regions, we would not realistically expect that 3,000+ individuals would be exposed around the pile driving for the Seattle DOT's Pier 62 Project. Considering these factors, as well as the general small size of the project area as compared to the range of the species affected, the numbers of marine mammals estimated to be taken are small proportions of the total populations of the affected species or stocks. Further, for SRWK we acknowledge that 30.77% of the stock is proposed to be taken by Level B harassment, but we believe that a single,

brief incident of take of one group of any species represents take of small numbers for that species. Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population sizes of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of SRKW and humpback whales, which are listed under the ESA.

The Permit and Conservation Division has requested initiation of Section 7 consultation with the West Coast Regional Office for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Seattle DOT for conducting piledriving activities at Pier 62, Elliot Bay, Seattle, Washington from September 2017 to February 2018, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

The proposed IHA language is provided next.

1. This Authorization is valid from September 1, 2017, through February 28, 2018.

2. This Authorization is valid only for activities associated with in-water construction work at the Seattle Department of Transportation's (Seattle DOT) Pier 62 Project, Seattle, Washington.

3. General Condition.

(a) The species authorized for taking, by Level A harassment and Level B harassment, and in the numbers shown in Table 19 are: Pacific harbor seal (*Phoca vitulina*), northern elephant seal (*Mirounga angustirostris*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), long-beaked common dolphin (*Delphinus capensis*), both southern resident killer whale (SRKW) and transient killer whale (*Orcinus orca*), humpback whale (*Megaptera novaengliae*), gray whale (*Eschrichtius robustus*), and minke whale (*Balaenoptera acutorostrata*).

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

- Impact pile driving;
- Vibratory pile driving; and
- Vibratory pile removal.

4. Prohibitions.

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 19 of this notice. The taking by serious injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited unless separately authorized or exempted under the MMPA and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 6(b), are not present in conformance with condition 6(b) of this Authorization.

5. Mitigation.

(a) Time Restriction.

In-water construction work will occur only during daylight hours.

(b) Bubble Curtain.

A bubble curtain will be used during pile driving activities with an impact hammer.

(c) Level B Harassment Zones.

Seattle DOT will implement the Level B harassment ZOIs as described in Table 6 of this notice.

(d) Exclusion Zones.

Outside of any Level A take authorized, Seattle DOT will shut down (stop work) in the Exclusion Zones using the PTS isopleths as described in Table 8 of this notice to protect marine mammals from Level A harassment.

(i) Seattle DOT will implement a minimum shutdown zone of 10 m radius around each pile for all construction methods other than pile driving for all marine mammals.

(ii) If a marine mammal is observed at or within the Exclusion Zone, work will stop until the individual has been observed outside of the zone, or has not been observed for at least 15 minutes for pinnipeds and small cetaceans and 30 minutes for large whales.

(e) Additional Shutdown Measures.

Seattle DOT will implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

(f) Soft-Start for Impact Pile Driving.

For impact pile installation, contractors will provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a one-minute waiting period, then two subsequent three-strike sets.

(g) Additional Coordination.

The project team will monitor and coordinate with local marine mammal sighting networks (*i.e.,* The Orca Network and/or The Center for Whale Research) to gather information on the location of whales prior to initiating pile removal. Marine mammal monitoring will be conducted to collect information on the presence of marine mammals within the Level B Harassment Zones for this project. The project team will also coordinate with Washington State Ferries (WSF) to discuss marine mammal sightings on days when vibratory or impact removal is occurring on their nearby projects. In addition, reports will be made available to interested parties upon request.

6. Monitoring.

(a) Protected Species Observers.

Seattle DOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its construction project. NMFS-approved PSOs will meet the following qualifications.

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience.

(iv) Where a team of three or more observers are required, one observer

should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.

(v) NMFS will require submission and approval of observer CVs.

(b) Monitoring Protocols: PSOs shall be present on site at all times during pile removal and driving. Marine mammal visual monitoring will be conducted for different Level B Harassment Zones based on different sizes of piles being driven or removed.

(i) A 30-minute pre-construction marine mammal monitoring will be required before the first pile driving or pile removal of the day. A 30-minute post-construction marine mammal monitoring will be required after the last pile driving or pile removal of the day. If the constructors take a break between subsequent pile driving or pile removal for more than 30 minutes, then additional 30-minute pre-construction marine mammal monitoring will be required before the next start-up of pile driving or pile removal.

(ii) During pile removal or installation with a vibratory hammer, a three-monitor protocol will be used, positioned such that each monitor has a distinct view-shed and the monitors collectively have overlapping view-sheds.

(iii) During pile driving activities with an impact hammer, one monitor, based at or near the construction site, will conduct the monitoring.

(iv) Where visibility becomes limited, additional land-based monitors and/or boat-based monitors shall be deployed.

(v) Monitors will record take when marine mammals enter their relevant Level B Harassment Zones based on type of construction activity.

(vi) If a marine mammal approaches an Exclusion Zone, the observation will be reported to the Construction Manager and the individual will be watched closely. If the marine mammal crosses into an Exclusion Zone, a stop-work order will be issued. In the event that a stop-work order is triggered, the observed marine mammal(s) will be closely monitored while it remains in or near the Exclusion Zone, and only when it moves well outside of the Exclusion Zone or has not been observed for at least 15 minutes for pinnipeds and small cetaceans and 30 minutes for large whales will the lead monitor allow work to recommence.

(vii) PSOs will monitor marine mammals around the construction site using high-quality binoculars *(e.g.,* Zeiss, 10 x 42 power) and/or spotting scopes.

(viii) If marine mammals are observed, the following information will be documented:

(A) Date and time that monitored activity begins or ends;

(B) Construction activities occurring during each observation period;

(C) Weather parameters (*e.g.,* percent cover, visibility);

(D) Water conditions (*e.g.,* sea state, tide state);

(E) Species, numbers, and, if possible, sex and age class of marine mammals;

(F) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

(G) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(H) Locations of all marine mammal observations; and

(I) Other human activity in the area.

(ix) Acoustic Monitoring—Seattle DOT will conduct acoustic monitoring up to six days per in-water work season to evaluate, in real time, sound production from construction activities (minimum of two days for each type of pile-related activity: vibratory removal of timber pile, vibratory installation of 30-in steel, and impact installation of 30-in steel). Acoustic monitoring will follow NMFS's 2012 Guidance Documents: *Sound Propagation Modeling to Characterize Pile Driving Sounds Relevant to Marine Mammals and Data Collection Methods to Characterize Underwater Background Sound Relevant to Marine Mammals in Coastal Nearshore Waters and Rivers of Washington and Oregon.* Background noise recordings (in the absence of pile-related work) will also be made during the study to provide a baseline background noise profile.

7. Reporting:

(a) Marine Mammal Monitoring.

(i) Seattle DOT will submit a draft marine mammal monitoring report within 90 days after completion of the in-water construction work or the expiration of the IHA (if issued), whichever comes earlier. The report will include data from marine mammal sightings as described: Date, time, location, species, group size, and behavior, any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting and environmental data for the period (*i.e.,* wind speed and direction, sea state, tidal state, cloud cover, and visibility). The marine mammal monitoring report will also include total takes, takes by day, and stop-work orders for each species.

(ii) If comments are received from NMFS Office of Protected Resources on the draft report, a final report will be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

(iii) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury, or mortality, Seattle DOT will immediately cease the specified activities and immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS' West Coast Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hrs preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hrs preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Seattle DOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Seattle DOT will not resume their activities until notified by NMFS via letter, email, or telephone.

(b) Reporting of Injured or Dead Marine Mammals.

(i) In the event that Seattle DOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Seattle DOT will immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS' West Coast Stranding Coordinator. The report must include the same information identified in 7(a)(iii). Activities may continue while NMFS reviews the circumstances of the

incident. NMFS will work with Seattle DOT to determine whether modifications in the activities are appropriate.

(ii) In the event that Seattle DOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Seattle DOT will report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS Stranding Hotline and/or by email to the NMFS' West Coast Stranding Coordinator within 24 hrs of the discovery. Seattle DOT will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

(c) Acoustic Monitoring Report—Seattle DOT will submit an Acoustic Monitoring Report that will provide details on the monitored piles, method of installation, monitoring equipment, and sound levels documented during monitoring. NMFS will review the acoustic monitoring report and suggest any changes in monitoring as needed.

8. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

9. A copy of this Authorization must be in the possession of each contractor who performs the construction work at the Pier 62 Project.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the proposed pile driving activities for the Seattle Pier 62 Project. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: July 19, 2017.

Catherine Marzin,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–15522 Filed 7–24–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; "Responses to Office Action and Voluntary Amendment Forms"

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office, Commerce.

Title: Responses to Office Action and Voluntary Amendment Form.

OMB Control Number: 0651–0050.

Form Number(s):

- PTO–1771
- PTO–1822
- PTO–1957
- PTO–1960
- PTO–1966

Type of Request: Regular.

Number of Respondents: 472,301 respondents per year.

Average Hours per Response: The USPTO estimates that it will take the public between 10 minutes (0.16 hours) and 45 minutes (0.75 hours), depending on the complexity of the situation, to gather the necessary information, prepare the appropriate documents, and submit the information required for this collection.

Burden Hours: 266,184 hours per year.

Cost Burden: $109,135,440.00.

Needs and Uses: The information in this collection is a matter of public record and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. The information is available at USPTO facilities and can also be accessed at the USPTO's Web site. Additionally, the USPTO provides the information to other entities, including Patent and Trademark Resource Centers (PTRCs). The PTRCs maintain the information for use by the public.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicolas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include "0651–0050 copy request" in the subject line of the message.
- *Mail*: Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 24, 2017 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Records and Information Governance Division Director, OCTO, United States Patent and Trademark Office.

[FR Doc. 2017–15496 Filed 7–24–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Petitions Related to Application and Reexamination Processing Fees

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on a proposed extension of an existing information collection.

DATES: Written comments must be submitted on or before September 25, 2017.

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

- *Email: InformationCollection@uspto.gov.* Include "0651–0059 comment" in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7728; or by email to *raul.tamayo@uspto.gov* with "0651–

0059 comment'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 *et seq.* to examine an application for patent and, when appropriate, issue a patent. The USPTO also is required to publish patent applications, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under Title 35, United States Code.

Many actions taken by the USPTO during its examination of an application for patent or for reissue of a patent, or during its reexamination of a patent, are subject to review by an appeal to the Patent Trial and Appeal Board. For other USPTO actions, review is in the form of administrative review obtained via submission of a petition to the USPTO. USPTO petitions practice also provides an opportunity for a patent applicant or owner to supply additional information that may be required in order for the USPTO to further process an application or patent.

This collection covers petitions filed in patent applications and reexamination proceedings that, when submitted to the USPTO, must be accompanied by the fee set forth in 37 CFR 1.17(f), (g), or (h). This collection also covers the transmittals for the petition fees.

II. Method of Collection

The items in this collection can be submitted electronically through EFS-Web, the USPTO's web-based electronic filing system. Items also can be submitted on paper by mail, facsimile, or hand delivery to the USPTO. The petitions to make special under the accelerated examination program only can be filed through EFS-Web.

III. Data

OMB Number: 0651–0059.

IC Instruments and Forms: PTO/SB/17P, PTO/SB/23, PTO/SB/24a, PTO/SB/28 (EFS-Web only), and PTO/SB/140.

Type of Review: Revision of a Previously Existing Information Collection.

Affected Public: Business or other for profit; non-profit institutions.

Estimated Number of Respondents: 40,560 responses per year. The USPTO estimates that 26% will be filed by small entities and 3% by micro entities. 98% of all responses will be filed electronically.

Estimated Time per Response: The USPTO estimates that the response time for activities related to these patent petitions will take the public approximately 5 minutes (0.08 hours) to 12 hours to complete, depending on the particular item. (See Table 1.) This includes time to gather the necessary information, create the documents, and submit the completed request to the USPTO. The USPTO calculates that, on balance, it takes the same amount of time to prepare the petition and the fee transmittal form, and submit them to the USPTO, regardless of whether the applicant or patent owner submits the material electronically or in paper form.

Estimated Total Annual Respondent Burden Hours: 42,195.00 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: $17,284,617.00 The USPTO expects that attorneys will complete all of the items in this collection, with the exception of the petitions for requests for documents in a form other than that provided by 37 CFR 1.19 and the petitions for express abandonment to avoid publication under 37 CFR 1.138(c), both of which the USPTO expects will be completed by para-professionals. The hourly rates for attorneys and paraprofessionals are $410 and $141, respectively. These rates are established by estimates in the 2015 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association. Using these hourly rates, the USPTO estimates that the total respondent cost burden for this collection is $17,284,617.00 per year.

TABLE 1—RESPONDENT HOURLY BURDEN

IC No.	Item	Estimated time for response (hours) (a)	Estimated annual responses (b)	Estimated annual burden hours (a) × (b)/60 = (c)	Rate ($/hr)
1	Petitions (corresponding to the fee) under 37 CFR 1.17(f) include: Petition to Accord a Filing Date under 1.57(b)(3) or 1.57(a)(3) (pre-PLT). Petition to Accord a Filing Date under 1.53(e)(2). Petition for Decision on a Question Not Specifically Provided For under 1.182. Petition to Suspend the Rules under 1.183.	4.00	50	200.00	410
1	EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(f).	4.00	2,750	11,000.00	410
2	Petitions (corresponding to the fee) under 37 CFR 1.17(g): Petition to Access an Assignment Record under 1.12(c). Petition for Access to an Application under 1.14(i). Petition for Expungement of Information under 1.59(b). Petition to Suspend Action in an Application under 1.103(a).	2.00	100	200.00	410
2	EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(g).	2.00	5,000	10,000.00	410
3	Petitions (corresponding to the fee) under 37 CFR 1.17(h): Petition for Accepting Color Drawings or Photographs under 1.84(a)(2). Petition for Entry of a Model or Exhibit under 1.91(a).	1.00	250	250.00	410

TABLE 1—RESPONDENT HOURLY BURDEN—Continued

IC No.	Item	Estimated time for response (hours) (a)	Estimated annual responses (b)	Estimated annual burden hours (a) × (b)/60 = (c)	Rate ($/hr)
	Petition to Withdraw an Application from Issue under 1.313(a) PTO/SB/140:				
	Petition to Defer Issuance of a Patent under 1.314.				
3	EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(h).	1.00	11,500	11,500.00	410
4	Petitions for Requests for Documents in a Form Other than that Provided by 37 CFR 1.19.	1.00	5	5.00	141
4	EFS-Web Petitions for Requests for Documents in a Form Other than that Provided by 37 CFR 1.19.	1.00	50	50.00	141
5	Petitions to Make Special Under Accelerated Examination Program.	12.00	600	7,200.00	410
	PTO/SB/28 (EFS-Web Only).				
6	Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c).	0.20	10	2.00	141
	PTO/SB/24a.				
6	EFS-Web Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c).	0.20	490	98.00	410
7	Petition for Extension of Time Under 37 CFR 1.136(b) ...	0.50	5	2.50	410
	PTO/SB/23.				
7	EFS-Web Petition for Extension of Time Under 37 CFR 1.136(b).	0.50	100	50.00	410
8	Petition Fee under 37 CFR 1.17(f), (g), and (h) Transmittal.	0.08	400	33.33	410
	PTO/SB/17P.				
8	EFS-Web Petition Fee under 37 CFR 1.17(f), (g), and (h) Transmittal.	0.08	19,250	1,604.17	410
Totals	.....	.....	40,560	42,195.00	

Estimated Total Annual (Non-hour) Respondent Cost Burden: $3,147,594.80. There are no capital start-up, operation, or maintenance costs associated with this information collection. However, the public may incur cost burden in the form of postage and filing fees.

The public may incur postage costs when submitting the items in this collection. Although the USPTO prefers that the items in this collection be submitted electronically, the items may be submitted to the USPTO by mail through the United States Postal Service. The USPTO expects that approximately 98 percent of the items in this collection will be submitted electronically (except for the petitions to make special under the accelerated examination program, which must be submitted electronically), resulting in 820 mailed submissions (though items that are not electronically filed may alternatively be submitted by mail, facsimile or hand delivery, for the purposes of this estimate, the USPTO is treating all items that are not filed electronically as though they were mailed). The average cost for a four-ounce large envelope shipped first-class via USPS is $1.64. Therefore, the USPTO estimates that the postage costs for the mailed submissions in this collection will total $1,344.80.

There are filing fees associated with this collection, which were previously accounted for in collection 0651–0072. That collection has been discontinued, and the relevant fees have been consolidated into to this collection. These fees are listed in the table below.

TABLE 2—FILING FEES

No.	Item	Estimated annual responses (a)	Filing fee ($) (b)	Total non-hour cost burden ($) (a) × (b) = (c)
1	Petitions requiring the petition fee set forth in 37 CFR 1.17 (f) (Group I) (large entity).	1,400	$400	$560,000.00
1	Petitions requiring the petition fee set forth in 37 CFR 1.17 (f) (Group I) (small entity).	1,150	200	230,000.00
1	Petitions requiring the petition fee set forth in 37 CFR 1.17 (f) (Group I) (micro entity).	250	100	25,000.00
2	Petitions requiring the petition fee set forth in 37 CFR 1.17 (g) (Group II) (large entity).	4,500	200	900,000.00
2	Petitions requiring the petition fee set forth in 37 CFR 1.17 (g) (Group II) (small entity).	550	100	55,000.00
2	Petitions requiring the petition fee set forth in 37 CFR 1.17 (g) (Group II) (micro entity).	50	50	2,500.00

TABLE 2—FILING FEES—Continued

No.	Item	Estimated annual responses (a)	Filing fee ($) (b)	Total non-hour cost burden ($) (a) × (b) = (c)
3	Petitions requiring the petition fee set forth in 37 CFR 1.17 (h) (Group III) (large entity).	8,000	140	1,120,000.00
3	Petitions requiring the petition fee set forth in 37 CFR 1.17 (h) (Group III) (small entity).	3,500	70	245,000.00
3	Petitions requiring the petition fee set forth in 37 CFR 1.17 (h) (Group III) (micro entity).	250	35	8,750.00
Totals		19,650		3,146,250.00

Therefore, the USPTO estimates that the total annual (non-hour) cost burden for this collection, in the form of postage costs and filing fees is $3,147,594.80 per year.

IV. Request for Comments

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

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, *e.g.,* the use of automated collection techniques or other forms of information technology.

Marcie Lovett,

Records and Information Governance Division Director, OCTO United States Patent and Trademark Office.

[FR Doc. 2017–15501 Filed 7–24–17; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Substantive Submissions Made During Prosecution of the Trademark Application

ACTION: Revision of an existing collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on a a proposed extension of an existing information collection.

DATES: Written comments must be submitted on or before September 25, 2017.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0054 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Catherine Cain, Attorney Advisor, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8946; or by email to *Catherine.Cain@uspto.gov* with ''0651–0054 comment'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. 1051 *et seq.,* which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their mark with the USPTO.

Such individuals and businesses may also submit various communications to the USPTO, including providing additional information needed to process a request to delete a particular filing basis from an application or to divide an application identifying multiple goods and/or services into two or more separate applications. Applicants may seek a six-month extension of time to file a statement that the mark is in use in commerce or submit a petition to revive an application that abandoned for failure to submit a timely response to an office action or a timely statement of use or extension request. In some circumstances, an applicant may expressly abandon an application by filing a written request for withdrawal of the application.

The rules implementing the Act are set forth in 37 CFR part 2. These rules mandate that each register entry include the mark, the goods and/or services in connection with which the mark is used, ownership information, dates of use, and certain other information. The USPTO also provides similar information concerning pending applications. The register and pending application information may be accessed by an individual or by businesses to determine the availability of a mark. By accessing the USPTO's information, parties may reduce the possibility of initiating use of a mark previously adopted by another. The Federal trademark registration process may thereby reduce the number of filings between both litigating parties and the courts.

II. Method of Collection

The forms in this collection are available in electronic format through the Trademark Electronic Application System (TEAS), which may be accessed on the USPTO Web site. TEAS Global Forms are available for the items where a TEAS form with dedicated data fields is not yet available. Applicants may also submit the information in paper form by mail, fax, or hand delivery.

III. Data

OMB Number: 0651–0054.

IC Instruments and Forms: PTO Forms 1553, 1581, 2194, 2195, 2200, and 2202.

Type of Review: Revision of a Previously Existing Information Collection.

Affected Public: Businesses or other for-profits; not-for-profit institutions; individuals.

Estimated Number of Respondents: 374,972 per year.

Estimated Time per Response: The USPTO estimates that the response time for activities related to submissions regarding trademark prosecution will take the public from 10 minutes (0.17 hours) to 35 minutes (0.58 hours) to complete. (See Table 1.) This includes the time to gather the necessary information, prepare the appropriate documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 101,400.37 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: $41,574,150.33. The professional hourly rate for attorneys is $410. This rate is established by estimates in the 2015 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association. Using this hourly rate, the USPTO estimates that the respondent cost burden for this collection will be approximately $41,574,150.33 per year.

No.	Item	Estimated time for response (minutes) (a)	Estimated annual responses (b)	Estimated annual burden hours (a) × (b) / 60 = (c)	Rate ($/hr)
1	Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) (Paper).	30	27	13.50	$410.00
1	Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) (TEAS).	25	109,086	45,452.50	410.00
2	Request for Extension of Time to File a Statement of Use (Paper).	15	59	14.75	410.00
2	Request for Extension of Time to File a Statement of Use (TEAS).	12	234,906	46,981.20	410.00
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (Paper).	25	5	2.08	410.00
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (TEAS).	20	19,545	6,515.00	410.00
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (Paper).	20	1	0.33	410.00
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (TEAS).	15	284	71.00	410.00
5	Request to Delete Section 1(b) Basis, Intent to Use (Paper).	15	1	0.25	410.00
5	Request to Delete Section 1(b) Basis, Intent to Use (TEAS).	10	1,400	233.33	410.00
6	Request for Express Abandonment (Withdrawal) of Application (Paper).	15	1	0.25	410.00
6	Request for Express Abandonment (Withdrawal) of Application (TEAS).	10	5,500	916.67	410.00
7	Request to Divide Application (Paper)	20	1	0.33	410.00
7	Request to Divide Application (TEAS)	15	3,057	764.25	410.00
8	Response to Intent-to-Use (ITU) Divisional Unit Office Action (Paper).	35	1	0.58	410.00
8	Response to Intent-to-Use (ITU) Divisional Unit Office Action (TEAS Global).	30	2	1.00	410.00
9	Response to Petition to Revive Deficiency Letter (Paper).	25	1	0.42	410.00
9	Response to Petition to Revive Deficiency Letter (TEAS Global).	20	313	104.33	410.00
10	Petition to the Director Under Trademark Rule 2.146 (Paper).	30	1	0.50	410.00
10	Petition to the Director Under Trademark Rule 2.146 (TEAS Global).	25	750	312.50	410.00
11	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services After NOA (Paper).	35	1	0.58	410.00
11	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services After NOA (TEAS Global).	30	30	15.00	410.00
Totals			374,972	101,400.37	

Estimated Total Annual (Non-hour) Respondent Cost Burden: $42,650,873.51.

There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) cost burden in the form of postage costs and filing fees.

Applicants incur postage costs when submitting information to the USPTO by mail through the United States Postal Service. The USPTO estimates that the majority of the paper forms are submitted to the USPTO via first-class mail at a rate of 49 cents per ounce. Therefore, the USPTO estimates that with a total of 99 paper submissions, the postage costs in this collection will be $48.51.

The filing fees for several items in this collection are charged per class of goods and/or services; therefore, the filing fees will vary for each respondent depending on the number of classes. The total filing fees of $42,650,825.00 shown here are based on the minimum fee of one class for those items for which a fee is required.

IC No.	Item	Estimated annual responses (a)	Filing fee ($) (b)	Total non-hour cost Burden ($) (a) × (b) = (c)
1	Trademark/Service Mark Allegation of Use (Statement of Use/ Amendment to Allege Use) (Paper).	27	$200	$5,400.00
1	Trademark/Service Mark Allegation of Use (Statement of Use/ Amendment to Allege Use) (TEAS).	109,086	100	10,908,600.00
2	Request for Extension of Time to File a Statement of Use (Paper).	59	225	13,275.00
2	Request for Extension of Time to File a Statement of Use (TEAS).	234,906	125	29,363,250.00
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (Paper).	5	200	1,000.00
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (TEAS).	19,545	100	1,954,500.00
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (Paper).	1	200	200.00
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (TEAS).	203	100	20,300.00
7	Request to Divide Application (Paper)	1	200	200.00
7	Request to Divide Application (TEAS Global)	3,057	100	305,700.00
10	Petition to the Director Under Trademark Rule 2.146 (Paper)	1	200	200.00
10	Petition to the Director Under Trademark Rule 2.146 (TEAS Global).	750	100	75,000.00
11	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services After NOA (Paper).	1	200	200.00
11	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services After NOA (TEAS Global).	30	100	3,000.00
Totals		374,891		42,650,825.00

Therefore, the USPTO estimates that the total annual (non-hour) cost burden for this collection, in the form of postage costs and filing fees is $42,650,873.51 per year.

IV. Request for Comments

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

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, *e.g.,* the use of automated collection techniques or other forms of information technology.

Marcie Lovett,

Records and Information Governance Division Director, OCTO, United States Patent and Trademark Office.

[FR Doc. 2017–15500 Filed 7–24–17; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Call for Written Third-Party Comments

AGENCY: Accreditation Group, Office of Postsecondary Education, U.S. Department of Education.

ACTION: Call for written third-party comments.

SUMMARY: This notice provides information to members of the public on submitting written comments for accrediting agencies currently undergoing review for purposes of recognition by the U.S. Secretary of Education.

FOR FURTHER INFORMATION CONTACT: Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 6C115, Washington, DC 20202, telephone: (202) 453–7615, or email: *herman.bounds@ed.gov.*

SUPPLEMENTARY INFORMATION:

NACIQI's Statutory Authority and Function: The National Advisory Committee on Institutional Quality and Integrity (NACIQI) is established under Section 114 of the Higher Education Act

of 1965, as amended (HEA), 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV of the HEA, as amended.
- The recognition of specific accrediting agencies or associations or a specific State public postsecondary vocational education or nurse education approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV of the HEA, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary may prescribe.

This solicitation of third-party comments concerning the performance of accrediting agencies under review by the Secretary is required by § 496(n)(1)(A) of the Higher Education Act (HEA) of 1965, as amended. These accrediting agencies will be on the agenda for the December 2017 NACIQI meeting. The meeting date has not been determined, but will be announced in a separate **Federal Register** notice.

Agencies Under Review and Evaluation: Below is a list of agencies currently undergoing review and evaluation by the Accreditation Group, including their current and requested scopes of recognition:

Applications for Renewal of Recognition:

1. *Accreditation Commission for Education in Nursing, Inc., Scope of Recognition:* Accreditation of nursing education programs and schools, both postsecondary and higher degree, which offer a certificate, diploma, or a recognized professional degree including clinical doctorate, masters, baccalaureate, associate, diploma, and practical nursing programs in the United States and its territories, including those offered via distance education.

2. *Accrediting Commission for Midwifery Education, Scope of Recognition:* The accreditation and pre-accreditation of basic certificate, basic graduate nurse-midwifery, direct entry midwifery, and pre-certification nurse-midwifery education programs, including those programs that offer distance education in the United States.

3. *American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education, Scope of Recognition:* The accreditation and preaccreditation (''Candidate for Accreditation'') in the United States of physical therapist education programs leading to the first professional degree at the master's or doctoral level and physical therapist assistant education programs at the associate degree level and for its accreditation of such programs offered via distance education.

4. *Middle States Commission on Higher Education, Scope of Recognition:* The accreditation and preaccreditation (''Candidacy status'') of institutions of higher education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands, including distance and correspondence education programs offered at those institutions.

5. *Higher Learning Commission, Scope of Recognition:* The accreditation and preaccreditation (''Candidate for Accreditation'') of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, including the tribal institutions and the accreditation of programs offered via distance education and correspondence education within these institutions. This recognition extends to the Institutional Actions Council jointly with the Board of Trustees of the Commission for decisions on cases for continued accreditation or reaffirmation, and continued candidacy, and to the Appeals Body jointly with the Board of Trustees of the Commission for decisions related to initial candidacy or accreditation or reaffirmation of accreditation.

6. *New England Association of Schools and Colleges, Commission on Institutions of Higher Education, Scope of Recognition:* The accreditation and pre-accreditation (''Candidacy status'') of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings, including the accreditation of programs offered via distance education within these institutions.

7. *New York State Board of Regents, and the Commissioner of Education, Scope of Recognition:* The accreditation of those degree-granting institutions of higher education in New York that designate the agency as their sole or primary nationally recognized accrediting agency for purposes of establishing eligibility to participate in HEA programs including accreditation of programs offered via distance education within these institutions.

8. *Western Association of Schools and Colleges, Senior Colleges and University Commission, Scope of Recognition:* The accreditation and preaccreditation (''Candidate for Accreditation'') of senior colleges and universities in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands and the Republic of the Marshall Islands, including distance education programs offered at those institutions.

Compliance Report:

1. *American Board of Funeral Service Education, Committee on Accreditation, Compliance report includes the following:* (1) Findings identified in the March 10, 2016 letter from the senior Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* and (2) Review under 34 CFR 602.15(a)(6), 602.20(b), and 602.24(f)(2).

Scope of recognition: The accreditation of institutions and programs within the United States awarding diplomas, associate degrees and bachelor's degrees in funeral service or mortuary science, including the accreditation of distance learning courses and programs offered by these programs and institutions.

2. *Montessori Accreditation Council for Teacher Education, Compliance report includes the following:* 1) Findings identified in the March 10, 2016 letter from the senior Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* and (2) Review under 34 CFR 602.17(f), 602.19(b), and 602.20(b).

Scope of recognition: The accreditation of Montessori teacher education institutions and programs throughout the United States, including those offered via distance education.

3. *Midwifery Education Accreditation Council, Compliance report includes the following:* (1) Findings identified in the March 10, 2016 letter from the senior Department official following the

December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* and (2) Review under 34 CFR 602.19(b), 602.20(a), and 602.20(b).

Scope of recognition: The accreditation and pre-accreditation throughout the United States of direct-entry midwifery educational institutions and programs conferring degrees and certificates, including the accreditation of such programs offered via distance education.

Applications for Renewal of Recognition—State Agency for Nurse Education

North Dakota Board of Nursing.

Compliance Report—State Agency for Nurse Education

New York State Board of Regents, State Education Department, Office of the Professions, Nursing Education, Compliance report includes the following: (1) Findings identified in the March 10, 2016 letter from the senior Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* and (2) Review under 34 CFR 3d.

Compliance Report—State Agency for the Approval of Public Postsecondary Vocational Education

Oklahoma Board of Career and Technology Education, Compliance report includes the following: (1) Findings identified in the March 10, 2016 letter from the senior Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* and (2) Review under 34 CFR 603.24(a)(1)(ii), 603.24(a)(3)(ii)(A), 603.24(b)(1)(iii), 603.24(b)(1)(iv), 603.24(b)(1)(v), 603.24(b)(1)(vi), 603.24(b)(1)(vii), 603.24(b)(2)(i), 603.24(b)(2)(ii), 603.24(b)(2)(iii), 603.24(d)(1), 603.24(d)(2).

Scope of Recognition: The approval of public postsecondary vocational education offered at institutions in the State of Oklahoma that are not under the jurisdiction of the Oklahoma State Regents of Higher Education, including the approval of public postsecondary vocational education offered via distance education.

Submission of Written Comments Regarding a Specific Accrediting Agency or State Approval Agency Under Review

Written comments about the recognition of a specific accrediting or State agency must be received by August 13, 2017, in the *ThirdPartyComments@ed.gov* mailbox and include the subject line ''Written Comments: (agency name).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Comments about an agency's recognition after review of a compliance report must relate to issues identified in the compliance report and the criteria for recognition cited in the senior Department official's letter that requested the report, or in the Secretary's appeal decision, if any. Comments about the renewal of an agency's recognition based on a review of the agency's petition must relate to its compliance with the Criteria for the Recognition of Accrediting Agencies, or the Criteria and Procedures for Recognition of State Agencies for Approval of Nurse Education as appropriate, which are available at *http://www.ed.gov/admins/finaid/accred/index.html.*

Only material submitted by the deadline to the email address listed in this notice, and in accordance with these instructions, become part of the official record concerning agencies scheduled for review and are considered by the Department and NACIQI in their deliberations.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1011c.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Planning, Policy, and Innovation.

[FR Doc. 2017–15561 Filed 7–24–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[EERE–2017–BT–DET–0046]

Preliminary Analysis Regarding Energy Efficiency Improvements in ANSI/ASHRAE/IES Standard 90.1–2016: Energy Standard for Buildings, Except Low-Rise Residential Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) is announcing the availability of a Preliminary Energy Savings Analysis of ANSI/ASHRAE/IES Standard 90.1–2016 (Preliminary Analysis). DOE welcomes written comments from interested parties on any subject within the scope of this Preliminary Analysis.

DATES: DOE will accept written comments and information on the Preliminary Analysis no later than September 8, 2017.

ADDRESSES: A copy of the Preliminary Analysis is available at *https://energy.gov/eere/buildings/downloads/preliminary-energy-savings-analysis-ansiashraeies-standard-901–2016.*

Any comments submitted must provide docket number EERE–2017–BT–DET–0046. Comments may be submitted using any of the following methods:

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

2. *Email: 2016ASHRAEstandard2017DET0046@ee.doe.gov.* Include the docket number in the subject line of the message.

3. *Postal Mail:* Building Energy Codes Program, U.S. Department of Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Building Energy Codes Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600,

Washington, DC 20024. Telephone: (202) 586–1927.

If possible, please submit all items on a CD, in which case it is not necessary to include printed copies. For detailed instructions on submitting comments, see section II of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *Regulations.gov*. All documents in the docket are listed in the *Regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. A link to the docket Web page on the *Regulations.gov* site can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2017-BT-DET-0046.* The *regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section II for further information on how to submit comments through *Regulations.gov*. For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact David Cohan at 503–477–0851 or *david.cohan@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Jeremiah Williams; U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., EE–5B, Washington, DC 20585; (202) 441–1288; *Jeremiah.Williams@ee.doe.gov.*

For legal issues, please contact Kavita Vaidyanathan; U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., GC–33, Washington, DC 20585; (202) 586–0669; *Kavita.Vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Participation

I. Background

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements for building energy conservation standards, administered by the DOE Building Energy Codes Program. (42 U.S.C. 6831 *et seq.*) Section 304(b), as amended, of ECPA provides that whenever the ANSI/ASHRAE/IESNA Standard 90.1–1989 (Standard 90.1–1989 or 1989 edition), or any successor to that code, is revised, the Secretary of Energy (Secretary) must make a determination, not later than 12 months after such revision, whether the revised code would improve energy efficiency in commercial buildings, and must publish notice of such determination in the **Federal Register**. (42 U.S.C. 6833(b)(2)(A))

Standard 90.1–2016, the most recent edition, was published in October 2016, triggering the statutorily-required DOE review process. The Standard is developed under ANSI-approved consensus procedures, and is under continuous maintenance by an ASHRAE Standing Standard Project Committee (commonly referenced as SSPC 90.1). ASHRAE has an established program for regular publication of addenda, or revisions, including procedures for timely, documented, consensus action on requested changes to the Standard. More information on the consensus process and ANSI/ASHRAE/IES Standard 90.1–2016 is available at: *https://www.ashrae.org/resources--publications/bookstore/standard-90-1.*

To meet the statutory requirement, DOE conducted a preliminary analysis to quantify the expected energy savings associated with Standard 90.1–2016 relative to the previous 2013 version. A copy of the Preliminary Analysis is available at *https://energy.gov/eere/buildings/downloads/preliminary-energy-savings-analysis-ansiashraeies-standard-901-2016.* DOE welcomes written comments from interested parties on any subject within the scope of this Preliminary Analysis.

II. Public Participation

DOE will accept comments, data, and information regarding the Preliminary Analysis no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting Comments via the Regulations.gov Web Site

The *Regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable, except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Do not submit to *Regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *Regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *Regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *Regulations.gov* provides after you have successfully uploaded your comment.

Submitting Comments via Email, Hand Delivery/Courier, or Mail

Comments and documents submitted via email, hand delivery, or mail also will be posted to *Regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter, including your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign Form Letters

Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on July 14, 2017.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2017–15579 Filed 7–24–17; 8:45 am]

BILLING CODE 6450–01–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: EC17–88–000.
Applicants: Monongahela Power Company, Allegheny Energy Supply Company, LLC.
Description: Response of Monongahela Power Company to June 27, 2017 letter requesting additional information.
Filed Date: 7/18/17.
Accession Number: 20170718–5097.
Comments Due: 5 p.m. ET 8/8/17.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG17–128–000.
Applicants: Great Valley Solar 1, LLC.
Description: EWG Self-Certification of Great Valley Solar 1, LLC.
Filed Date: 7/19/17.
Accession Number: 20170719–5046.
Comments Due: 5 p.m. ET 8/9/17.

Docket Numbers: EG17–129–000.
Applicants: Great Valley Solar 2, LLC.
Description: EWG Self-Certification of Great Valley Solar 2, LLC.
Filed Date: 7/19/17.
Accession Number: 20170719–5047.
Comments Due: 5 p.m. ET 8/9/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2906–008; ER10–2908–008; ER10–2910–008; ER10–2911–008; ER11–4666–002; ER11–4667–002; ER11–4669–002; ER11–4670–002; ER12–295–001; ER12–709–001.
Applicants: Morgan Stanley Capitol Group Inc., MS Solar Solutions Corp., Naniwa Energy LLC, Power Contract Financing II, L.L.C., NaturEner Glacier Wind Energy 1, LLC, NaturEner Glacier Wind Energy 2, LLC, NaturEner Rim Rock Wind Energy, LLC, Naturener Montana Wind Energy, LLC, NaturEner Power Watch, LLC, NaturEner Wind Watch, LLC.
Description: Supplement to December 30, 2016 Updated Market Power Analysis for the Northwest Region of the Morgan Stanley Public Utilities, et. al.
Filed Date: 7/18/17.
Accession Number: 20170718–5079.
Comments Due: 5 p.m. ET 8/8/17.

Docket Numbers: ER17–2104–000.
Applicants: Southern Partners.
Description: Baseline eTariff Filing: Southern Partners, INC MBR Application to be effective 8/1/2017.
Filed Date: 7/18/17.
Accession Number: 20170718–5093.
Comments Due: 5 p.m. ET 8/8/17.

Docket Numbers: ER17–2105–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 20170713_Town of Center PPA to be effective 4/11/2017.
Filed Date: 7/18/17.
Accession Number: 20170718–5118.
Comments Due: 5 p.m. ET 8/8/17.

Docket Numbers: ER17–2106–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–PMPA RS No. 340 Revised PPA to be effective 7/1/2017.
Filed Date: 7/19/17.
Accession Number: 20170719–5023.
Comments Due: 5 p.m. ET 8/9/17.

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: July 19, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–15548 Filed 7–24–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–471–000; PF17–2–000]

Paiute Pipeline Company; Notice of Application

On July 5, 2017, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations seeking for a certificate of public convenience and necessity authorizing

Paiute to abandon and replace certain pipeline facilities, and to construct and operate certain pipeline and associated facilities located in Douglas County, Lyon County, and Carson City, Nevada (2018 Expansion Project or Project), all as more fully set forth in the application, which is open to the public for 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.

Any questions regarding the Paiute application should be directed to Mark A. Litwin, Vice President/General Manager, Paiute Pipeline Company, P.O. Box 94197, Las Vegas, Nevada 89193–4197, or (702) 364–3195, or by email *mark.litwin@swgas.com.*

Specifically, the 2018 Expansion Project will involve: (1) Installation of 0.42 miles of a new 12-inch-diameter steel pipeline loop, (2) installation of 4.19 miles of a new 20-inch-diameter steel pipeline loop, (3) abandonment and replacement of 1.58 miles of existing 8-inch-diameter steel pipeline with 12-inch-diameter steel pipeline, (4) replacement of 2.27 miles of existing 10-inch-diameter steel pipeline with 20-inch-diameter steel pipeline, and (5) installation of associated auxiliary or appurtenant facilities. The Project is designed to provide incremental firm transportation services of 5,635 dekatherms per day on Paiute's system. Paiute proposes an initial incremental rate to recover the costs of the Project facilities. The estimated cost for Paiute's construction of the Project is $17,950,000.

On October 24, 2016, Commission staff granted Paiute's request to use the pre-filing process and assigned Docket No. PF17–2–000 to staff activities involving the Projects. Now, as of the filing of this application on July 5, 2017, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP17–471–000 as noted in the caption of this Notice.

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 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 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 August 9, 2017.

Dated: July 19, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–15550 Filed 7–24–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–472–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

Take notice that on July 10, 2017, National Fuel Gas Supply Corporation (National Fuel) 6363 Main Street, Williamsville, New York 14221, filed a prior notice application pursuant to sections 157.205, and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and National Fuel's blanket certificate issued in Docket No. CP83–4–000. National Fuel requests authorization to abandon one injection/withdrawal storage well and associated well line in its Colden Storage Field located in the Town of Aurora, Erie County, New York. Specifically, National Fuel proposes to plug and abandon one injection/withdrawal storage well, Well 0925–I, and abandon in place the associated Well Line CW–925, all as more fully set forth in the application, which is open to the public for inspection. There will be no abandonment or decrease in service to customers as a result of the proposed abandonment. 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.

Any questions regarding this application should be directed to Alice A. Curtiss, Deputy General Counsel for National Fuel, 6363 Main Street, Williamsville, New York 14221, or phone (716) 857–7075, or by email *curtissa@natfuel.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

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.

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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter 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.

Dated: July 19, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–15546 Filed 7–24–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–133–000]

Northwest Pipeline LLC; Notice of Schedule for Environmental Review of the North Fork Nooksack Line Lowering Project

On April 6, 2017, Northwest Pipeline LLC (Northwest) filed an application in Docket No. CP17–133–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the North Fork Nooksack Line Lowering Project (Project), and would involve replacing and lowering approximately 1,700 feet of 30-inch-diameter pipeline in Whatcom County, Washington.

On April 20, 2017, 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—November 13, 2017
90-day Federal Authorization Decision Deadline—February 11, 2018

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

Northwest proposes to remove, replace, and lower about 1,700 feet of 30-inch-diameter pipeline in the north floodplain of the North Fork Nooksack River. The project also includes removal of about 1,550 feet of previously abandoned 26-inch-diameter pipeline that would become exposed during the replacement of the 30-inch pipeline. The Project is located in Whatcom County, near Deming, Washington.

Background

On May 9, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed North Fork Nooksack Line Lowering Project and Request for Comments on Environmental Issues* (NOI). The NOI 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 the U.S. Environmental Protection Agency and the Lummi Indian Business Council. The primary issues raised by the U.S. Environmental Protection Agency are impacts on water quality during pipeline construction; impacts on wetlands, floodplains, and riparian resources; control of invasive and noxious weeds; and impacts on endangered species. The Lummi Business Council identified that it has an active interest in the proposed Project and requested additional time to prepare and submit scoping comments.

The U.S. Army Corps of Engineers has agreed to participate as 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.,* CP17–133), 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: July 19, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–15545 Filed 7–24–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1167–002.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance Effective Date Notice for BoP TCC Auctions to be effective 8/1/2017.

Filed Date: 7/18/17.

Accession Number: 20170718–5114.

Comments Due: 5 p.m. ET 8/8/17.

Docket Numbers: ER17–2107–000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: SPS–GSEC–SPEC–IA–T–L–Milwaukee–684–0.0.0 to be effective 9/18/2017.

Filed Date: 7/19/17.

Accession Number: 20170719–5053.

Comments Due: 5 p.m. ET 8/9/17.

Docket Numbers: ER17–2108–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: NYISO 205 filing re: Remove Bond Funds from Cash Collateral Investment Options to be effective 9/18/2017.

Filed Date: 7/19/17.

Accession Number: 20170719–5078.

Comments Due: 5 p.m. ET 8/9/17.

Docket Numbers: ER17–2109–000.

Applicants: PJM Interconnection, L.L.C., Old Dominion Electric Cooperative.

Description: § 205(d) Rate Filing: Third Revised Service Agreement No. 3746—NITSA among PJM and ODEC to be effective 7/1/2017.

Filed Date: 7/19/17.

Accession Number: 20170719–5091.

Comments Due: 5 p.m. ET 8/9/17.

Docket Numbers: ER17–2110–000.

Applicants: ISO New England Inc.

Description: Permanent De-List Bids and Retirement De-List Bids Submitted for 2021–22 Forward Capacity of ISO New England Inc.

Filed Date: 7/19/17.

Accession Number: 20170719–5102.

Comments Due: 5 p.m. ET 8/9/17.

Docket Numbers: ER17–2111–000.

Applicants: Otter Tail Power Company.

Description: § 205(d) Rate Filing: Amendment and Restatement of Otter Tail Rate Schedule No. 110 to be effective 7/30/2010.

Filed Date: 7/19/17.

Accession Number: 20170719–5108.

Comments Due: 5 p.m. ET 8/9/17.

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: July 19, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–15549 Filed 7–24–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–2104–000]

Southern Partners; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Southern Partners's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 8, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables Subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

FERCOnlineSupport@ferc.gov. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 19, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–15547 Filed 7–24–17; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice, request for comments.

SUMMARY: The following applicants filed AM or FM proposals to change the community of License: Christopher W. Johnson, Station WAMI, Facility ID 66212, BP–20170627ABG, From Opp, AL, To Maplesville, AL: Midwest Communications, Inc., Station WNFN, Facility ID 29862, BPH–20170627AAL, From Millersville, TN, To Franklin, TN; R & B Communications, Inc., Station WWTM, Facility ID 54328, BP–20170711AAQ, From Decatur, AL, To Mooresville, AL; Sebago Broadcasting Company, Station WCTG, Facility ID 88405, BPH–20170707AAP, From Chincoteague, VA, To Eden, MD; Southern Wabash Communications of Middle Tennessee, Inc., Station WBGB, Facility ID 172966, BPED–20170526ABK, From Scottsville, KY, To Portland, TN; Sun Valley Media Group, LLC., Station KPTO, Facility ID 129638, BP–20170531ABF, From Pocatello, ID, To Hailey, ID; Valleydale Broadcasting, LLC., Station WZNN, Facility ID 183374, BPH–20170627ABF, From Maplesville, AL, To Holtville, AL.

DATES: The agency must receive comments on or before September 25, 2017.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700, *tung.bui@fcc.gov.*

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2017–15503 Filed 7–24–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1124]

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 of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. 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 Office of Management and Budget (OMB) 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 OMB control number.

DATES: Written comments should be submitted on or before September 25, 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. 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.

OMB Control No.: 3060–1124.

Title: 80.231, Technical Requirements for Class B Automatic Identification System (AIS) Equipment.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 20 respondents; 50,020 responses.

Estimated Time per Response: 1 hour per requirement.

Frequency of Response: On occasion reporting 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. 154, 303, 307(e), 309 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 50,020 hours.

Annual Cost Burden: $25,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On September 19, 2008, the Commission adopted a Second Report and Order, FCC 08–208, which added a new section 80.231, which requires that manufacturers of Class B Automatic Identification Systems (AIS) transmitters for the Marine Radio Service include with each transmitting

device a statement explaining how to enter static information accurately and a warning statement that entering inaccurate information is prohibited. The Commission is seeking to extend this collection in order to obtain the full three-year clearance from OMB. Specifically, the information collection requires that manufacturers of AIS transmitters label each transmitting device with the following statement: WARNING: It is a violation of the rules of the Federal Communications Commission to input an MMSI hat has not been properly assigned to the end user, or to otherwise input any inaccurate data in this device. Additionally, prior to submitting a certification application (FCC Form 731, OMB Control Number 3060–0057) for a Class B AIS device, the following information must be submitted in duplicate to the Commandant (CG–521), U.S. Coast Guard, 2100 2nd Street SW., Washington, DC 20593–0001: (1) The name of the manufacturer or grantee and the model number of the AIS device; and (2) copies of the test report and test data obtained from the test facility showing that the device complies with the environmental and operational requirements identified in IEC 62287–1. After reviewing the information described in the certification application, the U.S. Coast Guard will issue a letter stating whether the AIS device satisfies all of the requirements specified in IEC 62287–1. A certification application for an AIS device submitted to the Commission must contain a copy of the U.S. Coast Guard letter stating that the device satisfies all of the requirements specified in IEC–62287–1, a copy of the technical test data and the instruction manual(s).

These reporting and third party disclosure requirements aid the Commission monitoring advance marine vessel tracking and navigation information transmitted from Class B AIS devices to ensure that they are accurate and reliable, while promoting marine safety.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–15595 Filed 7–24–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0004, 3060–1081, 3060–1223]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

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 Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) 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 OMB control number.

DATES: Written comments should be submitted on or before August 24, 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 contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0004.

Title: Sections 1.1307 and 1.1311, Guidelines for Evaluating the Environmental Effects of Radiofrequency Exposure.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal government.

Number of Respondents and Responses: 284,332 Respondents; 284,332 Responses.

Estimated Time per Response: 1 hour–5 hours.

Frequency of Response: On occasion reporting 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. Sections 154(i), 302, 303, 303(r), and 307.

Total Annual Burden: 58,865 hours.

Total Annual Costs: $5,449,750.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is a minimal exemption from the Freedom of Information Act (FOIA), *5 U.S.C. 552(b)(4),* and *47 CFR 0.459* of the Commission's rules, that is granted for trade secrets, which may be submitted to the Commission as part of the documentation of test results. The exemption is normally granted for a short time (weeks to months) for requests relating to routine authorizations and for a longer time for requests relating to experimental authorizations. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them.

This information collection is a result of responsibility placed on the FCC by the National Environmental Policy Act (NEPA) of 1969. NEPA requires that each federal agency evaluate the impact of ''major actions significantly affecting the quality of the human environment.'' It is the FCC's opinion that this is the most efficient and reasonable method of complying with NEPA with regard to the environmental issue of radiofrequency radiation from FCC-regulated transmitters.

The Commission requires applicants to submit limited information during the licensing and authorization process. In many services, the Commission simply requires licensees to provide reliable service to specific geographic areas, but does not require licensees to file site-specific information. It does not appear that the FCC's present licensing methods can provide public notification of site-specific information without imposing new and significant additional burden to the Commission's applicants. However, we note that applicants with the greatest potential to exceed the Commission's exposure limits are required to perform an environmental evaluation as part of the licensing and authorization process.

The Commission advises concerned members of the public, seeking site-specific information, to contact the FCC for the name and telephone number of the service providers in the concerned party's area. The Commission encourages all service providers to provide site-specific, technical information and environmental evaluation documentation upon public request. In addition, we note alternative sources of information may be state and local governments, which may collect some site-specific information as part of the zoning process.

OMB Control Number: 3060–1081.

Title: Section 54.202, 54.209, 54.307, 54.313, 54.314, and 54.809, Telecommunications Carriers Eligible for Universal Service Support.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time per Response: 40 hours.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 201(b), 214(e)(6), 303(r).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 800 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: If respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: Designation as an Eligible Telecommunications Carrier (ETC) makes a telecommunications carrier eligible to participate in the Universal Service Fund's high-cost program, which support the extension of telecommunications services to underserved rural communities. In the absence of this information collection, the Commission's ability to oversee the use of Federal universal service funds and to combat waste, fraud, and abuse in the use of Federal funds would be compromised. Section 54.202 of the Commission's rules requires carriers seeking designation from the Commission to submit an application that certifies that the carrier will comply with the service requirement applicable to the support that it receives, 47 CFR 54.202(a)(1)(i); applicants must submit a five year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area, with estimates of the area and population that will be served as a result of the improvements, § 54.202(a)(1)(ii); an applicant must demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations, § 54.202(a)(2); demonstrate that it will satisfy applicable consumer protection and service quality standards, § 54.202(a)(3). If the common carrier is seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of Tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send any public notice seeking comment on any petition for designation as an eligible telecommunications carrier on Tribal lands, at the time it is released, the affected tribal government and tribal regulatory authority, as applicable, by the most expeditious means available, § 54.202(c).

OMB Control Number: 3060–1223.

Title: Payment Instructions from the Eligible Entity Seeking Reimbursement from the TV Broadcaster Relocation Fund.

Form Number: FCC Form 1876.

Type of Review: Extension 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: 1,000 respondents; 2,000 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96 (Spectrum Act) § 6403(b)(4)(A).

Total Annual Burden: 6,000 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Nature and Extent of Confidentiality: The information collection includes information identifying bank accounts and providing account and routing

numbers to access those accounts. FCC considers that information to be records not routinely available for public inspection under 47 CFR 0.457, and exempt from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

Needs and Uses: This collection was approved under the emergency processing provision of the Paperwork Reduction Act (PRA), 5 CFR 1320.13. The Commission is now requesting OMB approval for this information collection for a full three year term. The Spectrum Act requires the Commission to reimburse broadcast television licensees for costs ''reasonably incurred'' in relocating to new channels assigned in the repacking process and Multichannel Video Programming Distributors (MVPDs) for costs reasonably incurred in order to continue to carry the signals of stations relocating to new channels as a result of the repacking process or a winning reverse auction bid.[1]

The Commission decided through notice-and-comment rulemaking that it will issue all eligible broadcasters and MVPDs an initial allocation of funds based on estimated costs, which will be available for draw down (from individual accounts in the U.S. Treasury) as the entities incur expenses, followed by a subsequent allocation to the extent necessary. The reason for allowing eligible entities to draw down funds as they incur expenses is to reduce the chance that entities will be unable to finance necessary relocation changes.[2]

The information collection for which we are requesting approval is necessary for eligible entities to instruct the Commission on how to pay the amounts the entities draw down, and for the entities to make certifications that reduce the risk of waste, fraud, abuse and improper payments.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–15527 Filed 7–24–17; 8:45 am]

BILLING CODE 6712–01–P

[1] Middle Class Tax Relief and Job Creation Act of 2012, Pubic Law 112–96 (Spectrum Act) § 6403(b)(4)(A)(i), (ii).

[2] Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12–268, Report and Order, 29 FCC Rcd 6567 (2014) (''Incentive Auction R&O'') at 609.

FEDERAL DEPOSIT INSURANCE CORPORATION

Guidelines for Appeals of Material Supervisory Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Guidelines.

SUMMARY: On July 18, 2017, the Federal Deposit Insurance Corporation (FDIC) Board of Directors (Board) adopted revised Guidelines for Appeals of Material Supervisory Determinations (Guidelines) to provide institutions with broader avenues of redress with respect to material supervisory determinations and enhance consistency with the appeals process of the other Federal banking agencies. The revisions to the Guidelines permit the appeal of the level of compliance with an existing formal enforcement action, the decision to initiate an informal enforcement action, and matters requiring board attention; provide that a formal enforcement-related action or decision does not affect an appeal that is pending under the Guidelines; make additional opportunities for appeal available under the Guidelines in certain circumstances; provide for the publication of annual reports on Division Directors' decisions with respect to material supervisory determinations; and make other limited technical and conforming amendments.

DATES: The revised Guidelines become effective on July 18, 2017.

FOR FURTHER INFORMATION CONTACT: Patricia Colohan, Associate Director, Division of Risk Management Supervision, (202) 898–7283; Sylvia Plunkett, Senior Deputy Director, Division of Depositor and Consumer Protection, (202) 898–6929; and James Watts, Senior Attorney, Legal Division, (202) 898–6678.

SUPPLEMENTARY INFORMATION: On August 4, 2016, the FDIC published in the **Federal Register** for notice and comment proposed amendments to the Guidelines for Appeals of Material Supervisory Determinations that would provide institutions with broader avenues of redress with respect to material supervisory determinations.[1] The 60-day comment period ended October 3, 2016. The FDIC received two comment letters, one from a trade association and another from a financial holding company. These comments and the FDIC's responses are summarized below.

[1] 81 FR 51441 (Aug. 4, 2016).

Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations.[2] The Riegle Act defines the term ''independent appellate process'' to mean ''a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.'' [3] In the appeals process, the FDIC is required to ensure that: (1) An appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.[4]

The term ''material supervisory determinations'' is defined to include determinations relating to: (1) Examination ratings; (2) the adequacy of loan loss reserve provisions; and (3) classifications on loans that are significant to an institution.[5] The Riegle Act specifically excludes from the definition of ''material supervisory determinations'' a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831o.[6] Finally, section 309(g) of the Riegle Act expressly provides that the requirement to establish an appeals process shall not affect the authority of the Federal banking agencies to take enforcement or supervisory actions against an institution.[7]

On December 28, 1994, the FDIC published in the **Federal Register,** for a 30-day comment period, a notice of and request for comments on proposed Guidelines for Appeals of Material Supervisory Determinations.[8] In the proposed Guidelines, the FDIC proposed that the term ''material supervisory determinations,'' in addition to the statutory exclusions noted above, also should exclude: (1) Determinations for which other appeals procedures exist (such as determinations relating to deposit

[2] 12 U.S.C. 4806(a).

[3] 12 U.S.C. 4806(f)(2).

[4] 12 U.S.C. 4806(b).

[5] 12 U.S.C. 4806(f)(1)(A).

[6] 12 U.S.C. 4806(f)(1)(B).

[7] 12 U.S.C. 4806(g).

[8] 59 FR 66965 (Dec. 28, 1994).

insurance assessment risk classifications); (2) decisions to initiate formal enforcement actions under section 8 of the FDI Act; (3) decisions to initiate informal enforcement actions (such as memoranda of understanding); (4) determinations relating to a violation of a statute or regulation; and (5) any other determinations not specified in the Riegle Act as being eligible for appeal.

Commenters to those proposed Guidelines had suggested that the proposed limitations on determinations eligible for appeal were too restrictive. In response to comments received, the FDIC modified the proposed Guidelines on March 21, 1995. The FDIC added a final clarifying sentence to the listing of ''Determinations Not Eligible for Appeal'' in the Guidelines as follows: ''The FDIC recognizes that, although determinations to take prompt corrective action or initiate formal or informal enforcement actions are not appealable, the determinations upon which such actions may be based (*e.g.,* loan classifications) are appealable provided they otherwise qualify.'' [9]

On March 18, 2004, the FDIC published in the **Federal Register,** for a 30-day comment period, a notice and request for comments regarding proposed revisions to the Guidelines, which would have changed the composition and procedures of the SARC.[10] On July 9, 2004, the FDIC published in the **Federal Register** a notice of guidelines which, effective June 28, 2004, adopted the revised Guidelines, largely as proposed.[11]

On May 27, 2008, the FDIC published in the **Federal Register,** for a 60-day comment period, a notice and request for comments regarding proposed revisions to the Guidelines.[12] On September 23, 2008, the FDIC published in the **Federal Register** final revisions to the Guidelines [13] modifying the supervisory determinations eligible for appeal to eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC for formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement-related action or decision, and the initiation of an investigation under section 10(c) of the FDI Act.[14] The FDIC noted at that time that these amendments better aligned the SARC appellate process with the material supervisory determinations appeals procedures at the other Federal banking agencies.

On April 19, 2010, the FDIC published in the **Federal Register** revised Guidelines, effective April 13, 2010, extending the decision deadline for requests for review and clarifying the decisional deadline for written decisions by the SARC.[15]

On March 23, 2012, the FDIC published in the **Federal Register** revised Guidelines, effective March 20, 2012 that included technical and ministerial revisions to reflect changes in the organization of the FDIC's Board, of its offices and divisions, and in the categories of institutions that it supervises.[16]

Amendments to the Guidelines

As explained above, the FDIC adopted amendments to the Guidelines in 2008 modifying the supervisory determinations eligible for appeal to eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC for formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement-related action or decision, and the initiation of an investigation. Since that time, the FDIC's experience in administering the current SARC appeals process suggests that it would be beneficial for institutions to have broader avenues of redress with respect to material supervisory determinations. Accordingly, the FDIC is amending the Guidelines to expand institutions' opportunities for appeal under certain circumstances and enhance consistency with the appeals process of the other Federal banking agencies. The FDIC is also making certain technical and non-substantive changes to the Guidelines to make them easier to understand.

I. Material Supervisory Determinations Eligible for Review

The amendments published for comment in the **Federal Register** on August 4, 2016 proposed to broaden the definition of ''material supervisory determination'' in two respects. First, the amendments proposed to allow determinations regarding an institution's level of compliance with a formal enforcement action to be appealed as a material supervisory determination; however, if the FDIC determines that lack of compliance with an existing enforcement action requires additional enforcement action, the proposed new enforcement action would not be appealable. Second, the amendments proposed to remove from the list of determinations that are not appealable the decision to initiate an informal enforcement action, such as a Memorandum of Understanding. Commenters supported these changes and the FDIC has adopted them as proposed.

One commenter noted that while the amendments published for comment proposed to remove from the list of determinations that are not appealable the decision to initiate an informal enforcement action, they did not propose to make such decisions expressly appealable. The commenter requested that, for clarity, the FDIC add the decision to initiate an informal enforcement action to the list of appealable determinations. The FDIC agrees that this change clarifies institutions' opportunities for appeal. Accordingly, the amended Guidelines provide expressly that material supervisory determinations include decisions to initiate informal enforcement actions.[17]

A commenter recommended that the definition of material supervisory determination include *matters requiring board attention.* This commenter noted that *matters requiring board attention* are arguably subject to appeal under the current Guidelines. The FDIC believes that this change clarifies institutions' opportunities for appeal and enhances consistency with the appellate processes used by other agencies. Accordingly, the amended Guidelines provide expressly that *matters requiring board attention* are material supervisory determinations that may be appealed under the Guidelines.

A commenter stated that the FDIC should allow appeals of the conclusions in an examination report. As discussed above, the Riegle Act provides for the review of ''material supervisory determinations.'' [18] The FDIC anticipates that many conclusions in examination reports would be ''material supervisory determinations'' within the meaning of the statute and Guidelines and therefore appealable under the Guidelines. However, in 2016 the FDIC also put in place an informal process through which institutions can obtain review by the relevant Division Director of matters that are not covered by the SARC process or another existing FDIC

[9] 60 FR 15929 (Mar. 28, 1995).

[10] 69 FR 12855 (Mar. 18, 2004).

[11] 69 FR 41479 (July 9, 2004).

[12] 73 FR 30393 (May 27, 2008).

[13] 73 FR 54822 (Sept. 23, 2008).

[14] 12 U.S.C. 1820(c).

[15] 75 FR 20358 (Apr. 19, 2010).

[16] 77 FR 17055 (Mar. 23, 2012).

[17] As a practical matter, the FDIC believes that appeals of decisions to initiate informal enforcement actions are likely to be rare due to differences in the processes for initiating formal and informal enforcement actions.

[18] 12 U.S.C. 4806(a).

appeals or administrative process. *See* FIL–51–2016 (July 29, 2016).

One commenter recommended that the definition of material supervisory determination include any supervisory action that would adversely impact an institution, including: (1) Formal enforcement actions and assessments of civil money penalties; (2) public disclosure of a determination that an institution has violated a law or regulation, has committed an unsafe or unsound practice, or is in an unsafe and unsound condition; (3) restrictions on an institution's ability to open or expand branches or to purchase other institutions or their assets; (4) decisions to refer a matter to another agency for enforcement; and (5) ratings downgrades that would have adverse consequences for the institution, regardless of whether the downgrade is related to an enforcement action. Each of these supervisory actions is addressed below.

Institutions that wish to appeal a formal enforcement action, including the assessment of a civil money penalty, have the ability to seek redress through the administrative process established under Section 8 of the FDI Act and Part 308 of the FDIC's regulations. Recommendations to pursue formal enforcement actions are reviewed by high-level FDIC officials prior to their initiation and are monitored by such officials subsequently. Contested enforcement actions include the right to an administrative hearing held before an impartial administrative law judge who makes findings of fact and conclusions of law and issues a recommended decision to the FDIC Board of Directors. The Board of Directors issues a final decision that is subject to review in federal court.

Accordingly, the FDIC believes that the administrative enforcement process provides the appropriate avenue for contesting such determinations and notes that addressing formal enforcement-related actions through the administrative enforcement process is consistent with the other Federal banking agencies' appellate processes.[19] The FDIC also notes that public disclosure of a determination that an institution has violated a law or regulation, has committed an unsafe or unsound practice, or is in an unsafe and unsound condition would typically occur in connection with a formal enforcement action, and is required by law to be made public.

Institutions currently may appeal restrictions based on examination ratings by appealing the relevant rating. Ratings also may affect institutions' applications with respect to certain activities. The FDIC also applies specific standards to failed bank acquisitions based upon the acquiring institution's CAMELS rating.[20] The Guidelines currently permit appeals of final decisions with respect to certain applications. *See* Section D, paragraph (m) of the Guidelines. Institutions file requests for reconsideration of such applications pursuant to Part 303.11(f) of the FDIC's regulations, 12 CFR 303.11(f). If the request for reconsideration is granted, and the filing was originally denied by a Division Director, the institution may appeal that determination to the SARC. In addition, if an institution has concerns with FDIC staff processing of applications before a final decision is made, the FDIC also provides an informal process to obtain review of the matter by the Division Director. *See* FIL–51–2016 (July 29, 2016).

With respect to referrals of matters to another agency, the Equal Credit Opportunity Act (ECOA) requires the FDIC to refer matters to the Attorney General whenever the agency has reason to believe that one or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of the statute.[21] Similarly, where the FDIC has reason to believe that an ECOA violation also would violate the Fair Housing Act (FHA) and the matter is not required to be referred to the Attorney General, it is required to notify the Department of Housing and Urban Development (HUD).[22]

The Guidelines currently allow institutions to appeal a variety of ratings, including CAMELS ratings, information technology ratings, trust ratings, Community Reinvestment Act ratings, and consumer compliance ratings, regardless of whether a change in the rating is related to an enforcement action. However, the facts and circumstances that form the basis of a recommended or pending formal enforcement action cannot be challenged through the process set forth in the Guidelines and must instead be addressed through the administrative enforcement process. In such instances, an appeal of the rating may be available through the SARC process based on grounds other than the facts and circumstances that form the basis of the recommended or pending formal enforcement action.

II. Commencement of Formal Enforcement Action

Currently, the Guidelines state that a formal enforcement action or decision commences, and therefore becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) or provides written notice to the institution indicating the FDIC's intention to pursue available formal enforcement remedies under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to ECOA or a notice to HUD for violations of ECOA and the FHA. The proposed amendments provided that a formal enforcement-related action or decision would commence and become unappealable when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) or provides written notice to the institution of a recommended or proposed formal enforcement action under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to ECOA or a notice to HUD for violations of ECOA and the FHA. This amendment, which the FDIC has adopted as proposed, is not intended to make a substantive change, but rather, to clarify the Guidelines and make them more consistent with the appellate processes used by other agencies.

A commenter requested that the FDIC further clarify when a formal enforcement-related action has commenced. Institutions will be notified in writing that the FDIC has recommended or proposed a formal enforcement action. Other types of correspondence from the FDIC to the institution, such as letters requesting additional information or referencing a violation of law without an express statement that the FDIC has recommended or proposed a formal enforcement action, are not considered to constitute notice of a recommended or proposed formal enforcement action for purposes of the Guidelines.

One commenter also expressed the concern that examiners may try to shield material supervisory determinations from appellate review by labeling them ''enforcement-related'' or initiating a formal enforcement action

[19] The FDIC considered institutions' opportunity to contest determinations through the administrative enforcement process when it revised the Guidelines in 2008, eliminating the ability to file appeals with the SARC with respect to formal enforcement-related actions or decisions, including determinations and the underlying facts and circumstances forming the basis of a recommended or pending formal enforcement action. *See* 73 FR 54822, 54824 (Sep. 23, 2008).

[20] *See* FDIC Statement of Policy on Qualifications for Failed Bank Acquisitions, 74 FR 45440, 45448 (Sep. 2, 2009).

[21] 15 U.S.C. 1691e(g).

[22] 15 U.S.C. 1691e(k).

on the eve of appeal. Formal enforcement actions are reviewed by high-level FDIC officials prior to their initiation. Moreover, field examiners do not decide whether material supervisory determinations form the basis of a formal enforcement action and are therefore reviewable only through the administrative enforcement process. Institutions submit requests for review to staff at the FDIC's Washington office. Division staff who were not substantively involved in the decision carefully consider the request for review in consultation with Legal Division SARC specialists to ascertain whether specific determinations are subject to appeal under the Guidelines, or alternatively, through another process. The FDIC believes that these processes mitigate the concern that an examiner might characterize a finding as related to a formal enforcement action, or initiate such an action, for the purpose of precluding an appeal under the Guidelines.

The proposed amendments also provided that initiation of a formal enforcement-related action or decision would not affect the appeal of any material supervisory determination that is pending under the Guidelines. In other words, this ensures that where an institution has filed an appeal of a material supervisory determination through the SARC process, the appeal will not be affected if the FDIC subsequently initiates a formal enforcement-related action or decision based on the same facts and circumstances as the appeal. The FDIC has adopted this amendment as proposed.

III. Additional Opportunities for Appeal

The amendments published for comment proposed to allow institutions additional opportunities to appeal material supervisory determinations through the SARC process in certain circumstances. In particular, the amendments proposed to allow an institution an additional opportunity to appeal material supervisory determinations where the FDIC provides the institution with written notice of a recommended or proposed formal enforcement action but does not pursue an enforcement action within 120 days of the written notice. The FDIC could extend this 120-day period, with the approval of the SARC Chairperson, if the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action. The FDIC also proposed to allow institutions an additional opportunity to appeal material supervisory determinations through the SARC process in the case of a referral to the Attorney General for certain violations of ECOA if the Attorney General returns the matter to the FDIC and the FDIC does not initiate an enforcement action within 120 days of the date the referral is returned. Similarly, an additional opportunity to appeal through the SARC process would be allowed if the FDIC provides notice to HUD for violations of ECOA or the FHA, but does not initiate an enforcement action within 120 days of the date the notice is provided. The amendments published for comment proposed to allow the 120-day timeframe to be extended if the FDIC and the institution mutually agree and deem it appropriate in order to reach a mutually agreeable solution. Institutions would be provided written notice of the additional opportunity to submit an appeal through the SARC process within 10 days of a determination that an appeal will be made available. The FDIC has adopted these amendments as proposed.

A commenter suggested that the FDIC should reduce the 120-day period in these provisions to 60 days because during this period, banks are subject to penalties and restrictions that can adversely affect operations. The FDIC believes that the 120-day time frame contained in these provisions is appropriate. As discussed above, formal enforcement actions are reviewed by high-level FDIC officials prior to their initiation. The 120-day time period appropriately balances the need for adequate review of enforcement actions with institutions' desire to promptly appeal material supervisory determinations.

IV. Structure of the Appellate Process

Commenters also addressed the structure of the appellate process. One commenter stated that the FDIC should employ an independent review process that is not confined exclusively to agency officials. The FDIC is mindful of the commenter's concern but concludes that review by high-level officials who were not involved in the determination at issue and do not report to the official who made the determination is consistent with the Riegle Act, which provides for an intra-agency appellate process.[23] The SARC is comprised of high-level officials, including one inside member of the FDIC's Board of Directors, who is designated the SARC Chairperson, and one deputy or special assistant to each of the inside Board members who are not designated as the SARC Chairperson. Furthermore, the amended Guidelines are specifically intended to provide institutions with broader avenues of redress with respect to material supervisory determinations. The FDIC also provides an informal process for review at the Division Director level of any matters that are not covered by an existing FDIC appeals or administrative process, such as the SARC appeals process or the administrative enforcement process. *See* FIL–51–2016 (July 29, 2016). Institutions may use this informal process to address, for example, concerns about FDIC staff processing of applications before a final decision is made.

A commenter suggested that under the Guidelines, initial appeals should be filed with the SARC, which is outside the supervision structure, rather than with the Division Director. The commenter noted that the OCC allows institutions to file appeals with its Ombudsman. The FDIC's experience in administering the appellate process, however, suggests that Division-level review resolves issues, narrowing the matters in dispute prior to SARC review or eliminating the need for an appeal to the SARC. Division-level review also ensures that the arguments are more fully developed for SARC review and allows the Division Director to correct errors and maintain consistency across the organization.

The same commenter stated that if the FDIC retains Division-level reviews, it should increase the transparency of those reviews by publishing Division Directors' decisions. Division Directors conduct their reviews on an expedited basis, issuing written determinations on institutions' requests for review within 45 days of receipt of the request. However, the FDIC believes that the transparency of the process could be enhanced by providing institutions with additional information regarding Division-level reviews. Accordingly, the amended Guidelines provide for publication of annual reports on Division Directors' decisions with respect to institutions' requests for review of material supervisory determinations.

A commenter stated that the FDIC should clarify that SARC decisions may be appealed to the federal courts of appeal. The FDIC notes that because supervisory decisions are entrusted to agency discretion, SARC decisions are not appealable.

V. Standard of Review

Commenters also addressed the standard of review that applies to appeals filed under the Guidelines. A commenter stated that the proposed

[23] 12 U.S.C. 4806(a).

amendments to the Guidelines did not address the high standard of review banks must meet when seeking redress. Another commenter stated that the FDIC should apply a *de novo* standard of review to appeals rather than the current standard, which the commenter believes is too deferential to examiners. Pursuant to Section M of the Guidelines, the SARC reviews appeals for ''consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced.'' The SARC's balanced approach includes review of the evidence and arguments presented by both Division staff and the appealing institution. In addition to submitting written materials, an institution is generally invited to make an oral presentation before the SARC and explain its positions on the issues raised in the appeal. The FDIC believes that this approach is reasonable and enables institutions to obtain a full and fair review of material supervisory determinations.

A commenter suggested that institutions also should be entitled to adduce evidence and engage in reasonable discovery during the appeals process. However, institutions often present extensive evidence in support of their appeals, and it is not apparent that the current process has hindered institutions' appeals.

One commenter requested that the FDIC clarify the standard of review for Division-level reviews, noting that the Guidelines are not clear in this respect. The FDIC agrees that it would be useful to clarify this aspect of the process. Historically, the same standard of review has been applied to Division-level reviews and SARC appeals. The amended Guidelines apply the current standard of review for SARC appeals to Division-level reviews.

VI. Stay of Supervisory Actions

A commenter requested that the FDIC stay supervisory actions during the pendency of an appeal. While the FDIC generally does not stay material supervisory determinations while an appeal under the Guidelines is pending, the Guidelines do not prohibit an institution from making such a request of the Division Director.

For the reasons set out in the preamble, the Federal Deposit Insurance Corporation Board of Directors adopts the *Guidelines for Appeals of Material Supervisory Determinations* as set forth below.

Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (Riegle Act) required the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (Guidelines) describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these Guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (SARC).

B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

C. Institutions Eligible to Appeal

The Guidelines apply to the insured depository institutions that the FDIC supervises (*i.e.,* insured State nonmember banks, insured branches of foreign banks, and state savings associations) and to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

D. Determinations Subject to Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these Guidelines.

Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) IT ratings under the Uniform Interagency Rating System for Data Processing Operations;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the adequacy of loan loss reserve provisions;

(j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;

(k) Determinations relating to violations of a statute or regulation that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR 303.11(f), for which a request for reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829 (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Depositor and Consumer Protection (DCP) or the Division of Risk Management Supervision (RMS);

(n) Decisions to initiate informal enforcement actions (such as memoranda of understanding);

(o) Determinations regarding the institution's level of compliance with a formal enforcement action; however, if the FDIC determines that the lack of compliance with an existing formal enforcement action requires additional enforcement action, the proposed new enforcement action is not appealable;

(p) Matters requiring board attention; and

(q) Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution;

(b) Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C. 1831o;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations); and

(d) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action.

A formal enforcement-related action or decision commences, and becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) or provides written notice to the institution of a recommended or proposed formal enforcement action under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (ECOA) or a notice to the Secretary of Housing and Urban Development (HUD) for violations of ECOA or the Fair Housing Act (FHA). For the purposes of these Guidelines, remarks in a Report of Examination do not constitute written notice of a recommended or proposed enforcement action. A formal enforcement-related action or decision does not affect the appeal of any material supervisory determination that is pending under these Guidelines.

Additional SARC Rights:

(a) In the case of any written notice from the FDIC to the institution of a recommended or proposed formal enforcement action, including a draft consent order, if an enforcement action, such as the issuance of a notice of charges or the signing of a consent order, is not pursued within 120 days of the written notice, SARC appeal rights will be made available pursuant to these guidelines. The FDIC may extend this 120-day period, with the approval of the SARC Chairperson, if the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

(b) In the case of a referral to the Attorney General for violations of the ECOA, if the Attorney General returns the matter to the FDIC and the FDIC does not initiate an enforcement action within 120 days of the date the referral is returned, SARC appeal rights will be made available pursuant to these guidelines.

(c) In the case of providing notice to HUD for violations of the ECOA or the FHA, if the FDIC does not initiate an enforcement action within 120 days of the date the notice is provided, SARC appeal rights will be made available under these guidelines.

(d) Written notification of SARC rights will be provided to the institution within 10 days of a determination that such rights have been made available.

(e) The FDIC and an institution may mutually agree to extend the timeframes in paragraphs (a), (b), and (c) if the parties deem it appropriate in order to reach a mutually agreeable solution.

E. Good-Faith Resolution

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and/or the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the appropriate Division, either DCP or RMS, or to filing an appeal with the SARC under these Guidelines.

F. Filing a Request for Review With the Appropriate Division

An institution may file a request for review of a material supervisory determination with the Division that made the determination, either the Director, DCP, or the Director, RMS, (Director or Division Director), 550 17th Street NW., Room F–4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors has considered the merits of the request and has authorized that it be filed.

The Division Director will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The Division Director will issue a written determination on the request for review, setting forth the grounds for that determination, within 45 days of receipt of the request. No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the appropriate Division Director.

G. Appeal to the SARC

An institution that does not agree with the written determination rendered by the Division Director must appeal that determination to the SARC within 30 calendar days from the date of that determination. The Director's determination will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC. If the Division Director recommends that an institution receive relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination. Notice of such a transfer will be provided to the institution. The Division Director may also request guidance from the SARC Chairperson as to procedural or other questions relating to any request for review.

H. Filing With the SARC

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the Division Director's written determination is a Saturday, Sunday, or a Federal holiday, filing may be made on the next business day. The appeal should be sent to the

address indicated on the Division Director's determination being appealed.

I. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in a written determination or direct referral to the SARC, may be appealed to the SARC. Evidence not presented for review to the Division Director may be submitted to the SARC only if authorized by the SARC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

J. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

K. Oral Presentation

The SARC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The SARC generally grants a request for oral presentation if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the SARC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its positions on the issues raised in the appeal and to respond to any questions from the SARC. The SARC may also require that FDIC staff participate as the SARC deems appropriate.

L. Dismissal, Withdrawal and Rejection

An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. An appeal may be rejected if the right to appeal has been cut off under Section D, above.

M. Scope of Review and Decision

The SARC will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The SARC will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days from the date the SARC meets to consider the appeal, which meeting will be held within 90 days from the date of the filing of the appeal. SARC review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC may reconsider its decision only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

N. Publication of Decisions

SARC decisions will be published as soon as practicable, and the published decisions will be redacted to avoid disclosure of exempt information. In cases in which redaction is deemed insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC. Annual reports on Division Directors' decisions with respect to institutions' requests for review of material supervisory determinations also will be published.

O. SARC Guidelines Generally

Appeals to the SARC will be governed by these Guidelines. The SARC will retain discretion to waive any provision of the Guidelines for good cause. The SARC may adopt supplemental rules governing its operations; order that material be kept confidential; and consolidate similar appeals.

P. Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed, or a final SARC decision issued, is not eligible for consideration by the Ombudsman.

Q. Coordination With State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP, or the Director, RMS, as appropriate, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

R. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

S. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

T. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street, Washington, DC 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

By order of the Board of Directors.

Dated at Washington, DC, the 18th day of July, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–15466 Filed 7–24–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 8, 2017.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Krystal Steele,* Sundance, Wyoming; as trustee, to acquire voting shares of Sundance State Bank Profit Sharing and Employee Stock Ownership Plan and Trust, Sundance, Wyoming, and thereby acquire voting shares of Sundance Bankshares, Inc., which controls Sundance State Bank, both of Sundance, Wyoming.

Board of Governors of the Federal Reserve System, July 20, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–15594 Filed 7–24–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10488]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by August 24, 2017.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at Web site address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. No comments were received in response to the 60-day comment period. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of an existing information collection request; *Title of Information Collection:* Consumer Experience Survey Data Collection. *Use:* Section 1311(c)(4) of the Affordable Care Act requires the Department of Health and Human Services (HHS) to develop an enrollee satisfaction survey system that assesses consumer experience with qualified health plans (QHPs) offered through an Exchange. It also requires public display of enrollee satisfaction information by the Exchange to allow individuals to easily compare enrollee satisfaction levels between comparable plans. HHS established the QHP Enrollee Experience Survey (QHP Enrollee Survey) to assess consumer experience with the QHPs offered through the Marketplaces. The survey include topics to assess consumer experience with the health care system such as communication skills of providers and ease of access to health care services. CMS developed the survey using the Consumer Assessment of Health Providers and Systems (CAHPS®) principles (*https://www.ahrq.gov/cahps/about-cahps/principles/index.html*) and established an

application and approval process for survey vendors who want to participate in collecting QHP enrollee experience data.

The QHP Enrollee Survey, which is based on the CAHPS® Health Plan Survey, will be used to (1) help consumers choose among competing health plans, (2) provide actionable information that the QHPs can use to improve performance, (3) provide information that regulatory and accreditation organizations can use to regulate and accredit plans, and (4) provide a longitudinal database for consumer research. CMS completed two rounds of developmental testing including 2014 psychometric testing and 2015 beta testing of the QHP Enrollee Survey. The psychometric testing helped determine psychometric properties and provided an initial measure of performance for Marketplaces and QHPs to use for quality improvement. Based on psychometric test results, CMS further refined the questionnaire and sampling design to conduct the 2015 beta test of the QHP Enrollee Survey. CMS previously obtained clearance for the 2016 and 2017 administrations of the QHP Enrollee Survey.

At this time, CMS is requesting to renew approval for the information collection related to the QHP Enrollee Experience Survey in 2018–2020. These activities are necessary to ensure that CMS fulfills legislative mandates established by section 1311(c)(4) of the Affordable Care Act to develop an ''enrollee satisfaction survey system'' and provide such information on Marketplace Web sites. CMS is also seeking approval to remove eight survey questions beginning with the 2018 survey administration. With the removal of these eight questions, the revised total estimated annual burden hours of national implementation of the QHP Enrollee Survey is 22,523 hours with 90,015 responses. The revised total annualized burden over three years for this requested information collection is 67,569 hours and the total average annualized number of responses is 270,045 responses. *Form Number:* CMS–10488 (OMB control number: 0938–1221); *Frequency:* Annually; *Affected Public:* Public sector (Individuals and Households), Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 90,015; *Total Annual Responses:* 90,015; *Total Annual Hours:* 22,523. (For policy questions regarding this collection contact Nidhi Singh Shah at 301–492–5110.)

Dated: July 20, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–15589 Filed 7–24–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Behavioral Interventions to Advance Self-Sufficiency Next Generation (BIAS–NG).

OMB No.: New Collection.

Description: The Office of Planning, Research and Evaluation (OPRE) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) requests Office of Management and Budget (OMB) approval for a 3-year pilot generic clearance to collect data as part of rapid cycle testing and evaluation, in order to inform the design of interventions informed by behavioral science and to better understand the mechanisms and effects of such interventions. These interventions, which will be in the program area domains of Temporary Assistance for Needy Families (TANF) and child welfare, are intended to improve outcomes for participants in these programs.

OPRE plans to conduct the Behavioral Interventions to Advance Self-Sufficiency Next Generation (BIAS–NG) project. This project will use behavioral insights to design and test interventions intended to improve the efficiency, operations, and efficacy of human services programs. The BIAS–NG project will apply behavioral insights to a range of ACF programs including TANF, Child Welfare, and other program areas to be determined. This notice is specific to data collection with TANF and Child Welfare sites; when and if the project desires to work in other program areas, OPRE will publish a **Federal Register** notice allowing for public comment and will submit a new information collection request for that work. Under this pilot generic clearance, OPRE plans to work with approximately six sites to conduct approximately two tests per site, for a total of approximately 12 tests of behavioral interventions.

The design and testing of BIAS NG interventions will be rapid and iterative. Each specific intervention will be designed in consultation with agency leaders and launched quickly. To maximize the likelihood that the intervention produces measurable, significant, positive effects on outcomes of interest, rapid cycle evaluation techniques will be employed in which proximate outcomes will be measured to allow the research team to rapidly iterate and adjust the intervention design, informing subsequent tests.

Due to the rapid and iterative nature of this work OPRE seeks generic clearance to conduct this research. Following standard OMB requirements for generic clearances, once instruments are tailored to a specific site and the site's intervention, OPRE will submit an individual generic information collection request under this umbrella clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, a description of the proposed intervention, and any supplementary documents. Each specific information collection will include two submissions: First, a submission for the formative stage research and second, a submission for the test and evaluation materials. In this notice we describe the types of information expected to be collected for each test and the expected burden.

To ensure maximal relevance to the domain areas selected (*i.e.,* Child Welfare and TANF), the project has identified a set of broad problems that affect entire domain areas rather than problems that are idiosyncratic to a particular program. In each of the approximately six sites with which the project will work under this clearance, interventions will be designed and tested using an approach called behavioral diagnosis and design which will involve determining how identified problems operate within each site's specific context, diagnosing behavioral reasons for those problems, designing interventions informed by behavioral insights, and rigorously testing the interventions. Information will be collected throughout this process. The information that will be collected is specific to each of the sites, will not be collected indefinitely, and is not intended to be interpreted as applicable to other sites or to other programs. In addition, in working with the project to design the behavioral interventions to be tested, some sites may decide to change what data they collect and/or the questions they ask the public to answer. Such decisions will be controlled by the sites, not by the project.

In order to define and diagnose program challenges and design appropriate interventions, OPRE plans to conduct interviews and focus groups

with administrators, staff, and/or clients in each of the approximately six sites. OPRE will field client and/or staff surveys in order to hear from a breadth of perspectives. In addition to interviews, focus groups, and surveys, OPRE anticipates observing program activities and reviewing documents and administrative data. This information will be critical to diagnosing where and why programs are facing challenges and which behavioral interventions may have an impact.

During the testing phase OPRE anticipates conducting mixed-methods evaluations consisting of implementation, impact, and cost research for the approximately two tests in each of the approximately six total sites that will be engaged across the two program areas included under this clearance, TANF and Child Welfare (for a total of 12 tests). To better understand how the intervention is being implemented and its effects, OPRE anticipates conducting interviews and focus groups with program administrators, staff, and/or clients in each site. Because not all outcomes of interest (for example, improved understanding of and/or satisfaction with the foster parent recruitment process) are reflected in administrative records, OPRE anticipates conducting client surveys and staff surveys.

Interest in participating in BIAS–NG is expected to be high, and it is not expected that systematic recruitment of sites will be necessary. Within each site, we do not intend to do any active recruitment as all those who are eligible will be enrolled in the study and randomization will be conducted using a list of those who meet the eligibility criteria. Findings from these tests will be publicized through multiple dissemination channels, which may include but are not limited to reports on individual tests, a final synthesis report, presentations at conferences and meetings, scholarly journal articles, webinars, social media, press outreach, newsletters, etc.

Respondents: (1) Program Administrators, (2) Program Staff and (3) Program Clients.

TOTAL BURDEN HOURS

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Diagnosis and Design Phase				
Administrator interviews/focus groups	24	1	1	24
Staff interviews/focus groups	48	1	1	48
Client interviews/focus groups	48	1	1	48
Client survey	600	1	.25	150
Staff Survey	120	1	.25	30
Evaluation Phase				
Administrator interviews/focus groups	48	1	1	48
Staff interviews/focus groups	96	1	1	96
Client interviews/focus groups	96	1	1	96
Client Survey	6,000	1	.25	1,500
Staff survey	120	1	.25	30

Estimated Total Burden Hours: 2,070 hours.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Mary Jones,

ACF/OPRE, Certifying Officer.

[FR Doc. 2017–15523 Filed 7–24–17; 8:45 am]

BILLING CODE 4184–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–4180]

Voluntary Medical Device Manufacturing and Product Quality Program; 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, the Agency, or we) is announcing the following public workshop entitled ''Voluntary Medical Device Manufacturing and Product Quality Program.'' The purpose of the public workshop is to announce the proposed framework and preliminary outline of a voluntary pilot program that recognizes an independent assessment of manufacturing and product quality. The workshop is intended to discuss the framework of the voluntary pilot program, information on the independent assessment, details of participation, rules of engagement, monitoring and performance expectations, as well as potential modifications to FDA's oversight actions in response to demonstrated manufacturing quality performance. FDA is soliciting public feedback to aid in the development of science-based approaches to regulatory decision making for assessing manufacturing quality, extent of manufacturing related submissions, and how to better allocate resources to lower the regulatory burden on manufacturers and FDA.

DATES: The public workshop will be held on October 10, 2017, from 8 a.m. to 4:30 p.m. Submit either electronic or written comments on this public workshop by October 18, 2017. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Rm. 1503 (the Great Room), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 18, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of October 18, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2017–N–4180 for ''Voluntary Medical Device Manufacturing and Product Quality Program.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Francisco Vicenty, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 3426, Silver Spring, MD 20993, 301–796–5577, email: *Francisco.Vicenty@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The FDA's Center for Devices and Radiological Health (CDRH or the Center) launched the Case for Quality initiative (Ref. 1) in 2011 to identify those practices that can promote a culture of quality and the implementation of a quality management approach that fosters continuous product quality. Since then, CDRH has engaged with a wide variety of stakeholders from the medical device ecosystem, including industry, patients, governmental and academic partners, and payer/provider counterparts to identify key factors affecting medical device quality and develop innovative ways to afford patient access to higher quality medical devices. As part of CDRH's 2016–2017 strategic priority to ''Promote a Culture of Quality and Organizational Excellence'' (Ref. 2), CDRH envisions a future state where the medical device ecosystem is inherently focused on device features and manufacturing practices that have the greatest impact on product quality and patient safety. The purpose of the public workshop is to present the proposed framework of a voluntary pilot program to recognize independent evaluation of product and manufacturing quality to strengthen product and manufacturing quality within the medical device ecosystem. This workshop will explore approaches to increase manufacturing and product quality, which may translate into better patient safety and outcomes, and discuss new approaches that are intended to lower the regulatory burden on demonstrating quality assurance, and acknowledge alternate methods for assuring safety and effectiveness during product development and manufacturing.

Historically, the FDA has evaluated manufacturers' compliance with regulations governing the design and production of devices. Compliance with the Quality System regulation (Ref. 3) is a baseline requirement for medical

device manufacturing firms. Focusing on elevating manufacturing quality practices gives greater emphasis to these practices, which should correlate to higher quality outcomes. This will allow FDA to adjust how we recognize and incentivize how the safety and effectiveness of a medical device is assured. CDRH intends to continue working with stakeholders to assess and promote manufacturers' implementation of manufacturing quality practices in day-to-day device design and production.

Through collaboration with the Medical Device Innovation Consortium (MDIC) over the last 2 years, a maturity model and appraisal system (*i.e.,* Capability Maturity Model Integration (CMMI) system) that can be adapted for the medical device industry was selected (Ref. 4) for this voluntary pilot program. The CMMI system is a process level improvement, training, and appraisal program. This program is administered by the CMMI Institute and helps organizations discover the true value they can deliver by building capability in their people and processes (Ref. 5). This model has been successfully used in various industries, including information technology, healthcare, automotive, defense, and aerospace, to consistently deliver high quality products and reduce waste and defects. The CMMI institute certifies and coordinates third party appraisers evaluating voluntary industry participants and any data necessary to demonstrate product performance. The appraiser would evaluate the firm's quality system maturity and manufacturing processes, and identify any gaps or where a participating firm is performing above a compliance baseline. The CMMI maturity appraisal process is not intended to serve as an FDA inspection nor is it intended to be a new regulatory requirement. Conducting independent-assessments using a maturity model is intended to be a driver of continuous process and product improvement and business value to voluntary participants in the pilot program.

Assessments under the CMMI Institute are classified as Standard CMMI Appraisal Method for Process Improvement (SCAMPI) elements. As noted, a gap assessment (SCAMPI–C) will be a part of the voluntary pilot program. SCAMPI–C is a critical tool for developing an in-depth understanding of the medical device manufacturer's current state of process performance. SCAMPI–C is a short and flexible appraisal. It is used to assess the adequacy of planned approaches to process implementation and to provide a quick analysis between the organization's processes and CMMI practices. It provides a rich dataset that reflects organizational performance and a comparison of the medical device manufacturer's performance against the CMMI model.

The next steps for Case for Quality and key discussion topics for this public workshop are the announcement of a maturity model appraisal framework and implementation plan for a voluntary pilot program. These will incorporate an independent assessment of manufacturing and product quality into the way medical devices are regulated while maintaining organizational excellence. Further, this workshop is intended to discuss least burdensome opportunities as incentives for manufacturers that participate in the voluntary pilot program and have demonstrated high performance in manufacturing quality.

II. Topics for Discussion at the Public Workshop

Following are a list of topics that are planned to be included for discussion at the public workshop:

- Background on Case for Quality and proposed use of the CMMI Assessments.
- Proposed Voluntary Program Framework and Implementation Plan:
  - Enrollment and participation;
  - Assessment strategy;
  - Audit credentials—Details on how assessors will be evaluated and accredited;
  - Cost of the independent assessment and sustaining a voluntary program;
  - Monitoring requirements and frequency of progress updates;
  - Data collection requirements; metrics that can be trended over time to provide assurance of sustained performance versus inspection or assessment; and
  - Data sharing guidelines; information shared between industry and third party, and industry and FDA.
- Possible modifications to decrease FDA regulatory burdens for manufacturers with demonstrated high quality:
  - Inspectional strategies;
  - Manufacturing submissions—Reducing burden and accelerating time to market, and
  - Regulatory activities—Recognizing alternate methods for demonstrating product quality assurance and problem solving and resolution before escalating to enforcement actions.
- Health outcomes to patients, value to industry, and benefits to health care.
- Identifying new risks and mitigation strategies.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *https://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) 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 September 29, 2017, at 4 p.m. Eastern Time. 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. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 8 a.m. We will let registrants know if registration closes before the day of the public workshop.

If you need special accommodations due to a disability, please contact Peggy Roney at Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5231, Silver Spring, MD 20993–0002, 301–796–5671, email: *Peggy.Roney@fda.hhs.gov,* no later than September 26, 2017.

Requests for Oral Presentations: During online registration you may indicate if you wish to present during a public comment session or participate in a specific session, and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments and requests to participate in the focused sessions. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by October 4, 2017. All requests to make oral presentations must be received by the close of registration on September 29, 2017. If selected for presentation, any presentation materials must be emailed to the Francisco Vicenty (see **FOR FURTHER INFORMATION CONTACT**) no

later than October 3, 2017. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming webcast of the public workshop: This public workshop will also be webcast. The webcast link will be available on the registration Web page after October 3, 2017. Organizations are requested to register all participants, but to view using one connection per location.

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.)

IV. References

The following references are on display in the Dockets Management Staff (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. FDA's CDRH Case for Quality Initiative is available at: *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/MedicalDeviceQualityandCompliance/ucm378185.htm.*

2. CDRH, 2016–2017 ''Promote a Culture of Quality and Organizational Excellence'' available at: *https://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHVisionandMission/UCM481588.pdf.*

3. The Quality System regulation available at: *https://www.ecfr.gov/cgi-bin/text-idx?SID=54a4a38f9c25eeab900b1c8f6c0f4212&mc=true&node=pt21.8.820&rgn=div5.*

4. MDIC available at: *http://mdic.org/.*

5. CMMI system available at: *http://cmmiinstitute.com/.*

Dated: July 18, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–15542 Filed 7–24–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0369]

Animal Drug User Fees and Fee Waivers and Reductions; Revised Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry (GFI) #170 entitled ''Animal Drug User Fees and Fee Waivers and Reductions.'' This revised guidance document describes the types of fees that FDA is authorized to collect under the Animal Drug User Fee Act of 2003, as amended, and how to request waivers and reductions of these fees.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: 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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2004–D–0369 for ''Animal Drug User Fees and Fee Waivers and Reductions.'' 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 Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Diane Heinz, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5692, *diane.heinz@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 2, 2016 (81 FR 76360), FDA published the notice of availability for a draft revised guidance entitled ''Animal Drug User Fees and Fee Waivers and Reductions'' giving interested persons until January 3, 2017, to comment on the draft revised guidance. FDA received no comments on the draft revised guidance. The guidance announced in this notice finalizes the draft guidance dated November 2016.

II. Significance of Guidance

This level 1 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 Animal Drug User Fees and Fee Waivers and Reductions. 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. This guidance is not subject to Executive Order 12866.

III. Paperwork Reduction Act of 1995

This revised guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information referred to in the guidance entitled ''Animal Drug User Fees and Fee Waivers and Reductions'' have been approved under OMB control number 0910–540.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *https://www.regulations.gov.*

Dated: July 19, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–15536 Filed 7–24–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–3235]

Institutional Review Board Waiver or Alteration of Informed Consent for Clinical Investigations Involving No More Than Minimal Risk to Human Subjects; Guidance for Sponsors, Investigators, and Institutional Review Boards; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a guidance for sponsors, investigators, and institutional review boards (IRBs) entitled ''IRB Waiver or Alteration of Informed Consent for Clinical Investigations Involving No More Than Minimal Risk to Human Subjects.'' This guidance informs sponsors, investigators, IRBs, and other interested parties that FDA does not intend to object to an IRB waiving or altering informed consent requirements, as described in the guidance, for certain minimal risk clinical investigations. In addition, this guidance explains that FDA does not intend to object to a sponsor initiating, or an investigator conducting, a minimal risk clinical investigation for which an IRB waives or alters the informed consent requirements as described in the guidance.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: 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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2017–D–3235 for ''IRB Waiver or Alteration of Informed Consent for Clinical Investigations Involving No More Than Minimal Risk to Human Subjects; Guidance for Sponsors, Investigators, and Institutional Review Boards.'' 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 office of Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of Good Clinical Practice, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5169, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Janet Norden, Office of Good Clinical Practice, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–1127.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for sponsors, investigators and IRBs entitled ''IRB Waiver or Alteration of Informed Consent for Clinical Investigations Involving No More Than Minimal Risk to Human Subjects.'' We are issuing this guidance consistent with our good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). We made this determination because this guidance presents a less burdensome policy that is consistent with the public health. FDA believes this guidance will facilitate the conduct of certain minimal risk clinical investigations that are important to addressing significant public health needs without compromising the rights, safety, or welfare of human subjects. Although this guidance is immediately in effect, it remains subject to comment in accordance with FDA's GGP regulation. FDA will consider all comments received and will revise this guidance when appropriate.

On December 13, 2016, the 21st Century Cures Act (Cures Act) (Pub. L. 114–255) was signed into law. Title III, section 3024 of the Cures Act amended sections 520(g)(3) and 505(i)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to provide authority for FDA to permit an exception from informed consent requirements when the proposed clinical testing poses no more than minimal risk to the human subject and includes appropriate safeguards to protect the rights, safety, and welfare of the human subject. This statutory amendment became effective on December 13, 2016.

Currently, FDA's regulations governing the protection of human subjects (21 CFR parts 50 and 56) allow exception from the general requirements for informed consent only in life-threatening situations when certain conditions are met (21 CFR 50.23) or when the requirements for emergency research are met (21 CFR 50.24), but do not include an exception from informed consent for minimal risk clinical investigations. In light of the Cures Act amendment to the FD&C Act described previously, FDA intends to revise its informed consent regulations to add a waiver or alteration for minimal risk clinical investigations, under appropriate human subject protection safeguards, to the two existing exceptions from informed consent.

This guidance informs sponsors, investigators, and IRBs that until FDA issues these regulations, we do not intend to object to an IRB approving a consent procedure that does not include, or that alters, some or all of the elements of informed consent set forth in 21 CFR 50.25, or waiving the requirements to obtain informed consent as described in the guidance. In addition, we do not intend to object to a sponsor initiating, or an investigator conducting, a minimal risk clinical investigation for which an IRB waives or alters the informed consent requirements as described in the guidance. We believe that this guidance will facilitate investigators' ability to conduct studies that may contribute substantially to the development of products to diagnose or treat diseases or conditions, or address unmet medical needs, without compromising the rights, safety, or welfare of human subjects.

The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This is not a significant regulatory action subject to Executive Order 12866.

II. 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 referenced in this guidance that are related to IRB recordkeeping requirements under 21 CFR part 56 have been approved under OMB control numbers 0910–0755 and 0910–0130.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm, http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/GuidancesInformationSheetsandNotices/ucm219433.htm,* or *https://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: July 11, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–15539 Filed 7–24–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–3474]

Recommendations for the Permitted Daily Exposures for Two Solvents, Triethylamine and Methylisobutylketone, According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents; International Council for Harmonisation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of recommendations for a new permitted daily exposure (PDE) for the residual solvent triethylamine and a revised PDE for the residual solvent methylisobutylketone. The PDEs were developed according to the methods for establishing exposure limits included in the guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The recommendations were prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. The document is intended to recommend acceptable amounts for the listed residual solvents in pharmaceuticals for the safety of the patient.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: 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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–3474 for ''Recommendations for the Permitted Daily Exposures for Two Solvents, Triethylamine and Methylisobutylketone, According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents; International Council for Harmonisation; Guidance for Industry; Availability.'' 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 Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Timothy J. McGovern, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6300, Silver Spring, MD 20993–0002, 240–402–0477.

Regarding the ICH: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring, MD 20993–0002, 301–796–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical

development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are: The European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; CDER and CBER, FDA; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a Member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization and is funded by the Members of the ICH Association. The ICH Assembly is the overarching body of the Association and includes representatives from each of the ICH members and observers.

In the **Federal Register** of December 24, 1997 (62 FR 67377), FDA published a notice announcing the availability of the ICH guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The guidance makes recommendations as to what amounts of residual solvents are considered toxicologically acceptable for some residual solvents. Upon issuance in 1997, the text and appendix 1 of the guidance contained several tables and a list of solvents categorizing residual solvents by toxicity, classes 1 through 3, with class 1 being the most toxic. The ICH Quality Expert Working Group (EWG) agreed that the PDE could be modified if reliable and more relevant toxicity data were brought to the attention of the group and the modified PDE could result in a revision of the tables and list.

In 1999, ICH instituted a Q3C maintenance agreement and formed a maintenance EWG (Q3C EWG). The agreement provided for the revisitation of solvent PDEs and allowed for minor changes to the tables and list that include the existing PDEs. The agreement also provided for new solvents and PDEs that could be added to the tables and list based on adequate toxicity data. In the **Federal Register** of February 12, 2002 (67 FR 6542), FDA briefly described the process for proposing future revisions to the PDE. In the same notice, the Agency announced its decision to delink the tables and list from the Q3C guidance and create a stand-alone document entitled ''Q3C: Tables and List'' to facilitate making changes recommended by ICH, available at *https://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm073395.pdf.* The ''Q3C: Tables and List'' has been updated as of January 2017 to include the recommended PDE for triethylamine and methylisobutylketone.

In the **Federal Register** of October 16, 2015 (80 FR 62537), FDA published a notice announcing the availability of draft recommendations for the PDEs for two solvents, trimethylamine and methylisobutylketone, according to the maintenance procedures for the guidance entitled ''Q3C Impurities: Residual Solvents,'' available at *https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm073394.pdf.* The notice gave interested persons an opportunity to submit comments by December 15, 2015. After consideration of the comments received and revisions to the guidance, a final draft of the recommendations was submitted to the ICH Assembly and endorsed by the regulatory agencies in November 2016.

The guidance provides a new PDE for the solvent trimethylamine and a revised PDE for the solvent methylisobutylketone. In addition, the data used to derive the PDEs are summarized. Revisions made to the final guidance as a result of comments include a modification of the PDE for methylisobutylketone from 22.6 milligrams (mg)/day to 45 mg/day based on reconsideration of the severity of effects identified in rat studies and the human relevance of effects identified in mouse carcinogenicity study. The recommendation to place methylisobutylketone into class 2 remains. The ''Q3C: Tables and List'' has been updated as of January 2017 to include the recommended PDE for triethylamine and methylisobutylketone.

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 ''Q3C Impurities: Residual Solvents.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the document at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: July 18, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–15537 Filed 7–24–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–3235]

M4E(R2): The Common Technical Document—Efficacy; International Council for Harmonisation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance entitled ''M4E(R2): The CTD—Efficacy.'' The guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. The guidance revises the ICH guidance ''M4E: The CTD—Efficacy'' (M4E guidance). The revised guidance standardizes the presentation of benefit-risk information in regulatory submissions, providing greater specificity on the format and structure of benefit-risk information. This revision is intended to facilitate communication among regulators and industry.

DATES: Submit either electronic or written comments on Agency guidance's 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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–3235 for ''M4E(R2): The Common Technical Document—Efficacy; International Council for Harmonisation; Guidance for Industry; Availability.'' 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 Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Pujita Vaidya, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1144, Silver Spring, MD 20993–0002, 301–796–0684; or Steve Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

Regarding the ICH: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring, MD 20993–0002, 301–796–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; CDER and CBER, FDA; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a Member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization and is funded by the Members of the ICH Association.

The ICH Assembly is the overarching body of the association and includes representatives from each of the ICH members and observers.

In the **Federal Register** of October 2, 2015 (80 FR 59785), FDA published a notice announcing the availability of a draft guidance entitled ''M4E(R2): The CTD—Efficacy.'' The notice gave interested persons an opportunity to submit comments by December 1, 2015.

After consideration of the comments received and revisions to the guidance,

a final draft of the guidance was submitted to the ICH Assembly and endorsed by the regulatory agencies on June 16, 2016.

Regulatory authorities approve drugs that are demonstrated to be safe and effective for human use. The meaning of ''safe'' has historically been interpreted to mean that the benefits of the drug outweigh its risks. This benefit-risk assessment of pharmaceuticals is the fundamental basis of regulatory decision-making. In the last several years, providing greater structure for the benefit-risk assessment has been an important topic in drug regulation. The M4E guidance directs applicants to include their conclusions on benefits and risks in the Clinical Overview of Module 2 of the Common Technical Document (CTD) under section 2.5.6. Although general guidance is provided in the M4E guidance regarding the expected content of section 2.5.6, no further structure is suggested to aid industry in developing the benefit-risk assessment. As a result, regulators observe a high degree of variability in the approaches taken by applicants in presenting this information. This variability may not facilitate efficient communication of industry views to regulators. Although regulators and industry have developed approaches for structured benefit-risk assessment and these approaches may take different forms, there is a common thread evident that can inform harmonization of the format and structure of benefit-risk assessments provided by applicants in their regulatory submissions.

The revised M4E(R2) guidance provides more specific guidance regarding the format and structure of the benefit-risk assessment in section 2.5.6. Section 2.5.6 is divided into four subsections: (1) Therapeutic context, (2) Benefit, (3) Risk, and (4) Benefit-Risk Assessment. Each subsection describes the aspects that are most pertinent to the benefit-risk assessment. This guidance also lists characteristics that should be considered when identifying and describing key benefits and key risks of the medicinal product. Recognizing that there are many reasonable approaches for conducting a benefit-risk assessment, M4E(R2) does not specify a particular approach to be used by industry. However, the document does offer specific guidance on the major elements that should be included in the benefit-risk assessment. Furthermore, the revised guidance does not dictate an approach used by a regulator in conducting a benefit-risk assessment.

This guidance also revises other sections of the guidance for clarification, given the proposed revisions in section 2.5.6. In addition, the revised guidance changes the numbering and the section headings for consistency.

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 this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at *https://www.regulations.gov, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: July 18, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–15534 Filed 7–24–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Office of the Commissioner; Statement of Organization, Functions, and Delegations of Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Office of the Commissioner (OC), and Office of Operations (OO) have modified their structures. This new organizational structure was approved by the Secretary of Health and Human Services on January 10, 2017 and effective on February 11, 2017.

FOR FURTHER INFORMATION CONTACT: Segaran Pillai, Ph.D., Director, Office of Laboratory Science and Safety, Office of the Commissioner, Food and Drug Administration, White Oak Bldg. 1, Rm. 2218, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–402–2856.

SUPPLEMENTARY INFORMATION: Part D, Chapter D–B, (Food and Drug Administration), the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, 60 FR 56606, November 9, 1995, 64 FR 36361, July 6, 1999, 72 FR 50112, August 30, 2007, 74 FR 41713, August 18, 2009, and 76 FR 45270, July 28, 2011) is amended to reflect the reorganization of the Office of the Commissioner and the Office of Operations.

This reorganization establishes the Office of Laboratory Science and Safety, and will authorize the consolidation of the laboratory science, safety functions, and program activities across FDA under one organizational component that will report directly to the Office of the Commissioner. The Employee Safety and Environmental Management Staff will be realigned from the Office of Safety, Security and Crisis Management to the Office of Laboratory Science and Safety. As a result of the staff realignment the Office of Safety, Security and Crisis Management within the Office of Operations will be re-titled to the Office of Security and Emergency Management. The Office of Crisis Management within the newly titled Office of Security and Emergency Management will change its title to the Office of Emergency Management. Additionally, the Office of Security and Emergency Management has established the Emergency Planning, Evaluation, and Exercise Staff, and the Program Operations and Coordination Staff within the Office of Emergency Management.

The Food and Drug Administration, Office of the Commissioner (OC), has been restructured as follows:

DA. ORGANIZATION. The Office of the Commissioner is headed by the Commissioner of Food and Drugs and includes the following organizational units:

Office of the Commissioner (DA)
Office of the Chief Counsel (DAA)
Office of the Executive Secretariat (DAB)
Executive Secretariat Staff (DAB1)
Freedom of Information Staff (DAB2)

Dockets Management Staff (DAB3)
Office of the Chief Scientist (DAE)
National Center for Toxicological Research (DAEC)
Office of the Center Director (DAECA)
Office of Management (DAECB)
Planning and Resource Management Staff (DAECBA)
Office of Research (DAECC)
Division of Biochemical Toxicology (DAECCA)
Division of Genetic and Molecular Toxicology (DAECCB)
Genetic Toxicology Lab (DAECCB1)
Division of Microbiology (DAECCD)
Division of Systems Biology (DAECCE)
Division of Neurotoxicology (DAECCF)
Division of Bioinformatics and Biostatistics (DAECCH)
Office of Scientific Coordination (DAECF)
Office of Counter-Terrorism and Emerging Threats (DAEG)
Office of Scientific Integrity (DAEH)
Office of Regulatory Science and Innovation (DAEI)
Division of Science Innovation and Critical Path (DAEIA)
Division of Scientific Computing and Medical Information (DAEIB)
Office of Scientific Professional Development (DAEJ)
Office of Health Informatics (DAEK)
Office of the Counselor to the Commissioner (DAR)
Office of Women's Health (DAS)
Office of External Affairs (DAU)
Web and Digital Media Staff (DAU1)
Administrative Management Staff (DAU2)
Office of Media Affairs (DAUA)
Web Communications Staff (DAUA2)
Office of Communications (DAUB)
Communications Staff (DAUB1)
FDA History Office (DAUB2)
Office of Health and Constituent Affairs (DAUC)
Office of Minority Health (DAY)
Office of Laboratory Science and Safety (DAZ)
Employee Safety and Environmental Management Staff (DAZ1)

The Food and Drug Administration, Office of Operations (OO), has been restructured as follows:

DMM. ORGANIZATION. The Office of Operations is headed by the Deputy Commissioner for Operations and Chief Operating Officer and includes the following organizational units:

Office of Operations (DMM)
Office of Business Services (DMM1)
Business Operations Staff (DMM11)
Employee Resource and Information Center (DMM1A)
Division of Ethics and Integrity (DMM3)
Ombudsman and Conflict Prevention and Resolutions Staff (DMM4)
Office of Equal Employment Opportunity (DMMA)
Compliance Staff (DMMA1)
Diversity Staff (DMMA3)
Office of Finance, Budget and Acquisitions (DMMD)
Office of Budget (DMMDA)
Division of Budget Formulation (DMMDAA)
Division of Budget Execution and Control (DMMDAB)
Office of Acquisition and Grant Services (DMMDB)
Division of Acquisition Operations (DMMDBA)
Service Contract Branch (DMMDBA1)
Contract Operations Branch (DMMDBA2)
Division of Acquisition Programs (DMMDBB)
Scientific Support Branch (DMMDBB1)
Field Operations Branch (DMMDBB2)
Facilities Support Branch (DMMDBB3)
Division of Regulatory Inspections Acquisitions and Grants and Assistance Management (DMMDBC)
Grants Management Branch (DMMDBC1)
Regulatory Inspections and Acquisitions Branch (DMMDBC2)
Division of Information Technology Acquisitions (DMMDBD)
Information Technology Acquisitions Branch (DMMDBD1)
Systems Technology Acquisitions Branch (DMMDBD2)
Division of Policy, Systems, and Program Support (DMMDBE)
Office of Financial Operations and Policy (DMMDC)
Office of Financial Management (DMMDCA)
Internal Controls, Compliance and Oversight Staff (DMMDCA1)
Business Transformation, Administration and Management Staff (DMMDCA2)
User Fee Staff (DMMDCA3)
Financial Systems Support Staff (DMMDCA4)
Division of Accounting (DMMDCAB)
Division of Travel Services (DMMDCAC)
Division of Payment Services (DMMDCAD)
Office of Human Resources (DMME)
Commissioned Corps Affairs Staff (DMME6)
Management Analysis Services Staff (DMME7)
Business Operations Staff (DMME8)
Division of Workforce Relations (DMMEB)
Employee and Labor Relations Branch I (DMMEB1)
Employee and Labor Relations Branch II (DMMEB2)
Division of Policy, Programs, and Executive Resources (DMMEC)
Policy Branch (DMMEC1)
Executive Resources Branch (DMMEC2)
Accountability Branch (DMMEC3)
Division of Enterprise Support Services (DMMED)
Resources and Information Branch (DMMED1)
Systems and Records Management Branch (DMMED2)
Benefits Branch (DMMED3)
FDA University (DMMEF)
Division of Human Resource Services for Office of the Commissioner/Office of Operations (DMMEG)
Office of the Commissioner/NCTR Customer Solutions Branch (DMMEG1)
Office of Operations Customer Solutions Branch (DMMEG2)
Division of Human Resource Services for Office of Medical Products and Tobacco (DMMEH)
CDRH Customer Solutions Branch (DMMEH1)
CBER and NCTR Customer Solutions Branch (DMMEH2)
CDER Customer Solutions Branch (DMMEH3)
CTP Customer Solutions Branch (DMMEH4)
Division of Human Resource Services for the OFVM/OGROP (DMMEI)
CFSAN/CVM Customer Solutions Branch (DMMEI1)
ORA/OIP Customer Solutions Branch (DMMEI2)
Office of Facilities, Engineering, and Mission Support Services (DMMF)
Jefferson Laboratories Complex Staff (DMMF1)
Facilities Program Staff (DMMF2)
Division of Operations Management and Community Relations (DMMFA)
Logistics and Transportation Management Branch (DMMFA1)
Facilities Maintenance and Operations Branch (DMMFA2)
Auxiliary Program Management Branch (DMMFA3)
Division of Planning, Engineering and Space Management (DMMFB)
Portfolio and Space Management Branch (DMMFB1)
Engineering Management Branch (DMMFB2)
Office of Information Management and Technology (DMMH)
Office of Information Management (DMMHA)
Information Security Staff (DMMHA1)
Knowledge Management Staff (DMMHA2)
Enterprise Architecture and Technology Innovation Staff (DMMHA3)
Office of Technology and Delivery (DMMHAA)
Delivery Management and Support Staff (DMMHAA1)
Divisions of Infrastructure Operations (DMMHAAA)

Infrastructure Management Services Staff (DMMHAAA1)
Implementation Branch (DMMHAAA2)
Infrastructure Engineering Branch (DMMHAAA3)
Systems Monitoring and Response Branch (DMMHAAA4)
Systems Operations Branch (DMMHAAA5)
Network and Communications Operations Branch (DMMHAAA6)
Division of Application Services (DMMHAAB)
Application Management Services Staff (DMMHAAB1)
Data Management and Operations Branch (DMMHAAB2)
Medical Products Branch (DMMHAAB3)
OC/CVM/CTP Branch (DMMHAAB4)
ORA/CFSAN Branch (DMMHAAB5)
Enterprise Application Branch (DMMHAAB6)
Division of Delivery Management and Support (DMMHAAC)
Delivery Management Branch (DMMHAAC1)
Process Management and Control Branch (DMMHAAC2)
Office of Business and Customer Assurance (DMMHAB)
Records, eDiscovery and Risk Management Staff (DMMHAB1)
Division of Business Partnership and Support (DMMHABA)
Internet and Intranet Branch (DMMHABA1)
Call Center Branch (DMMHABA2)
Regional Support Branch (DMMHABA3)
Property, Receiving and Distribution Branch (DMMHABA4)
Division of Management Services (DMMHABB)
Internal Services and Response Branch (DMMHABB2)
Acquisitions Services Branch (DMMHABB3)
Human Capital and Visual Media Branch (DMMHABB4)
Office of Enterprise Portfolio Management (DMMHAC)
Office of Security and Emergency Management (DMMJ)
Office of Security Operations (DMMJA)
Office of Emergency Management (DMMJB)
Emergency Planning, Evaluation, and Exercise Staff (DMMJB1)
Program Operations and Coordination Staff (DMMJB2)
Office of Emergency Operations (DMMJBA)

I. Delegations of Authority

Pending further delegation, directives, or orders by the Commissioner of Food and Drugs, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

II. Electronic Access

This reorganization is reflected in FDA's Staff Manual Guide (SMG). Persons interested in seeing the complete Staff Manual Guide can find it on FDA's Web site at: *https://www.fda.gov/AboutFDA/ReportsManualsForms/StaffManualGuides/default.htm.*

Authority: 44 U.S.C. 3101.

Dated: July 17, 2017.

Thomas E. Price,

Secretary of Health and Human Services.

[FR Doc. 2017–15564 Filed 7–24–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Information Technology Advisory Committee; Call for Applications

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Call for applications.

SUMMARY: The Office of the National Coordinator for Health Information Technology (ONC) is seeking applications to the Health Information Technology Advisory Committee.

SUPPLEMENTARY INFORMATION:

Name of Committee: Health Information Technology Advisory Committee.

General Function of the Committees: The Health Information Technology Advisory Committee (HITAC) shall make recommendations to the National Coordinator on a policy framework to advance an interoperable health information technology infrastructure. The Health Information Technology Advisory Committee shall recommend to the National Coordinator a policy framework for adoption by the Secretary consistent with the strategic plan under section 3001(c)(3) for advancing the following target areas (described in more detail in the Description of Duties section): (1) Achieving a health information technology infrastructure that allows for the electronic access, exchange, and use of health information; (2) the promotion and protection of privacy and security of health information in health information technology; (3) the facilitation of secure access by an individual to such individual's protected health information; and (4) any other target area that the HITAC identifies as an appropriate target area to be considered. Such policy framework shall seek to prioritize achieving advancements in these target areas and may incorporate policy recommendations made by the HIT Policy Committee, as in existence before the date of the enactment of the 21st Century Cures Act.

Date and Time: Applications must be received by 12:00 p.m. on Friday, August 4, 2017.

Contact Person: Michelle Consolazio, email: *michelle.consolazio @hhs.gov.*

Background: Section 3002 of the 21st Century Cures Act (Pub. L. 114–255) establishes the Health Information Technology Advisory Committee (referred to as the ''HITAC''). Once established, the Health Information Technology Advisory Committee will be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees. HHS is seeking applications for two members ofthe HITAC; one of whom shall be appointed to be a public health official representative. Members of the HITAC shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant Federal agencies, and individuals with technical expertise on health care quality, privacy and security, and on the electronic exchange and use of health information.

Members will be selected in order to achieve a balanced representation of viewpoints, areas of experience, subject matter expertise, and representation of the health care landscape. Terms will be three (3) years from the appointment date. Members serve without pay, but will be provided per diem and travel costs for committee services.

Submitting Applications: Applications should be submitted electronically through the application database on the *HealthiT.gov* Web site at: *http://U www.healthit.gov/facas/faca-workgroup-membership-application.* An application package must include: A short bio, a current resume or CV including contact information, and two letters of support.

Dated: July 10, 2017.

Michelle Consolazio,

Office of Policy, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2017–15565 Filed 7–24–17; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notification Process for Availability of Test Tools and Test Procedures Approved by the National Coordinator for the ONC Health IT Certification Program IT Certification Program

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces a change in the notification process for the availability of test tools and test procedures approved by the National Coordinator for Health Information Technology for the testing of health IT under the ONC Health IT Certification Program.

FOR FURTHER INFORMATION CONTACT: Alicia Morton, Director, ONC Health IT Certification Program, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION: On January 7, 2011, the Department of Health and Human Services issued a final rule establishing a permanent certification program for the purposes of testing and certifying health information technology (''Establishment of the Permanent Certification Program for Health Information Technology,'' (76 FR 1262) (''Permanent Certification Program final rule'')). The Permanent Certification Program was renamed the ONC HIT Certification Program in a final rule published on September 4, 2012 (77 FR 54163) (''2014 Edition final rule''), and subsequently renamed the ONC Health IT Certification Program (''Program'') in a final rule published on October 16, 2015 (80 FR 62601) (''2015 Edition final rule''). In the preamble ofthe Permanent Certification Program final rule, we stated that when the National Coordinator for Health Information Technology (National Coordinator) had approved test tools and test procedures for certification criteria adopted by the Secretary, ONC would publish a notice of availability in the **Federal Register** and identify the approved test tools and test procedures on the ONC Web site.

The public notification of the availability of approved test tools and test procedures is an operational aspect of the process ONC adopted in rulemaking for approving test tools and test procedures. To date, we have found that health IT stakeholders prefer to be notified via ONC's normal communication channels (listserv and Web site updates) and more frequently visit the ONC Health IT Certification Program's Web page for up-to-date Program information. Thus, to improve the efficiency and effectiveness of Program operations, ONC will now begin notifying the public of the availability of approved test tools and test procedures via our listserv. ONC will also continue to identify approved test tools and test procedures on the ONC Web site, including test data approved for the testing ofhealth IT under the Program (76 FR 1280 and 80 FR 32477). The new approach will enable ONC to more effectively and timely reach interested parties, particularly health IT developers. Health IT developers and other interested parties can sign up for the Program listserv at *https://public. gov delivery.cornlaccounts/USHHSONC/ subscriber/new?category id=USHH SONC C8.*

Authority: 42 U.S.C. 300jj–11.

Dated: July 13, 2017.

Donald W. Rucker,

National Coordinator for Health Information Technology.

[FR Doc. 2017–15566 Filed 7–24–17; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Review (2018/01).

Date: September 28, 2017.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 920, Bethesda, MD 20892 (Virtual Meeting)

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@ mail.nih.gov.*

Dated: July 19, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–15510 Filed 7–24–17; 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 a meeting of the National Heart, Lung, and Blood Advisory Council. 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 Heart, Lung, and Blood Advisory Council.

Date: August 29, 2017.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 9100, Bethesda, MD 20892, (Teleconference).

Contact Person: Laura K. Moen, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, 301–435–0260, *moenl@mail.nih.gov.*

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.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/ index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: July 19, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–15509 Filed 7–24–17; 8:45 am]

BILLING CODE 4140–01–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: September 1, 2017.

Time: 8:15 a.m. to 12:00 p.m.

Agenda: Call to Order and Introductions; Announcements and Updates; Invited Speaker Presentation; A Study of Variability in Scientific Grant Peer Review; NIH Update and Discussion; Common Fund Concept Update and Vote.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: September 1, 2017.

Time: 12:30 p.m. to 1:30 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: September 1, 2017.

Time: 1:30 p.m. to 4:00 p.m.

Agenda: Council Operating Procedures; Update—*All of Us*[SM] Research Program; Update on the Office of Research on Women's Health (ORWH) Strategic Planning Process; Sexual and Gender Minority Research Office (SGMRO) Update; Report from the Sexual and Gender Minority Research Working Group; Retiring Council Members' Perspectives; 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: July 19, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–15511 Filed 7–24–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Immune Mechanism.

Date: August 1, 2017.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892301–495–1506, *jakesse@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project: Support of NIGMS Program Project Grants.

Date: August 2, 2017.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting)

Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Pathogenesis and Treatments of Eye Diseases.

Date: August 21, 2017.

Time: 10:00 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: Luis Dettin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, Bethesda, MD 20892, 301–451–1327, *dettinle@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: July 19, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–15514 Filed 7–24–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will also be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov/*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: November 1, 2017.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Institutes of Health, Building 31, C-Wing, 6th Floor, Room 9 and 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, Coordinating Center for Clinical Trials, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov.*

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 Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 19, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–15515 Filed 7–24–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Interagency Autism Coordinating Committee, July 26, 2017, 09:00 a.m. to July 26, 2017, 05:00 p.m., National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892 which was published in the **Federal Register** on April 03, 2017, 82 FR 16217.

The meeting is being amended to change the conference call access number from 1–800–323- 2720 to 1–888–323–2720. The meeting is open to the public.

Dated: July 18, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–15512 Filed 7–24–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of Intertek USA, Inc., as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of Intertek USA, Inc., as a commercial laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 24, 2016.

DATES: Intertek USA, Inc., was accredited as commercial laboratory as of August 24, 2016. The next triennial inspection date will be scheduled for August 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12, that Intertek USA, Inc., 1114 Seaco Avenue, Deer Park, TX 77536, has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12. Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.

CBPL No.	ASTM	Title
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–07	D 4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–10	D 323	Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method).
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27–46	D 5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure).
	D 4007	Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: July 13, 2017.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2017–15525 Filed 7–24–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc. as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of February 15, 2017.

DATES: Intertek USA, Inc. was accredited and approved as a commercial gauger and laboratory as of February 15, 2017. The next triennial inspection date will be scheduled for February 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 4702 Westway Dr., Corpus Christi, TX 78408, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27–46	D 5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: July 13, 2017.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2017–15524 Filed 7–24–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2017–0014; OMB No. 1660–0016]

Agency Information Collection Activities: Proposed Collection; Comment Request; Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 reinstatement without change, of a previously approved information collection for which approval has expired. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information required by FEMA to revise National Flood Insurance Program Maps.

DATES: Comments must be submitted on or before August 24, 2017.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Brian Koper, Emergency Management Specialist, Federal Insurance and Mitigation Administration, DHS/FEMA, 202–646–3085.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.* The Federal Emergency Management Agency (FEMA) administers the NFIP and maintains the maps that depict flood hazard information. In 44 CFR 65.3, communities are required to submit technical information concerning flood hazards and plans to avoid potential flood hazards when physical changes occur. In 44 CFR 65.4, communities are provided the right to submit technical information when inconsistencies on maps are identified. In order to revise the Base (l-percent annual chance) Flood Elevations (BFEs), Special Flood Hazard Areas (SFHAs), and floodways presented on the NFIP maps, a community must submit scientific or technical data demonstrating the need for a revision. The NFIP regulations cited in 44 CFR part 65 outline the data that must be submitted for these requests. This collection serves to provide a standard format for the general information requirements outlined in the NFIP regulations, and helps establish an organized package of the data needed to revise NFIP maps.

This proposed information collection previously published in the **Federal Register** on May 9, 2017 at 82 FR 21547 with a 60-day public comment period. No comments were received. This information collection expired on May 31, 2017. FEMA is requesting a reinstatement, without change, of a previously approved information collection for which approval has expired. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0016.

FEMA Forms: FEMA Form 086–0–27, Overview and Concurrence Form; FEMA Form 086–0–27A, Riverine Hydrology and Hydraulics Form; FEMA Form 086–0–27B, Riverine Structures Form; FEMA Form 086–0–27C, Coastal Analysis Form; FEMA Form 086–0–27D, Coastal Structures Form; FEMA Form 086–0–27E, Alluvial Fan Flooding Form.

Abstract: The forms in this information collection are used to determine if the collected data will result in the modification of a BFE, a SFHA, or a floodway. Once the information is collected, it is submitted to FEMA for review and is subsequently included on the NFIP maps. Using these maps, lenders will determine the application of the mandatory flood insurance purchase requirements, and insurance agents will determine actuarial flood insurance rates.

Affected Public: State, Local and Tribal Government and Business or Other for-Profit Institutes.

Estimated Number of Respondents: 5,291.

Estimated Number of Responses: 5,291.

Estimated Total Annual Burden Hours: 16,107.

Estimated Total Annual Respondent Cost: $1,108,050.

Estimated Respondents' Operation and Maintenance Costs: $22,010,000.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $24,559.06.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through

the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: July 19, 2017.

Tammi Hines,

Acting Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2017–15578 Filed 7–24–17; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2017–0021; OMB No. 1660–0105]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Community Preparedness and Participation Survey

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before August 24, 2017.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3100, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.* Or, Jacqueline Snelling, Senior Advisor, FEMA, National Preparedness Directorate, at (202) 786–9577.

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on May 19, 2017 at 82 FR 23023 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Community Preparedness and Participation Survey.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0105.

Form Titles and Numbers: FEMA Form 008–0–15, Community Preparedness and Participation Survey.

Abstract: The Individual and Community Preparedness Division uses this information to more effectively improve the state of preparedness and participation from the general public by customizing preparedness education and training programs, messaging and public information efforts, and strategic planning initiatives.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,040.

Estimated Number of Responses: 5,040.

Estimated Total Annual Burden Hours: 1,260 hours.

Estimated Total Annual Respondent Cost: $32,760.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $627,432.28.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: July 19, 2017.

Tammi Hines,

Acting Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2017–15577 Filed 7–24–17; 8:45 am]

BILLING CODE 911–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0017; OMB No. 1660–0135]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Staffing for Adequate Fire and Emergency Response (SAFER) Grants

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before August 24, 2017.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3100, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.* Or, William Dunham, Fire Program Specialist, FEMA, Grant Program Directorate, 202–786–9813.

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on May 12, 2017 at 82 FR 22150 with a 60-day public comment period. FEMA received two positive comments supporting FEMA's effort to continue SAFER grants for both fire departments and the communities they serve, but one provided a caveat to streamline the process. FEMA's response is that the Program Office is working towards this goal. FEMA received one comment that application material were difficult to locate at this time. FEMA's response is that the materials are only available during the application period, applicants are notified well ahead of time through the Notice of Funding Opportunity of these dates. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Staffing for Adequate Fire and Emergency Response (SAFER) Grants.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0135.

Form Titles and Numbers: FEMA Form 080–0–4, Staffing for Adequate Fire and Emergency Response (SAFER) (General Questions All Applicants); FEMA Form 080–0–4a, Staffing for Adequate Fire and Emergency Response Hiring of Firefighters Application (Questions and Narrative); FEMA Form 080–0–4b, Staffing for Adequate Fire and Emergency Response Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative); FEMA Form 087–0–0–2, Staffing for Adequate Fire and Emergency Response Quarterly Report and Payment Request Form.

Abstract: FEMA uses this information to ensure that FEMA's responsibilities under the legislation can be fulfilled accurately and efficiently. The information will be used to objectively evaluate each of the anticipated applicants to determine which of the applicants' proposals in each of the activities are the closest to the established program priorities.

Affected Public: State, Local or Tribal Government; Not-for-Profit Institutions.

Estimated Number of Respondents: 2,330.

Estimated Number of Responses: 2,990.

Estimated Total Annual Burden Hours: 18,064 hours.

Estimated Total Annual Respondent Cost: $984,437.20.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $1,666,213.80.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: July 19, 2017.

Tammi Hines,

Acting Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2017–15576 Filed 7–24–17; 8:45 am]

BILLING CODE 9111–46–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Road Milling Machines and Components Thereof DN 3238*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (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 has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Wirtgen America, Inc. on July 19, 2017. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain road milling machines and components thereof. The complaint names as respondents Caterpillar Bitelli SpA of Italy; Caterpillar Prodotti Stradali S.r.L. of Italy; Caterpillar Americas CV of Switzerland; Caterpillar Paving Products, Inc. of Minneapolis, MN; and Caterpillar Inc. of Peoria, IL. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief

specifically requested by the complainant 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 requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(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 requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

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 § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3238'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] 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 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,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.
Issued: July 20, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–15587 Filed 7–24–17; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on July 3, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. (''PXI Systems'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Shanghai JYTEK Co., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; and Hartmann Electronic GmbH, Stuttgart, GERMANY, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on April 12, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 2, 2017 (82 FR 20489).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–15581 Filed 7–24–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on July 10, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Brigham Young University, Provo, UT; California State University,

Office of the Chancellor, Long Beach, CA; Cerego, San Francisco, CA; Data Recognition Corp., Maple Grove, MN; Digitalme, Leeds, UNITED KINGDOM; Indiana University, Bloomington, IN; Learning Machine, Dallas, TX; School District of Philadelphia, Philadelphia, PA; Seattle Public Schools, Seattle, WA; South Carolina Department of Education, Columbia, SC; and Galena Park Independent School District, Houston, TX, have been added as parties to this venture.

Also, Intersective, Sydney, AUSTRALIA; Intel, Santa Clara, CA; and Utah Valley University, Orem, UT, have withdrawn as parties to this venture.

In addition, an existing member, CODE–OUJ, has changed its name to Online Education Center of OUJ, Chiba, JAPAN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on April 19, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 2, 2017 (82 FR 20488).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–15583 Filed 7–24–17; 8:45 a.m.]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin

Notice is hereby given that, on June 22, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin (''Permian Basin'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Diamondback E&P LLC, Midland, TX; and Noble Energy, Inc., Houston, TX, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Permian Basin intends to file additional written notifications disclosing all changes in membership.

On April 18, 2017, Permian Basin filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 2017 (82 FR 22159).

The last notification was filed with the Department on May 17, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 20, 2017 (82 FR 28092).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–15582 Filed 7–24–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Border Security Technology Consortium

Notice is hereby given that, on June 8, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Border Security Technology Consortium (''BSTC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AeroVironment, Inc., SimiValley, CA; AirRobot US, Inc., Arlington, VA; Applied Research Associates, Inc. (ARA), Albuquerque, NM; Aventura Technologies, Inc., Hauppauge, NY; C Speed, LLC, Liverpool, NY; Capgemini Government Solutions, LLC, Herndon, VA; CCSN, LLC, Guynabo, P.R.; Chartis Consulting Corporation, Falls Church, VA; Commdex Consulting, LLC, Norcross, GA; CONVERUS, Inc., Lehi, UT; Drone Co-Habitation Services, LLC, Herndon, VA; Elbit Systems of America, Inc., McLean, VA; EnZoo, Inc., Woodinville, WA; Exelis, Inc., Fort Wayne, IN; FLIR Detection, Inc., Arlington, VA; Georgia Tech Applied Research Corporation, Atlanta, GA; Guidepost Solutions, LLC, New York, NY; HiTech Systems, Inc., D.B.A. Pulsiam, Los Angeles, CA; ICF, Fairfax, VA; IEC Infrared Systems, Middleburg Heights, OH; Innovative Wireless Technologies, Lynchburg, VA; International Business Machines Corporation (IBM), Bethesda, MD; Leidos, Reston, VA; Logos Technologies, LLC, Fairfax, VA; Lukos, LLC, Tampa, FL; Michael Baker Jr., Inc., Phoenix, AZ; Polaris Sensor Technologies, Huntsville, AL; Pricewaterhouse Coopers (PwC), McLean, VA; Priority 5 Holdings, Inc., Needham, MA; Rajant, Malvern, PA; Red Team Defense Group, Spring Branch, TX; Rhombus Power, Inc., Moffett Field, CA; Salient Federal Solutions, Fairfax, VA; SRI International, Menlo Park, CA; Stark Aerospace, Arlington, VA; StrongWatch Corporation, Tucson, AZ; TigerSwan, Inc., Apex, NC; Toyon Research Corporation, Goleta, CA; Unmanned Experts, Inc., Denver, CO; Unmanned Solutions Technology, LLC, Beavercreek, OH; USTETA, Washington, DC; ViON Corporation, Herndon, VA; and XLA Associates, Springfield, VA, have been added as parties to this venture.

Also, ADDSS Incorporated, Tucson, AZ; Azos AI LLC, Haymarket, VA; Digital Barriers Services, LTD, London, UK; Hurley IR, Mount Airy, MD; ICS Consulting, LLC, Arlington, VA; ICx Tactical Platforms, Forest Park, GA; Morpho Detection, Newark, CA; Morpho Trak, Alexandria, VA; NAVISTAR, Lisle, IL; ProQual-I.T., Inc., Rockville, MD; Rapiscan Systems, Torrence, CA; Symetrica, Maynard, MA; University of Arizona, Tucson, AZ; and Whitney Bradley & Brown, Inc., Reston, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BSTC intends to file additional written notifications disclosing all changes in membership.

On May 30, 2012, BSTC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 18, 2012 (77 FR 36292).

The last notification was filed with the Department on October 5, 2012. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 6, 2012 (77 FR 66635).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–15584 Filed 7–24–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mohammed S. Aljanaby, M.D.; Decision and Order

On February 10, 2017, the Assistant Administrator, Division of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Mohammed S. Aljanaby, M.D. (hereinafter, Registrant),[1] of West Hartford, Connecticut. Show Cause Order, at 1. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, on the ground that he does not have authority to handle controlled substances in Connecticut, the State in which he is registered with DEA. *Id.*

As to the Agency's jurisdiction, the Show Cause Order alleged that Registrant possesses a practitioner's registration for schedules II through V, and that his registered address is 74 Park Road, West Hartford, Connecticut. *Id.* The Order further alleged that Registrant's registration ''expires by its own terms on June 30, 2017.'' *Id.*

As to the substantive ground for the proposed action, the Show Cause Order alleged that ''[o]n November 15, 2017, the State of Connecticut Medical Examining Board revoked [his] license to practice medicine due to [his] (1) inappropriate physical and/or sexual conduct with one or more female patients; and (2) false statements on [his] Connecticut medical license renewal application.'' *Id.* (emphasis added). The Show Cause Order also alleged that the Board's ''order remains in effect.'' *Id.*[2] The Order further asserted that Registrant's registration was subject to revocation based on his lack of state authority. *Id.* at 2.

The Government attempted to serve the Order to Show Cause on Registrant through a variety of ways. These included: (1) Mailing by first class mail addressed to him at his registered address; (2) a Diversion Investigator (DI) going to his registered address, where he was told that Registrant ''had not worked there for a very long time'' and his current location was unknown; (3) the DI going to Registrant's purported residence on Laird Drive in Bristol, Connecticut where no one answered the door;[3] (4) mailing the Show Cause Order by Certified Mail, Return Receipt Requested, addressed to him at his registered address; (5) mailing the Show Cause Order by Certified Mail, Return Receipt Requested, to his purported residence address; (6) mailing the Show Cause Order by Certified Mail, Return Receipt Requested, to a second property in Bristol, Connecticut, which is purportedly owned by Registrant; (7) mailing the Show Cause Order by Certified Mail, Return Receipt Requested, to an address in New York State where he receives his property tax bill from the Town of Bristol; and (8) email sent to an address obtained from a public access database maintained by Thomson Reuters, which also corresponds to the email address Registrant provided to the Connecticut Board. GX 3, at 1–2 (DI Declaration). The first mailing was accomplished on February 10, 2017; the other attempts at service were made on February 22–23, 2017. *Id.; see also* GX 4 (Declaration of Chief Counsel Analyst).

With the exception of the mailing to his registered address (where he no longer worked), each of the other mailings was returned to the Government and marked as undelivered. GX 3, at 2. The Government represents, however, that the attempt to email the Show Cause Order did not generate an error or undeliverable message.

Of note, several courts have held that the emailing of process can, depending on the facts and circumstances, satisfy due process, especially where service by conventional means is impracticable because a person secretes himself. *See Rio Properties, Inc.* v. *Rio Int'l Interlink,* 284 F.3d 1007, 1017–18 (9th Cir. 2002); *Snyder, et al.* v. *Alternate Energy Inc.,* 857 N.Y.S. 2d 442, 447–449 (N.Y. Civ. Ct. 2008); *In re International Telemedia Associates, Inc.,* 245 B.R. 713, 721–22 (Bankr. N.D. Ga. 2000); *see also Richard C. Quigley,* 79 FR 50945 (2014); *Emilio Luna,* 77 FR 4829, 4830 (2012). Given the multiple attempts by the Government to serve the Show Cause Order by conventional means, including by mailing it to the address where he receives his property tax bills, I conclude that the Government's use of email satisfies its obligation with respect to service of the Show Cause Order. *See, e.g., Jones* v. *Flowers,* 547 U.S. 220, 226 (2006) (due process does not require actual notice but only '''notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' '' *Id. (quoting Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950)).

On May 8, 2017, the Government submitted a Request for Final Agency Action. Therein, it represents that Registrant did not request a hearing or submit a written statement while waiving his right to a hearing. The Government thus seeks a final order revoking Registrant's registration.

I deny the Government's Request for an Order of Revocation. As support for the proposed revocation, the Government submitted a copy of the Board's Order revoking Registrant's state license, which states that it was actually issued on the ''15th day of November, 2016.'' GX 3, Appendix C, at 9. However, as noted above, the Show Cause Order alleges that the Board revoked his state license ''[o]n November 15, 2017.'' *See* GX 2, at 1. I need not decide, however, whether this typographical error renders the Show Cause Order defective as this case is now moot.[4]

As noted above, the Show Cause Order alleges that Registrant's registration was due to expire on June 30, 2017. *Id.* According to the registration records of the Agency of

[1] Notwithstanding that Dr. Aljanaby is now an ex-registrant, he is referred to as Registrant throughout this Decision.

[2] The Show Cause Order also notified Registrant of his right to request a hearing or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. Show Cause Order, at 2. The Order also notified Registrant of his right to submit a Corrective Action Plan. *Id.* at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

[3] According to the Connecticut Medical Examining Board's Order, when the Board attempted to served Registrant at this address its mailing was returned and marked: ''Return to sender, No Such Street, Unable to Forward.'' GX 3, Appendix C, at 3.

[4] Had Registrant requested a hearing, the Government could have corrected its error as to the date of the Board's Order by motion. And by offering the Board's Order to support a motion for summary disposition, the Government would have refuted any claim of prejudice. *Cf. United States* v. *Cina,* 699 F.2d 853, 857 (7th Cir. 1983) (holding in criminal prosecution that trial court's amendment of the alleged commencement date of conspiracy charge by two years did not ''affect[] a 'material element' of the . . . charge, causing prejudice to the defendant''). Furthermore, as long as the Board's Order was still in effect, the date of its Order would not be material.

which I take official notice,[5] Registrant's registration did, in fact, expire on June 30, 2017. Moreover, Registrant has not filed a renewal application, whether timely or not.

It is well settled that ''[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.'' *Ronald J. Riegel,* 63 FR 67132, 67133 (1998); *see also William W. Nucklos,* 73 FR 34330 (2008). Furthermore, because Registrant did not file a renewal application, there is no application to act upon. *See Nucklos,* 73 FR at 34330. Accordingly, because there is neither a registration, nor an application, to act upon, I hold that this case is now moot.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Mohammed S. Aljanaby, M.D., be, and it hereby is, dismissed.

Dated: July 14, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–15494 Filed 7–24–17; 8:45 am]

BILLING CODE 4410–09–P

[5] *See* 5 U.S.C. 556(e); 21 CFR 1316.59(e).

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Third Modification to Consent Decree Under the Clean Air Act

On July 19, 2017, the United States lodged a proposed Third Modification to the Consent Decree (''Third Modification'') with the United States District Court for the Western District of Pennsylvania in the lawsuit entitled *United States, et al.* v. *Essroc Cement Corp.,* Civil No. 2:11–cv–01650.

The Court approved the original Consent Decree in 2012, resolving claims under the Clean Air Act against six Essroc cement facilities in three states and Puerto Rico. The proposed Third Modification affects only Defendant's Logansport facility in Logansport, Indiana. The proposed Third Modification reworks requirements for controlling emissions of nitrogen oxides, known as NO_X, at Logansport. Under the proposed agreement, Essroc will no longer be required to install a NO_X control technology known as SNCR (which stands for selective non-catalytic reduction) at Logansport Kiln 2. Instead, Essroc will be required to install water injection technology, another NO_X control technology, at both Logansport kilns. In addition, the proposed agreement reduces the allowable NO_X emissions rate at both kilns. Finally, the proposed Third Modification notes that Essroc is now known as Lehigh Hanson ECC.

The publication of this notice opens a period for public comment on the Third Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Essroc Cement Corp.,* D.J. Ref. No. 90–5–2–1–09608. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Third Modification 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 Third Modification to Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a complete copy of the original Consent Decree, the prior approved modification, and the proposed Third Modification (without exhibits and signature pages), the cost is $20.00.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–15541 Filed 7–24–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Nominations for the Task Force on Apprenticeship Expansion

AGENCY: Employment and Training Administration, Labor.

ACTION: Solicitation of nominations to serve on the Task Force on Apprenticeship Expansion.

SUMMARY: The Secretary of Labor invites interested persons to submit nominations for individuals to serve on the Task Force on Apprenticeship Expansion (hereinafter ''the Task Force'' or ''the panel''), a non-discretionary federal advisory committee authorized pursuant to section 8 of Executive Order 13801, entitled ''Expanding Apprenticeships in America'' (hereinafter ''the Executive Order''), which was issued on June 15, 2017 (82 FR 28229) and which directed the Secretary of Labor to establish and chair such a panel in the Department of Labor.

DATES: If transmitted by mail, nominations for individuals to serve on the Task Force must be postmarked by August 8, 2017. Alternatively, if Task Force nominations are submitted electronically or by hand delivery, such nominations must be received by August 8, 2017.

ADDRESSES: Interested persons may submit Task Force nominations, including relevant attachments, through any of the following methods:

- *Electronically:* Send to: *Apprenticeshiptaskforce@dol.gov* (and please specify in the email subject line, ''Nominations for Task Force on Apprenticeship Expansion'').
- *Mail, express delivery, hand delivery, messenger service, or courier service:* Submit one copy of the documents listed above to the following address: U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, Task Force on Apprenticeship Expansion, Room C–5321, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the Task Force nomination process, please contact Ms. Natalie S. Linton, Program Analyst, Employment and Training Administration, Office of Apprenticeship, at *Linton.Natalie.S.@dol.gov*, telephone (202) 693–3592 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Task Force is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. The Task Force is charged with the mission of identifying strategies and proposals to promote apprenticeships, especially in sectors where apprenticeship programs are insufficient. Upon completion of this assignment, the Task Force shall

submit to the President of the United States a final report which details these strategies and proposals. Pursuant to the Executive Order, the report must specifically address the following four topics:

- Federal initiatives to promote apprenticeships;
- Administrative and legislative reforms that would facilitate the formation and success of apprenticeship programs;
- The most effective strategies for creating industry-recognized apprenticeships; and
- The most effective strategies for amplifying and encouraging private-sector initiatives to promote apprenticeships.

The Task Force will be solely advisory in nature, and will consider testimony, reports, comments, research, evidence, and existing practices as appropriate to develop recommendations for inclusion in its final report to the President. While the Executive Order did not set forth a definite time frame by which the panel must complete its development of apprenticeship-related strategies and proposals and submit its final report to the President, it is important to note that the Task Force will not be continuing in nature. Pursuant to the Executive Order, the Task Force shall terminate 30 days after it submits its final report to the President.

Under the Executive Order, the Secretary of Labor shall serve as the Chair of the Task Force. The Secretaries of Education and Commerce shall serve as Vice-Chairs of the Task Force. The Secretary of Labor shall appoint the other members of the Task Force, which shall consist of no more than twenty (20) individuals who work for or represent the perspectives of American companies, trade or industry groups, educational institutions, and labor unions, and such other persons as the Secretary of Labor may from time to time designate. These members shall include distinguished citizens from outside of the Federal Government with relevant experience or subject-matter expertise concerning the development of a skilled workforce through quality apprenticeship programs. Pursuant to the Executive Order, a member of the Task Force may designate a senior member of his or her organization to attend any Task Force meeting.

Members of the Task Force shall serve without additional compensation for their work on the Task Force, but shall be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707), consistent with the availability of funds. Each member of the Task Force shall serve at the pleasure of the Secretary of Labor for a term specified in the Task Force's charter (not to exceed 30 days after the delivery of the panel's final report to the President). The Secretary of Labor may also appoint members to fill any Task Force vacancies that may emerge while the panel is in existence.

Nomination Process: Any interested person or organization may nominate one or more qualified individuals for membership on the Task Force. If you would like to nominate yourself or another person for appointment to the panel, you must include the following information as part of the application:

- A copy of the nominee's resume;
- A cover letter that provides your reason(s) for nominating the individual, including a description of the relevant experience and subject-matter expertise of that person concerning the development of a skilled workforce through quality apprenticeship programs; and
- Contact information for the nominee (name, title, business address, business phone, fax number, and business email address).

In addition, the cover letter must represent that the Task Force nominee has agreed to be nominated and is willing to serve on the panel. Please do not include any information in your nomination submission that you do not want publicly disclosed. In selecting Task Force members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. Nominees will be appointed based upon their demonstrated qualifications, professional experience, and demonstrated knowledge of issues related to the scope and purpose of the Task Force, as well as the need to obtain a diverse range of views on this important subject.

Byron Zuidema,

Deputy Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2017–15682 Filed 7–24–17; 8:45 am]

BILLING CODE 4510–FR–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 17–0015–CRB–AU]

Notice of SoundExchange's Intent To Audit Music Choice's "Preexisting" Subscription Service and Business Establishment Service for CY 2016

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Public notice of receipt of a notice of intent to audit statements of account.

SUMMARY: The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2016 statements of account of Music Choice concerning the royalty payments its Preexisting Subscription Service and Business Establishments Service made pursuant to two statutory licenses.

DATES: The notice of intent to audit was filed with the Copyright Royalty Board on June 27, 2017.

ADDRESSES: *Docket:* For access to the docket to read the notice of intent to audit, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 17–0015–CRB–AU.

FOR FURTHER INFORMATION CONTACT: Anita Brown, Program Specialist, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 of the United States Code, grants to copyright owners of sound recordings the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the right is limited by the statutory license in section 114 which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording, including for transmissions to business establishments.[1] 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates

[1] Subject to the limitations set forth in section 114(d)(1)(C)(iv).

and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382–84.

As part of the terms set for these licenses, the Judges designated SoundExchange, Inc. as the Collective, *i.e.,* the organization charged with collecting the royalty payments and statements of account submitted by licensees, including those that operate preexisting subscription services and those that make ephemeral copies for transmission to business establishments. The Collective is also charged with distributing the royalties to the copyright owners and performers entitled to receive them. *See* 37 CFR 382.2, 384.4(b).

As the Collective, SoundExchange may, not more than once a calendar year, conduct an audit of a licensee for any or all of the prior three years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See* 37 CFR 382.6, 384.6.

On June 27, 2017, SoundExchange filed with the Judges a notice of intent to audit Music Choice's Preexisting Subscription Service and Business Establishment Service for calendar year 2016. Today's notice fulfills the Judges' publication obligation with respect to SoundExchange's June 27, 2017 notice of intent to audit.

Dated: July 19, 2017.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2017–15528 Filed 7–24–17; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–057]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by August 24, 2017. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Defense, Defense Logistics Agency (DAA–0361–2017–0004, 1 item, 1 temporary item). Records used to track the disposal of abandoned and destructed property and hazardous material.

2. Department of Homeland Security, Immigration and Customs Enforcement

(DAA–0567–2016–0006, 2 items, 2 temporary items). Records related to interagency collaboration on unapproved international agreements, and agent international travel clearance requests.

3. Department of Homeland Security, Transportation Security Administration (DAA–0560–2017–0011, 2 items, 1 temporary item). Routine correspondence, reports, and materials related to affirmative employment programs. Proposed for permanent retention are briefing books, meeting minutes, and reports of public forums on civil rights issues.

4. Department of Homeland Security, U.S. Secret Service (DAA–0087–2017–0003, 1 item, 1 temporary item). Counterfeit currency seized by, or released to, the U.S. Secret Service and not needed as evidence in a judicial proceeding.

5. Department of the Navy, Agency-wide (DAA–NU–2015–0011, 25 items, 19 temporary items). Records relating to facilities and activities ashore including routine correspondence, construction, facility planning, property acquisition, family housing, fire protection, and related matters. Proposed for permanent retention are records relating to policy, real property historical files, structure design, historic structure photographs, burial registers, and emergency planning.

6. National Archives and Records Administration, Government-wide (DAA–GRS–2017–0009, 2 items, 2 temporary items). A revised General Records Schedule for records related to information technology programs, including capital investment planning and enterprise architecture record

7. Securities and Exchange Commission, Office of Human Resources (DAA–0266–2017–0005, 1 item, 1 temporary item). Records used for the purpose of determining salaries for new hires and current employees transitioning to new positions.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2017–15531 Filed 7–24–17; 8:45 am]

BILLING CODE 7515–01–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 4 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate.

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. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

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.

The upcoming meetings are:

Arts Research Labs (review of applications): This meeting will be closed.

Date and time: August 17, 2017; 11:00 a.m. to 1:30 p.m.

Arts Research Labs (review of applications): This meeting will be closed.

Date and time: August 18, 2017; 11:00 a.m. to 1:30 p.m.

Arts Research Labs (review of applications): This meeting will be closed.

Date and time: August 18, 2017; 2:30 p.m. to 5:00 p.m.

Literature Fellowships (review of applications): This meeting will be closed.

Date and time: September 14, 2017; 3:00 p.m. to 5:00 p.m.

Dated: July 19, 2017.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2017–15495 Filed 7–24–17; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0249]

Information Collection: Safeguards on Nuclear Material—Implementation of United States/International Atomic Energy Agency Agreement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) recently submitted a renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, Information Collection: Safeguards on Nuclear Material—Implementation of United States/International Atomic Energy Agency Agreement.''

DATES: Submit comments by August 24, 2017.

ADDRESSES: Submit comments directly to the OMB reviewer at: Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (3150–0055), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–3621, email: *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information.

Please refer to Docket ID NRC–2016–0249 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0249.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public

Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML17173A062.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Information Collection: Safeguards on Nuclear Material—Implementation of United States/International Atomic Energy Agency Agreement.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 6, 2017 (82 FR 16862).

1. *The title of the information collection:* 10 CFR part 75, ''Information Collection: Safeguards on Nuclear Material—Implementation of United States/International Atomic Energy Agency Agreement''.

2. *OMB approval number:* 3150–0055.

3. *Type of submission:* Extension.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required or requested:* Selected licensees are required to provide reports of nuclear material inventory and flow for selected facilities under the US/IAEA Safeguards Agreement, permit inspections by International Atomic Energy Agency Agreement (IAEA) inspectors, complementary access of IAEA inspectors under the Additional Protocol, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. Reporting is done when specified events occur. Recordkeeping for nuclear material accounting and control information is done in accordance with specific instructions.

6. *Who will be required or asked to respond:* Licensees of facilities on the U.S. eligible list who have been selected by the IAEA for reporting or recordkeeping activities.

7. *The estimated number of annual responses:* 7 (2 reporting responses + 5 recordkeepers).

8. *The estimated number of annual respondents:* 5.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 3,960.

10. *Abstract:* Part 75 of Title 10 of the *Code of Federal Regulations,* requires selected licensees to provide reports of nuclear material inventory and flow for selected facilities under the US/IAEA Safeguards Agreement, permit inspections by IAEA inspectors, complementary access of IAEA inspectors under the Additional Protocol, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. Licensees will also follow written material accounting and control procedures, although actual reporting of transfer and material balance records to the IAEA will be done through the U.S. State system of accounting for and control of nuclear material (Nuclear Materials Management and Safeguards System, collected under OMB clearance numbers 3150–0003, 3150–0004, 3150–0057, and 3150–0058. The NRC needs this information to implement its responsibilities under the US/IAEA agreement. The NRC is not submitting the information collections associated with the modified Small Quantities Protocol to OMB at this time. A separate 30-day notice will be published prior to submitting the information collections associated with the final rule.

Dated at Rockville, Maryland, this 19th day of July 2017.

For the U.S. Nuclear Regulatory Commission.

David Cullison,

Clearance Officer, U.S. Nuclear Regulatory Commission, Office of the Chief Information Officer.

[FR Doc. 2017–15540 Filed 7–24–17; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81171; File No. SR–NASDAQ–2017–069]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enhance Anti-Internalization Functionality

July 19, 2017.

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 July 6, 2017, 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 VI, Section 10 of the rules of the NASDAQ Options Market (''NOM'') to enhance anti-internalization functionality.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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 enhance the anti-internalization (''AIQ'') functionality provided to market makers on NOM by giving members the flexibility to choose to have this protection apply at the market participant identifier (''MPID'') level (*i.e.,* existing functionality), at the Exchange account level, or at the member firm level. The Exchange believes that this enhancement will provide helpful flexibility for market making firms that wish to prevent trading against all quotes and orders entered by their firm, or Exchange account, instead of just quotes and orders that are entered under the same MPID.

Currently, the Exchange provides mandatory AIQ functionality whereby quotes and orders entered by market makers using the same MPID are not executed against quotes and orders entered on the opposite side of the market by the same market maker using the same identifier.[3] When a quote or order entered by a market maker would trade with other quotes or orders from the same market maker, the trading system cancels the oldest of the quotes or orders back to the entering party prior to execution.[4] AIQ assists market makers in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm when performing the same market making function.

Today, this protection prevents market makers from trading against their own quotes and orders at the MPID level. The proposed enhancement to this functionality would allow members to choose to have this protection applied at the MPID level as implemented today, at the Exchange account level, or at the member firm level. If members choose to have this protection applied at the Exchange account level, AIQ would prohibit quotes and orders from different MPIDs associated with the same Exchange account from trading against one another. Similarly, if the members choose to have this protection applied at the member firm level, AIQ would prohibit quotes and orders from different MPIDs within the member firm from trading against one another. Members that do not select to have this protection applied at the Exchange account level or member firm level will have their AIQ protection defaulted to the MPID level protection applied today. The Exchange believes that the proposed AIQ enhancement will provide members with more tailored self-trade functionality that allows them to manage their trading as appropriate based on the members' business needs. While the Exchange believes that some firms will want to restrict AIQ to trading against interest from the same MPID—*i.e.,* as implemented today—the Exchange believes that other firms will find it helpful to be able to configure AIQ to apply at the Exchange account level or at the member firm level so that they are protected regardless of which MPID the order or quote originated from. Similar functionality also exists on the BATS BZX Exchange (''BZX''), which provides members the ability to apply Match Trade Prevention (''MTP'') modifiers—*i.e.,* BZX's version of self-trade protection—based on MPID, Exchange Member, trading group, or Exchange Sponsored Participant identifiers.[5]

The examples below illustrate how AIQ would operate based on the MPID level protection, the Exchange account level, or for members that choose to apply AIQ at the member firm level:

Example 1

1. Member ABC (MPID 123A & 555B) with AIQ configured at the MPID level.
2. 123A Quote: $1.00 (5) × $1.10 (20).
3. 555B Buy Order entered for 10 contracts at $1.10.
4. 555B Buy Order executes 10 contracts against 123A Quote. 123A and 555B are permitted trade against one another because Member ABC has configured AIQ to apply at the MPID level. This is the same as existing functionality.

Example 2

1. Member ABC (Account 999 with MPIDs 123A and 555B, and Account 888 with MPID 789A) with AIQ configured at the Exchange account level.
2. 123A Quote: $1.00 (5) × $1.10 (20).
3. 789A Quote: $1.05(10) × $1.10 (20).
4. 555B Buy Order entered for 30 contracts at $1.10.
5. 555B Buy Order executes against 789A Quote but 555B Buy Order does not execute against 123A Quote. AIQ purges the 123A Quote and the remaining contracts of the 555B Buy Order rests on the book at $1.10. 123A and 555B are not permitted trade against one another because Member ABC has configured AIQ to apply at the Exchange account level. This is new functionality as the member has opted to have AIQ operate at the Exchange account level.

Example 3

1. Same as Example 2 above but Member ABC has AIQ configured at the member level.
2. AIQ purges the 123A Quote and the 789A Quote and the 555B Buy Order rests on the book at $1.10. This is new functionality as the member has opted to have AIQ operate at the member level.

Implementation

The Exchange proposes to launch the AIQ functionality described in this proposed rule change in either Q3 or Q4 2017. The Exchange will announce the implementation date of this functionality in an Options Trader Alert issued to members prior to the launch date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[7] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms 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

[3] *See* Chapter VI, Section 10.

[4] *Id.* A quote or order entered by a market maker only triggers AIQ when it would trade with other quotes or orders from the same market maker. Thus, an incoming quote or order entered by a market maker may interact with other interest with priority on the book prior to triggering AIQ.

[5] *See* BZX Rule 21.1(g).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

the protection of investors and the public interest as it is designed to provide NOM market makers with additional flexibility with respect to how to implement self-trade protections provided by AIQ. Currently, all market makers are provided functionality that prevents quotes and orders from one MPID from trading with quotes and orders from the same MPID. This allows market makers to better manage their order flow and prevent undesirable executions where the market maker, using the same MIPID, would be on both sides of the trade. While this functionality is helpful to our members, some members would prefer not to trade with quotes and orders entered by different MPIDs within the same Exchange account or member. Thus, the Exchange is proposing to provide members with flexibility with respect to how AIQ is implemented. While members that like the current functionality can continue to use it, members who would prefer to prevent self-trades across different MPIDs within the same Exchange account or at the member level will now be provided with functionality that lets them do this. Similar functionality also exists on BZX,[8] and the Exchange believes that flexibility to apply AIQ at the Exchange account or member firm level would be useful for NOM members too. The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and will remove impediments to and perfect the mechanisms of a free and open market as it will further enhance self-trade protections provided to NOM market makers similar to those protections provided on other markets. This functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to enhance AIQ functionality provided to NOM market makers, and will benefit members that wish to protect their quotes and orders against trading with other quotes and orders within the same Exchange account or member, rather than the more limited MPID standard applied today. The new functionality, which is similar to functionality already provided on BZX, is also completely voluntary, and members that wish to use the current functionality can also continue to do so. The Exchange does not believe that providing more flexibility to members will have any significant impact on competition. In fact, the Exchange believes that the proposed rule change is evidence of the competitive environment in the options industry where exchanges must continually improve their offerings to maintain competitive standing.

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–NASDAQ–2017–069 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–NASDAQ–2017–069. 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–NASDAQ–2017–069 and should be submitted on or before August 15, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–15530 Filed 7–24–17; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* supra note 5.

[9] 15 U.S.C. 78f(b)(8).

[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.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission's Office of Compliance Inspections and Examinations (''OCIE'') will host a public conference, characterized as a ''Compliance Outreach Program for Broker-Dealers,'' on Thursday, July 27, 2017, in the Auditorium, Room L–002 at the Commission's headquarters, 100 F Street NE., Washington, DC 20549. The conference will begin at 10:30 a.m. (ET). Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The conference will be webcast on the Commission's Web site at *www.sec.gov.*

On May 3, 2017, the Commission issued notice of the conference indicating that the conference is open to the public. This Sunshine Act notice is being issued because a quorum of the Commission may attend.

The agenda for the conference includes: Opening remarks by Chairman Jay Clayton; a panel discussion with insights from Michael Piwowar, Commissioner, Securities and Exchange Commission, Robert Cook, President and CEO of FINRA (Financial Industry Regulatory Authority), and moderated by Peter Driscoll, Acting Director, OCIE; a panel discussion addressing certain broker-dealer hot topics, including anti-money laundering, conflicts of interest, recidivist and high risk brokers and dual registrants.

Other panels include a discussion of issues relating to senior investors and those investing for retirement and a discussion addressing current cybersecurity threats impacting broker-dealers and the securities markets, including mitigation approaches.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: July 20, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–15627 Filed 7–21–17; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81170; File No. SR–CBOE–2017–055]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Updates for the CBOE Fees Schedule

July 19, 2017.

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 July 11, 2017, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to make a number of changes to its Fees Schedule, effective immediately.

The text of the proposed rule change is also 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

The Exchange proposes to make a number of changes to its Fees Schedule.[3]

VIX License Index Surcharge Waiver

The Exchange proposes to extend the current waiver of the VIX Index License Surcharge of $0.10 per contract for Clearing Trading Permit Holder Proprietary (''Firm'') (origin codes ''F'' or ''L'') VIX orders that have a premium of $0.10 or lower and have series with an expiration of seven (7) calendar days or less. The Exchange adopted the current waiver to reduce transaction costs on expiring, low-priced VIX options, which the Exchange believed would encourage Firms to seek to close and/or roll over such positions close to expiration at low premium levels, including facilitating customers to do so, in order to free up capital and encourage additional trading. The Exchange had proposed to waive the surcharge through June 30, 2017. The Exchange proposes to extend the waiver of the surcharge through December 31, 2017, at which time the Exchange will reevaluate whether the waiver has continued to prompt Firms to close and roll over positions close to expiration at low premium levels.

Extended Trading Hour Fees Waiver

In order to promote and encourage trading during the Extended Trading Hours (''ETH'') session, the Exchange currently waives ETH Trading Permit and Bandwidth Packet fees for one (1) of each initial Trading Permits and one (1) of each initial Bandwidth Packet, per affiliated TPH. The Exchange notes that waiver is set to expire June 30, 2017. The Exchange also waives fees through June 30, 2017 for a CMI and FIX login ID if the CMI and/or FIX login ID is related to a waived ETH Trading Permit and/or waived Bandwidth packet. In order to continue to promote trading during ETH, the Exchange wishes to extend these waivers through December 31, 2017.

RLG, RLV, RUI, AWDE, FTEM, FXTM and UKXM Transaction Fees Waiver

The Exchange was recently authorized to list options on seven FTSE Russell Indexes (*i.e.,* Russell 1000 Growth Index (''RLG''), Russell 1000

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee change on June 29, 2017 (SR–CBOE–2017–053). On July 11, 2017, the Exchange withdrew that filing and submitted this filing.

Value Index (''RLV''), Russell 1000 Index (''RUI''), FTSE Developed Europe Index (''AWDE''), FTSE Emerging Markets Index (''FTEM''), China 50 Index ''(FXTM'') and FTSE 100 Index (''UKXM'')). In order to promote and encourage trading of these products, the Exchange currently waives all transaction fees (including the Floor Brokerage Fee, Index License Surcharge and CFLEX Surcharge Fee) for each of these products. This waiver however is set to expire June 30, 2017. In order to continue to promote trading of these options classes, the Exchange proposes to extend the fee waiver of through December 31, 2017.

AWDE, FTEM, FXTM and UKXM DPM Payment Extension

The Exchange currently offers a compensation plan to the Designated Primary Market-Maker(s) (''DPM(s)'') appointed in AWDE, FTEM, FXTM or UKXM to offset the initial DPM costs. Specifically, the Fees Schedule provides that DPM(s) appointed for an entire month in these classes will receive a payment of $7,500 per class per month through June 30, 2017. The Exchange notes that DPMs appointed in these products still have ongoing costs, which the Exchange desires to continue to help offset. As such, the Exchange proposes to extend the DPM payment plan through December 31, 2017.

FLEX Asian and Cliquet Flex Trader Incentive Program Extension

By way of background, a FLEX Trader is entitled to a pro-rata share of the monthly compensation pool based on the customer order fees collected from customer orders traded against that FLEX Trader's orders with origin codes other than ''C'' in FLEX Broad-Based Index Options with Asian or Cliquet style settlement (''Exotics'') each month (''Incentive Program''). The Fees Schedule provides that the Incentive Program is set to expire either by June 30, 2017 or until total average daily volume in Exotics exceeds 15,000 contracts for three consecutive months, whichever comes first. The Exchange notes that total average daily volume in Exotics has not yet exceeded 15,000 contracts for three consecutive months. In order to continue to incentivize FLEX Traders to provide liquidity in FLEX Asian and Cliquet options, the Exchange proposes to extend the program to December 31, 2017 or until total average daily volume in Exotics exceeds 15,000 contracts for three consecutive months, whichever comes first.

RVX DPM Payment

The Exchange proposes to offer a compensation plan for the DPM appointed in CBOE Russell 2000 Volatility Index (''RVX'') to offset associated DPM costs, similar to the compensation plan offered to DPM(s) appointed in AWDE, FTEM, FXTM or UKXM. Specifically, the Exchange proposes to provide that the DPM appointed for an entire month in RVX will receive a payment of $8,500 through December 31, 2017. The Exchange notes that a DPM appointed in this product has ongoing costs, which the Exchange desires to continue to help offset so that the DPM may continue to meet its obligations.

Volume Incentive Program

The Exchange also proposes to amend its Volume Incentive Program (''VIP''). By way of background, under VIP, the Exchange credits each Trading Permit Holder (''TPH'') the per contract amount set forth in the VIP table resulting from each public customer (''C'' origin code) order transmitted by that TPH (with certain exceptions) which is executed electronically on the Exchange, provided the TPH meets certain volume thresholds in a month.[4] The Exchange proposes to provide that Professional Customers and Voluntary Professionals (''Professional Customers'') (origin code ''W''), Broker-Dealers (origin code ''B'') and Joint Back-Offices (''JBO'') (origin code ''J'') orders would also count towards the qualifying volume thresholds. The Exchange believes the inclusion of Professional Customer, Broker-Dealer and JBO orders in the qualifying thresholds will encourage TPHs to execute more Professional Customer, Broker-Dealer and JBO orders. The Exchange notes however, that while these orders would now count towards the qualifying volume thresholds, the Exchange would not pay credits to the executing TPH for these orders (*i.e.,* only Customer orders (origin code ''C'') would continue to receive the credits under the program).

Footnote 25 Clarification

The Exchange proposes to clarify an inadvertent omission in Footnote 25 of the Fees Schedule. By way of background, Footnote 25, which governs rebates on Floor Broker Trading Permits, currently provides that any Floor Broker that executes a certain average of customer open-outcry contracts per day over the course of a calendar month in all underlying symbols excluding Underlying Symbol List A (except RLG, RLV, RUI, AWDE, FTEM, FXTM and UKXM), DJX, XSP, XSPAM and subcabinet trades (''Qualifying Symbols''), will receive a rebate on that TPH's Floor Broker Trading Permit fees. The Exchange notes that it inadvertently failed to include a reference to ''subcabinet trades'' in the last sentence of the footnote (*i.e.,* when referencing which options are excluded from the qualifying thresholds).[5] The Exchange notes that subcabinet trades should have been included in this section and proposes to add it to avoid potential confusion.

Removal of SPXPM

The Exchange lastly proposes to eliminate references to ''SPXPM'' from the Fees Schedule. Particularly, the Exchange recently moved P.M.-settled S&P 500 Index options expiring on the third-Friday of the month (''third-Friday''), previously listed in a separate class and trading under the symbol ''SPXPM'', to the SPX class which includes the weekly SPXW. In connection with the move, the Exchange has changed the trading symbol for these options from ''SPXPM'' to ''SPXW.'' As such, the Exchange proposes to delete from the Fees Schedule references to SPXPM, as such references are obsolete.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] 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

[4] *See* CBOE Fees Schedule, Volume Incentive Program.

[5] Specifically, the last sentence currently reads: ''For purposes of determining the rebate, the qualifying volume of all Floor Broker Trading Permit Holders affiliated with a single TPH organization will be aggregated, and, if such total meets or exceeds the customer and/or professional customer and voluntary professional open-outcry contracts per day thresholds in all underlying symbols excluding Underlying Symbol List A (except RLG, RLV, RUI, AWDE, FTEM, FXTM and UKXM)(34), DJX, XSP and XSPAM that TPH organization will receive a single rebate, regardless of the number of Floor Broker Trading Permits affiliated with that TPH organization.''

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 Section 6(b)(4) of the Act,[8] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes it's appropriate to continue to waive the VIX Index License Surcharge for Clearing Trading Permit Holder Proprietary VIX orders that have a premium of $0.10 or lower and have series with an expiration of 7 calendar days or less because the Exchange wants to continue encouraging Firms to roll and close over positions close to expiration at low premium levels. Particularly, the Exchange believes it's reasonable to waive the entire $0.10 per contract surcharge because without the waiver of the surcharge, firms are less likely to engage in these transactions, as opposed to other VIX transactions, due to the associated transaction costs. The Exchange believes it's equitable and not unfairly discriminatory to limit the waiver to Clearing Trading Permit Holder Proprietary orders because they contribute capital to facilitate the execution of VIX customer orders with a premium of $0.10 or lower and series with an expiration of 7 calendar days or less. Finally, the Exchange believes it's reasonable, equitable and not unfairly discriminatory to provide that the surcharge will be waived through December 2017, as it gives the Exchange additional time to evaluate if the waiver is continuing to have the desired effect of encouraging these transactions.

The Exchange believes extending the waiver of ETH Trading Permit and Bandwidth Packet fees for one of each type of Trading Permit and Bandwidth Packet, per affiliated TPH through December 2017 is reasonable, equitable and not unfairly discriminatory, because the respective fees are being waived in their entirety, which promotes and encourages trading during the ETH session and applies to all ETH TPHs. The Exchange believes it's also reasonable, equitable and not unfairly discriminatory to waive fees for Login IDs related to waived Trading Permits and/or Bandwidth Packets because the respective fees are being waived in their entirety, which promotes and encourages ongoing participation in ETH and applies to all ETH TPHs.

The Exchange believes it is appropriate to extend the waiver of all transaction fees for RLG, RLV, RUI, AWDE, FTEM, FXTM and UKXM transactions, including the Floor Brokerage fee, the License Index Surcharge and CFLEX Surcharge Fee. Particularly, it is reasonable because TPHs will not be assessed fees for these transactions which promotes and encourages trading of these products which are still relatively new. The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies to all TPHs.

The Exchange believes that the compensation plan for DPM(s) appointed in AWDE, FTEM, FXTM and UKXM is reasonable because it offsets the DPM(s)' ongoing costs. The Exchange believes it's equitable and not unfairly discriminatory to extend the compensation plan to the DPM(s) appointed in AWDE, FTEM, FXTM or UKXM because these DPMs have ongoing DPM costs related to these products and the Exchange wants to continue to incentivize the DPMs to continue to serve as DPMs in these products.

The Exchange believes extending the FLEX Asian and Cliquet Flex Trading Incentive Program is reasonable, equitable and not unfairly discriminatory because the Exchange believes the amount of the current incentives provided to FLEX Traders should encourage the Flex Traders to trade FLEX Asian and Cliquet options, which should result in a more robust price discovery process that will result in better execution prices for customers. In addition, the proposed change applies equally to all FLEX Traders.

The Exchange believes that the proposed subsidy to the DPM appointed in RVX is reasonable because it offsets the DPM's ongoing DPM costs. The Exchange notes that the DPM provides a crucial role in providing quotes and the opportunity for market participants to trade RVX, which can lead to increased volume, thereby providing a robust market. Additionally, the Exchange believes the proposed change is equitable and not unfairly discriminatory because the DPM in RVX incurs costs as part of being a DPM. Moreover, as noted above, a similar compensation plan is already in place for DPM(s) of AWDE, FTEM, FXTM and UKXM. While the amount of the proposed subsidy for RVX is larger than the amount provided to the DPM(s) of AWDE, FTEM, FXTM, UKXM, the Exchange notes that it is more difficult to quote a volatility index, as opposed to a cash index. Additionally, the Exchange notes that there is currently more volume in RVX than the products mentioned above and as such, the Exchange wishes to ensure the DPM continues to provide liquid and active markets in the product to encourage its continued growth.

The Exchange believes that permitting Professional Customer, Broker-Dealer and JBO orders to count towards the qualifying volume thresholds for VIP is reasonable because it will allow TPHs to more easily reach qualifying volume thresholds (and thereby receive more credits). The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies to TPHs equally. The Exchange also notes that, while only certain orders would count towards the qualifying thresholds, Professional Customers, Broker-Dealers and JBOs are similar to Customers in that these market participants' orders are primarily executed by an agent and VIP is an incentive program for agency trading. Additionally, an increase in Customer, Professional Customer, Broker-Dealer and JBO order flow would bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads. Indeed, the Exchange notes that incentive programs based on aggregate volume of certain market participants already exist elsewhere within the industry.[9] Additionally, the Exchange believes it's reasonable, equitable and not unfairly discriminatory to only apply credits to Customer orders (*i.e.,* ''C'' origin code) because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer volume is important because it continues to attract liquidity to the Exchange, which benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to Customers. Lastly, while the proposed rule change may affect the Affiliate Volume Plan (''AVP''), the Exchange believes the proposed change is still appropriate for the reasons set forth in filings related to AVP.[10]

[8] 15 U.S.C. 78f(b)(4).

[9] *See e.g.,* NASDAQ Stock Market Rules, Chapter XV, Options Pricings, Sec. 2 Options Market—Fees and Rebates, Tiers 1–5 and Tier 8.

[10] *See* Securities Exchange Act Release No. 76923 (January 15, 2016), 81 FR 3841 (January 22, 2016)

Lastly, the Exchange believes (i) eliminating references to SPXPM in the Fees Schedule and (ii) correcting an inadvertent failure to include a reference to ''subcabinet'' trades in Footnote 25 will help to avoid confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. Additionally, the Exchange notes that no substantive changes are being made by these particular proposed rule changes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. 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 purposes of the Act because, while different fees and rebates are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Clearing TPHs have clearing obligations that other market participants do not have and DPMs have quoting obligations that other market participants do not have. There is also a history in the options markets of providing preferential treatment to customers. Further, the proposed changes, are intended to encourage market participants to bring increased volume to the Exchange (which benefits all market participants), while still covering Exchange costs (including those associated with the upgrading and maintenance of Exchange systems). The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only affects trading on CBOE. To the extent that the proposed change makes CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2017–055 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–2017–055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2017–055, and should be submitted on or before August 15, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–15529 Filed 7–24–17; 8:45 am]

BILLING CODE 8011–01–P

(SR–CBOE–2016–002) and Securities Exchange Act Release No. 77926 (May 26, 2016), 81 FR 35421 (June 2, 2016) (SR–CBOE–2016–045).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, July 27, 2017 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: July 20, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–15628 Filed 7–21–17; 1:00 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Certification Service Organizational Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice informs the American public and aviation industry of organizational changes in the Aircraft Certification Service (AIR) of the FAA Aviation Safety Office (AVS). AIR is eliminating product directorates, and will be composed of six functional divisions: The Organizational Performance Division (AIR–300), the International Division (AIR–400), the Policy and Innovation Division (AIR–600), the Compliance and Airworthiness Division (AIR–700), the System Oversight Division (AIR–800) and the Enterprise Operations Division (AIR–900).

FOR FURTHER INFORMATION CONTACT: The Organizational Performance Division (AIR–300), Aircraft Certification Service, Federal Aviation Administration, 1200 District Avenue, Burlington, MA 01803; telephone (781) 238–7101; email *9-AVS-AIR300@faa.gov.*

SUPPLEMENTARY INFORMATION: AIR is transitioning to a functionally aligned organizational structure on July 23, 2017. AIR's functional realignment will establish an infrastructure that will enable a comprehensive approach to becoming more efficient and effective known as ''AIR Transformation.'' As a result of realignment, all product directorates will be eliminated and replaced with functional divisions. Field offices will be realigned under new routing codes, but will stay intact and continue to provide the public the same service they do today. For further details on this reorganization, please refer to *http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/air/transformation/* and *https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=21315.*

You can obtain more information on the new AIR organization and the responsibilities and functions of the AIR divisions in FAA Order 8100.5C, ''Aircraft Certification Service—Organizational Structure and Functions.'' AIR also created a new order, FAA Order 8100.18, ''Aircraft Certification Service Organizational Realignment References,'' to facilitate the use of existing AIR policy and guidance under the functionally aligned organization. These orders are available online at *https://www.faa.gov/regulations_policies/orders_notices/.* All AIR-issued advisory circulars, orders, notices, and other guidance will remain in effect until revised, changed, or deleted.

Dorenda D. Baker,

Executive Director, Aircraft Certification Service.

[FR Doc. 2017–15573 Filed 7–24–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0020]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before August 24, 2017.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0020 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from

the Federal Motor Carrier Safety Regulations for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each two-year period.

The 11 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person:

> Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

II. Qualifications of Applicants

Michael T. Allen

Mr. Allen, 58, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''It is my professional opinion that Michael Allen has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Allen reported that he has driven buses for five years, accumulating 312,500 miles. He holds a Class B CDL from Arizona. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Robert F. Anneheim

Mr. Anneheim, 48, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''It is therefore my opinion that Mr. Anneheim has excellent vision and is able to operate any vehicle he choses [*sic*] to for commercial and personal purposes.'' Mr. Anneheim reported that he has driven straight trucks for 20 years, accumulating 400,000 miles. He holds an operator's license from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Ray C. Atkinson

Mr. Atkinson, 64, has had a retinal detachment in his left eye since 2011. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2017, his ophthalmologist stated, ''. . . Mr. Atkinson's vision is sufficient to operate a commercial vehicle.'' Mr. Atkinson reported that he has driven straight trucks for 47 years, accumulating 2.44 million miles. He holds a Class A CDL from Tennessee. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Joseph Cuthbert

Mr. Cuthbert, 56, has had amblyopia in his right eye since birth. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''Overall, I feel that Mr. Cuthbert is doing quite well and in my medical opinion has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Cuthbert reported that he has driven straight trucks for 40 years, accumulating 240,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Kent W. Fulp

Mr. Fulp, 48, has had pars planitis in his right eye since 2008. The visual

acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2017, his ophthalmologist stated, ''Mr. Fulp has adequate vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Fulp reported that he has driven straight trucks for 30 years, accumulating 300,000 miles and tractor-trailer combinations for 30 years, accumulating 300,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows one crash and no convictions for moving violations in a CMV.

Edward P. Hutton

Mr. Hutton, 60, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2017, his ophthalmologist stated, ''His OS is amblyopic and lifelong. If he has performed well as a commercial driver in the past, he should continue to do so.'' Mr. Hutton reported that he has driven straight trucks for 14 years, accumulating 175,000 miles. He holds a Class A CDL from Idaho. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Stephen McLaren

Mr. McLaren, 33, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2016, his optometrist stated, ''Based on today's examination, it is my opinion that Stephen McLaren's refractive amblyopia in the left eye is stable and will not prevent him from driving tasks necessary to operate a commercial vehicle.'' Mr. McLaren reported that he has driven straight trucks for five years, accumulating 36,000 miles. He holds a Class B CDL from Tennessee. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Robert E. Richards

Mr. Richards, 31, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''In my medical opinion Mr. Richards has sufficient vision to perform the driving tasks required to operate a commercial vehicle and his visual deficiency is stable.'' Mr. Richards reported that he has driven straight trucks for two years, accumulating 50,000 miles, and tractor-trailer combinations for 11 years, accumulating 880,000 miles. He holds a Class A CDL from Maine. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

James R. Robinette

Mr. Robinette, 25, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''Based on these findings, Mr. Robinette has sufficient vision to operate a commercial vehicle.'' Mr. Robinette reported that he has driven straight trucks for four years, accumulating 3,120 miles. He holds a Class B CDL from Virginia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

James Tucker

Mr. Tucker, 57, has a prosthetic left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2017, his optometrist stated, ''It is our opinion that your visual abilities are adequate for driving a commercial vehicle.'' Mr. Tucker reported that he has driven straight trucks for three years, accumulating 63,000 miles. He holds a Class A CDL from Tennessee. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Alvin White

Mr. White, 61, has an enucleated left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/15, and in his left eye, no light perception. Following an examination in 2017, his optometrist stated, ''It is my opinion that Mr. Alvin White has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. White reported that he has driven straight trucks for six years, accumulating 60,000 miles and tractor-trailer combinations for six years, accumulating 600 miles. He holds a Class A CDL from Tennessee. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0020 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0020 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: July 18, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–15571 Filed 7–24–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2017–0032]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 43 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on May 13, 2017. The exemptions expire on May 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On April 12, 2017, FMCSA published a notice of receipt of Federal diabetes exemption applications from 43 individuals and requested comments from the public (82 FR 17728). The public comment period closed on May 12, 2017 and one comment was received.

FMCSA has evaluated the eligibility of the 43 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 43 applicants have had ITDM over a range of 1 to 30 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and the medical condition of each applicant were stated and discussed in detail in the April 12, 2017, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received one comment in this proceeding. Mark Skubik stated that he believes ''FMCSA should err on the side of safety'' when making an exemption determination. He also stated that he believes drivers should be required to carry ''at least $2,000,000 in liability insurance beyond the minimal insurance requirements for commercial drivers,'' citing safety concerns. FMCSA sets minimum financial responsibility levels for carriers, based on their operations (general freight, passenger, hazmat, etc.). If a carrier obtains additional insurance, above and beyond the minimum requirements, that is decided by the carrier. FMCSA does not regulate insurance levels of drivers, just the companies and their operations, based on their granted authority. The Agency doesn't feel that drivers should carry additional insurance. FMCSA has reviewed the medical records for each driver in this document and has determined that granting the exemptions will likely achieve a level of safety equal to or greater than that existing without the exemption.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's

or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 43 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(3):

Lucas L.R. Adams (NE)
Ronald E. Allen, Jr. (CA)
Kevin N. Blair (KS)
Justin D. Bodily (ID)
George C. Burbach (CA)
Paul T. Caputo (IN)
Frederic J. Conti (PA)
Joshua L. Crider (MN)
Culley R. Despain (MO)
Mitchell F. Durkan (CO)
Ray A. Espinoza (CA)
Christopher J. Fisher (OR)
Jacob L. Flatt (OK)
Terry Fleharty (NM)
Kevin P. Fulcher (MA)
Michael F. Fulton (AZ)
Ivan R. Grove (PA)
Nathaniel M.I. Hicks (OR)
Daniel J. Lacroix (MA)
Kenneth S. LeColst (MA)
John G. Liebl (MN)
William E. McClain (IL)
Kevon T. McCray (NC)
Rodney G. Moore (WA)
Brian M. Morel (NJ)
Keith E. Newbauer (IN)
Herbert L. Redd (IN)
Quentin M. Rembert (WI)
Philip J. Richard (PA)
Lars A. Sandaker (MN)
John E. Sargent, Jr. (MA)
Kevin R. Sewell (NC)
Donald J. Smith (VT)
Larry D. Smith (TN)
Warren A. Smith (NJ)
Daniel J. Spauling (ID)
Russell D. Swanson (SD)
Scot D. Thompson (NY)
Wayne F. Todd (NE)
Harold W. Trombly, III (MA)
Steven L. Welker (IA)
Christopher U. Williams (LA)
Craig L. Woodard (OH)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 18, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–15569 Filed 7–24–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0045]

Agency Information Collection Activities; Extension of a Currently-Approved Information Collection Request: Revocation of Authority Granted

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. FMCSA requests approval to extend an ICR titled, ''Request Extension for Revocation of Authority Granted.'' This information collection supports the DOT strategic goal of safety by enabling registrants to voluntarily request revocation of operating authority, or some part of that authority. A completed Form OCE–46 is filed with FMCSA by the registrant for requesting that all, or a part, of its operating authority be revoked. The information contained on the form is used by FMCSA in deciding on the revocation request. The use of Form OCE–46 has proven to be an easy and effective means by which a registrant can request revocation of its operating authority. No comments were received in response to the 60-day notice published in the **Federal Register** on March 22, 2017 (82 FR 14792).

DATES: Please send your comments by August 24, 2017. OMB must receive your comments by this date to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2017–0045. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tura Gatling, Office of Registration, Information and Licensing, Department of Transportation, OA, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–385–2412; email *tura.gatling@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Request for Extension for Revocation of Authority Granted.

OMB Control Number: 2126–0018.

Type of Request: Extension of a currently approved collection.

Respondents: For-hire motor carriers or regulated commodities, surface freight forwarders, and property brokers.

Estimated Number of Respondents: 3,501.

Estimated Time per Response: 0.25 hours.

Expiration Date: July 31, 2017.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 875 hours [3,501 responses × 0.25 hour = 875].

Background

FMCSA registers for-hire motor carriers of regulated commodities under 49 U.S.C. 13902, surface freight forwarders under 49 U.S.C. 13903, and property brokers under 49 U.S.C. 13904. Each registration is effective from the date specified under 49 U.S.C. 13905(c). Subsection (d) of 49 U.S.C. 13905 also provides that on application of the registrant, the Secretary may amend or revoke a registration, and hence the registrant's operating authority. Form OCE–46 allows registrants to apply voluntarily for revocation of their operating authority or parts thereof. If the registrant fails to maintain evidence of the required level of insurance coverage on file with FMCSA, its

operating authority will be revoked involuntarily. Although the effect of both types of revocation is the same, some carriers prefer to request voluntary revocation. For various business reasons, a registrant may request revocation of some part, but not all, of its operating authority.

This information collection supports the DOT strategic goal of safety by enabling registrants to voluntarily request revocation of operating authority, or some part of that authority. A completed Form OCE–46 is filed with FMCSA by the registrant for requesting that all, or a part, of its operating authority be revoked. The information contained on the form is used by FMCSA in deciding on the revocation request. The use of Form OCE–46 has proven to be an easy and effective means by which a registrant can request revocation of its operating authority.

Form OCE–46 is filed by registrants on a voluntary, and for the most part, one-time basis. It calls for a very limited amount of information to identify the registrant and the scope of its request. Thus, the information collection itself has not been automated, although the information collected is ultimately entered into an automated database. The burden associated with this ICR is being revised due to an anticipated increase in the estimated number of annual filings from 3,000 to 3,501 and to account for the corresponding cost of notarizing and mailing Form OCE–46.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: July 18, 2017.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2017–15568 Filed 7–24–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2017–0002–N–3]

Proposed Agency Information Collection Activities; Comment Request; Work Force Development Survey

AGENCY: Federal Railroad Administration (FRA), Department of Transportation. (DOT).

ACTION: Notice and comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA), this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden.

DATES: Comments must be submitted on or before August 24, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590 (Telephone: (202) 493–6132). (This telephone number is not toll free.)

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), and 1320.12. On March 29, 2017, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 82 FR 15417. FRA received no comments in response to this notice.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the ICR and its expected burden. FRA is submitting the new request for clearance by OMB as the PRA requires.

Title: Workforce Development (WFD) Survey.

OMB Control Number: 2130–NEW.

Abstract: The FRA has statutory responsibility to ensure the safety of railroad operations as prescribed in the Federal Railroad Safety Act of 1970 (49 U.S.C. 20103). To conduct safe railroad operations, the workforce must have the requisite skills to operate equipment and technologies. Therefore, it is the responsibility of the FRA to promote workforce development policy and standards to ensure the workforce has the necessary skills and talent to conduct safe railroad operations. Due to an increasingly dynamic and maturing workforce combined with changing skills requirements imposed by newly introduced technologies, there is an increasing risk in not having the necessary talent pools to fill critical railroad operational positions. In 2011, FRA published the first Railroad Industry Modal Profile: An Outline of the Railroad Industry Workforce Trends, Challenges, and Opportunities, which provided a comprehensive overview of the railroad industry workforce as of December 31, 2008. This document is available to the public through the FRA Web site. The Railroad Industry Modal Profile was a response to the DOT National Transportation Workforce Development Initiative that required each DOT Operating Administration to produce an analysis of its industry workforce.

The prevailing workforce concerns during the early stages of the DOT National Transportation Workforce Development Initiative were the large number of retirement-eligible employees in transportation related fields and the national shortage of science, technology, engineering, and math graduates. Since the railroad industry had done very little hiring in the late 1980s and throughout most of the 1990s, the retirement-eligible population became quite large, even beyond that of most other industries and transportation modes (each of which were also grappling with similar retirement population concerns).

These concerns create risk in maintaining a viable workforce, and to take effective and efficient action to minimize these risks, FRA requires trustworthy information on current WFD strategies and challenges. Initial

data collected for the modal profile established a baseline understanding of the risks and status. However, to validate and further develop the understanding of the risks, this survey is being proposed. With this submission, FRA is requesting permission to acquire the needed knowledge regarding the workforce.

Type of Request: New information collection.

Affected Public: Class I freight and passenger railroads, short line and regional railroads, labor unions, major associations, academia and specialty experts.

Form(s): FRA Form 240.

Total Estimated Annual Responses: 91.

Total Estimated Annual Burden: 30.5 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collection of information is necessary for DOT to properly perform its functions, including whether the information will have practical utility; the accuracy of DOT's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Sarah L. Inderbitzin,

Acting Chief Counsel.

[FR Doc. 2017–15585 Filed 7–24–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2017–0049]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes an Information Collection Request (ICR) for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before September 25, 2017.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2017–0049 using any of the following methods:

Electronic Submissions: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Randolph Atkins, Ph.D., Contracting Officer's Representative, Office of Behavioral Safety Research (NPD–310), National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., W46–500, Washington, DC 20590. Dr. Atkins' phone number is 202–366–5597 and his email address is *randolph.atkins@dot.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comment on the following proposed collection of information:

Title: Effectiveness of State Law Enforcement Liaison Programs.

Type of Request: New information collection request.

OMB Clearance Number: None.

Form Numbers: NHTSA Form 1408 and NHTSA Form 1409.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information: The National Highway Traffic Safety Administration (NHTSA) proposes to collect information from the State's Law Enforcement Liaisons (LELs) and a selection of their State and sponsoring agency sponsors about the State's LEL program activities in promoting NHTSA's traffic safety programs and initiatives. Participation in the study will be voluntary. The LELs and their State and sponsoring agency sponsors will be asked to participate in an online Web site-based survey designed to identify their program characteristics, costs, and State-recommended program practices. The following data will be collected: Number of LELs, program structure and organization, job description, program objectives, reporting requirements, performance monitoring practices, program costs, communication networks, reported usefulness of specific program practices, site and conference attendance practices, and public outreach activities. The estimated time to complete the web-based surveys will be 45 minutes. No personally identifiable information will be used in analysis. The results from the

surveys will be reported in aggregate and not identify individuals.

Description of the Need for the Information and Proposed Use of the Information: NHTSA was established to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the nations' highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs. In support of this mission, NHTSA proposes to collect information from LELs and their State and/or sponsoring agency sponsors to improve NHTSA's understanding of LEL programs in the United States and to evaluate the programmatic and cost effectiveness of existing LEL approaches. Study outcomes will be used to inform funding agencies and LEL programs about LEL best practices and what is required to maintain maximum LEL program effectiveness. The information will support States and other agencies and organizations in their efforts to reduce and prevent injuries among the motoring public through the use of traffic safety programs promoted by the LELs.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): NHTSA proposes to conduct two one-time surveys. The first survey will include the approximately 240 LELs across the country. The second survey will include the sponsoring agencies from the 49 States that use LELs, either State Highway Safety Office (SHSO) or other sponsoring agency personnel that supervise the LELs. Potential participants will be sent an advance letter to inform them of the survey and how to access the questionnaire along with a request for their participation. Both surveys will be administered using an online survey format.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information: Each of the approximately 240 LELs and the LEL supervisors from the 49 sponsoring agencies will take the a single web-based online survey, which will take approximately 45 minutes to complete. Data collection is expected to take place over a 2 month period of time in the spring of 2018. The estimated annual burden is approximately 217 total hours for both surveys combined. The participants will not incur any record keeping burden nor record keeping cost from the information collection.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on July 20, 2017.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2017–15567 Filed 7–24–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Revision; Submission for OMB Review; Uniform Interagency Transfer Agent Registration and Deregistration Forms

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 comment on the revision of an information collection as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a 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 on a revision to its collection titled ''Uniform Interagency Transfer Agent Registration and Deregistration Forms.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before August 24, 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 ''1557–0124, Forms TA–1 and TA–W,'' 400 7th Street SW., Suite 3E–218, 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 comments or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0124, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by email to *oira submission@omb.eop.gov.*

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., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to revise the following information collection:

Report Title: Uniform Interagency Transfer Agent Registration and Deregistration Forms.

Form Numbers: Forms TA–1 & TA–W.

Frequency of Response: On occasion.

Affected Public: National banks and their subsidiaries; federal savings associations and their subsidiaries.

OMB Control No.: 1557–0124.

Form TA–1

Estimated Number of Respondents: Registrations: 1; Amendments: 10.

Estimated Average Time per Response: Registrations: 1.25 hours; Amendments: 10 minutes.

Estimated Total Annual Burden: 3 hours.

Form TA–W

Estimated Number of Respondents: Deregistrations: 2.

Estimated Average Time per Response: Registrations: 30 minutes.

Estimated Total Annual Burden: 1 hour.

Section 17A(c) of the Security Exchange Act of 1934 (the Act) requires all transfer agents for securities registered under section 12 of the Act or, if the security would be required to be registered except for the exemption from registration provided by section 12(g)(2)(B) or section 12(g)(2)(G), to ''fil[e] with the appropriate regulatory

agency . . . an application for registration in such form and containing such information and documents . . . as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section.'' [1] In general, an entity performing transfer agent functions for a qualifying security is required to register with its appropriate regulatory agency (ARA). The OCC's regulations at 12 CFR 9.20 implement these provisions of the Act.

To accomplish the registration of transfer agents, Form TA–1 was developed in 1975 as an interagency effort by the Securities and Exchange Commission (SEC) and the federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation). The agencies primarily use the data collected on Form TA–1 to determine whether an application for registration should be approved, denied, accelerated, or postponed, and the agencies use the data in connection with their supervisory responsibilities. In addition, when a national bank or federal savings association no longer acts as a transfer agent for covered corporate securities or when the national bank or federal savings association is no longer supervised by the OCC, *i.e.,* liquidates or converts to another form of financial institution, the national bank or federal savings association must file Form TA–W with the OCC requesting withdrawal from registration as a transfer agent. In 2007, the OCC removed Form TA–W from this information collection and began use of the SEC's Form TA–W (OMB Control No. 3235–0151). The OCC is now reinstituting use of Form TA–W by national banks and federal savings associations to alleviate any confusion created by the use of the SEC form.

The OCC has determined that Forms TA–1 and TA–W are mandatory and that their collection is authorized by sections 17A(c), 17(a)(3), and 23(a)(1) of the Act, as amended (15 U.S.C. 78q–1(c), 78q(a)(3), and 78w(a)(1)). Additionally, section 3(a)(34)(B) of the Act (15 U.S.C. 78c(a)(34)(B)(ii)) provides that the OCC is the ARA in the case of a national banks, federal savings associations, and subsidiaries of such institutions. The registrations are public filings and are not considered confidential.

The OCC needs the information contained in this collection to fulfill its statutory responsibilities. Section 17A(c) of the Act (15 U.S.C. 78q–1(c)), as amended, provides that all those authorized to transfer securities registered under section 12 of the Act (transfer agents) shall register ''by filing with the appropriate regulatory agency . . . an application for registration in such form and containing such information and documents . . . as such appropriate regulatory agency may prescribe to be necessary or appropriate in furtherance of the purposes of this section.''

Request for Comment

The OCC issued a notice for 60 days of comment on May 5, 2017, 82 FR 21300. No comments were received. Comments continue to be invited on:

(a) Whether the information collections 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: July 18, 2017.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2017–15516 Filed 7–24–17; 8:45 am]

BILLING CODE 4810–33–P

[1] 15 U.S.C. 78q–1.

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 622

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Hogfish Management Measures in Amendment 43; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160630574–7542–02]

RIN 0648–BG18

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Hogfish Management Measures in Amendment 43

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in Amendment 43 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Gulf)(FMP), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council)(Amendment 43). This final rule revises the geographic range of the fishery management unit (FMU) for Gulf hogfish (the West Florida stock) consistent with the South Atlantic Fishery Management Council's (South Atlantic Council) boundary between the Florida Keys/East Florida and West Florida stocks, sets the annual catch limit (ACL) for the West Florida stock, increases the minimum size limit for the West Florida stock, and removes the powerhead exception for harvest of hogfish in the Gulf reef fish stressed area. This final rule also corrects a reference in the regulatory definition for charter vessel. The purpose of this final rule is to manage hogfish using the best scientific information available.

DATES: This final rule is effective August 24, 2017.

ADDRESSES: Electronic copies of Amendment 43 may be obtained from *www.regulations.gov,* or from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2016/am43/index.html.* Amendment 43 includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *peter.hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Gulf Council manage the Gulf reef fish fishery, which includes hogfish, under the FMP. The FMP was prepared by the Gulf Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)(16 U.S.C. 1801 *et seq.*).

On November 4, 2016, NMFS published a notice of availability for Amendment 43 and requested public comment (81 FR 76908, November 4, 2016). On November 23, 2016, NMFS published a proposed rule for Amendment 43 and requested public comment (81 FR 84538, November 23, 2016). The proposed rule and Amendment 43 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 43 and implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

Amendment 43 and this final rule revise the hogfish FMU managed by the FMP to the West Florida hogfish stock, which includes hogfish in the Gulf exclusive economic zone (EEZ), except south of the 25°09′ N. lat. line off the west coast of Florida; specify the ACL for the West Florida hogfish stock; increase the minimum size limit for the West Florida hogfish stock; and remove the powerhead exception for the harvest of hogfish in the Gulf reef fish stressed area.

Fishery Management Unit

Hogfish occur throughout the Gulf but are caught primarily off the Florida west coast. The most recent stock assessment for hogfish, the Southeast Data, Assessment, and Review 37 (SEDAR 37), divided the hogfish stock into three stocks based on genetic analysis as follows: The West Florida stock, the Florida Keys/East Florida stock, and the Georgia through North Carolina stock. The West Florida stock is completely within the jurisdiction of the Gulf Council and the Georgia through North Carolina stock is completely within the jurisdiction of the South Atlantic Council. The Florida Keys/East Florida stock crosses the two Councils' jurisdictional boundary, with a small portion of the stock extending into the Gulf Council's jurisdiction off the west coast of Florida. The West Florida stock is not overfished or undergoing overfishing, the Florida Keys/East Florida stock is overfished and experiencing overfishing, and the status of the Georgia through North Carolina stock is unknown.

The South Atlantic Council developed and submitted for review by the Secretary of Commerce (Secretary) a rebuilding plan for the Florida Keys/East Florida hogfish stock through Amendment 37 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 37). In Amendment 43 and this final rule, the Gulf Council revises the hogfish FMU in the Gulf to be the West Florida stock, and defines the geographic range of this stock consistent with the South Atlantic Council's boundary between the Florida Keys/East Florida and West Florida hogfish stocks in Amendment 37. The Gulf Council will manage hogfish (the West Florida stock) in the Gulf EEZ except south of the 25°09′ N. lat. line off the west coast of Florida, which is near Cape Sable. The South Atlantic Council will manage hogfish (the Florida Keys/East Florida stock) in the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida, and in the South Atlantic EEZ to the state border of Florida and Georgia. The boundary line at 25°09′ N. lat. off the west coast of Florida is currently used by the Florida Fish and Wildlife Conservation Commission (FWC) as a regulatory boundary for certain state-managed species. Using a pre-existing management boundary increases enforceability and helps fishermen comply with management measures by simplifying regulations across adjacent management jurisdictions.

In accordance with section 304(f) of the Magnuson-Stevens Act, the Gulf Council requested that the Secretary designate the South Atlantic Council as the responsible Council for management of the Florida Keys/East Florida hogfish stock in Gulf Federal waters south of the 25°09′ N. lat. line off the west coast of Florida. On February 2, 2017, the Secretary approved Amendment 43 and the Gulf Council's request. The Secretary approved Amendment 37 on December 28, 2016, and NMFS is publishing a final rule implementing Amendment 37 in the same issue of the **Federal Register** as this final rule on July 25, 2017. Therefore, the Gulf Council continues to manage hogfish in Federal waters in the Gulf, except in Federal waters south of this boundary, and the South Atlantic Council establishes management measures for the entire range of the Florida Keys/East Florida hogfish stock, including in Gulf Federal waters south of 25°09′ N. lat. off the west coast of Florida, which is near Cape Sable. All recreational anglers and federally permitted vessels must comply with the applicable management measures in the final rule implementing

Amendment 37 when fishing for hogfish in Gulf Federal waters south of 25°09′ N. lat. off the west coast of Florida.

Commercial vessels, charter vessels, and headboats fishing for hogfish in Gulf Federal waters, *i.e.,* north and west of the jurisdictional boundary between the Gulf and South Atlantic Councils, as defined at 50 CFR 600.105(c), are still required to have the appropriate Federal Gulf reef fish permits, and vessels fishing for hogfish in South Atlantic Federal waters, *i.e.,* south and east of the jurisdictional boundary, are still required to have the appropriate Federal South Atlantic snapper-grouper permits. Those permit holders are still required to follow the sale and reporting requirements associated with the respective permits.

Annual Catch Limit

The SEDAR 37 stock assessment projections produced annual yields for the overfishing limit (OFL) and acceptable biological catch (ABC) level for the West Florida hogfish stock for the 2016 through 2026 fishing years. However, because of increasing uncertainty with long-range projections, the Gulf Council's Scientific and Statistical Committee (SSC) only provided OFL and ABC recommendations for the West Florida hogfish stock for the first 3 years, 2016 through 2018. The Gulf Council's SSC made constant catch OFL and ABC recommendations based on the averages of the 2016–2018 OFLs and ABCs. For 2019 and subsequent years, the SSC recommended an OFL and ABC set at the equilibrium yield levels.

This final rule sets the ACL for the West Florida hogfish stock based on the ABC recommendations made by the Gulf Council's SSC at 219,000 lb (99,337 kg), round weight, for the 2017 and 2018 fishing years and at the equilibrium yield level of 159,300 lb (72,257 kg), round weight, in 2019 and subsequent fishing years. The Council decided to discontinue the designation of an annual catch target (ACT), because it is not used in the current accountability measures (AMs) or for other management purposes.

Minimum Size Limit

Although the West Florida hogfish stock is not overfished or undergoing overfishing, the stock could be subject to seasonal closures if landings exceed the stock ACL and AMs are triggered. This final rule increases the minimum size limit to harvest West Florida hogfish in Federal waters from 12 inches (30.5 cm), fork length (FL), to 14 inches (35.6 cm), FL, to reduce the directed harvest rate and reduce the probability of exceeding the ACL.

Powerhead Exemption

Since 2011, hogfish was the only Gulf species subject to the powerhead exemption, which was a regulatory holdover from when hogfish were previously listed in the regulations as a ''species in the fishery but not in the reef fish fishery management unit.'' This final rule removes the provision that exempted hogfish from the prohibition on the use of powerheads to take Gulf reef fish in the reef fish stressed area and, therefore, prohibits the harvest of hogfish with powerheads in the stressed area. By removing the powerhead exemption for hogfish, hogfish are subject to the same regulations for Gulf reef fish in the stressed area as other species in the reef fish FMU.

Management Measures Contained in Amendment 43 but Not Codified Through This Final Rule

Amendment 43 also specifies additional status determination criteria (SDC) for the West Florida hogfish stock. The only SDC previously implemented for hogfish in the Gulf was the overfishing threshold, or maximum fishing mortality threshold (MFMT).

In Amendment 43, the Council selected the spawning potential ratio (SPR) as the basis for a maximum sustainable yield (MSY) proxy. Amendment 43 uses the equilibrium yield based on an overfishing threshold of the fishing morality rate (F) at 30 percent of the spawning potential ratio ($F_{30\neq SPR}$) as a proxy for MSY. This proxy is consistent with that used in SEDAR 37 and with the MSY proxy commonly used for reef fish species.

Both the hogfish MFMT and minimum stock size threshold (MSST) are based on this MSY proxy. The current MFMT value of $F_{30\neq SPR}$ for hogfish is already consistent with the MSY proxy and is not being changed in Amendment 43. In Amendment 43, the Gulf Council determined that setting the MSST at 75 percent of the spawning stock biomass (SSB) capable of producing an equilibrium yield when fished at $F_{30\neq SPR}$ ($SSB_{30\neq SPR}$) balanced the likelihood of declaring the stock as overfished as a result of natural variations in stock size with being able to allow the stock to recover quickly from an overfished state.

Comments and Responses

A total of 26 unique comments were received on the notice of availability and proposed rule for Amendment 43. Half of the comments (13 comments) were in favor of the proposed management measures for the West Florida stock. Some comments were outside the scope of Amendment 43 and the proposed rule; these included comments that proposed or discussed adding hogfish to the individual fishing quota program; creating regulations for spearguns to harvest reef fish; and creating a Florida Keys/East Florida and West Florida boundary for all reef fish species. Specific comments related to the actions in Amendment 43 and the proposed rule, as well as NMFS' respective responses, are summarized below.

Comment 1: The single hogfish stock should not be split, because establishing three different stocks of hogfish with different regulations will lead to confusion when harvesting hogfish.

Response: NMFS disagrees that hogfish should continue to be managed as a single stock because the best scientific information available indicates that hogfish in the Gulf and South Atlantic are comprised of three separate stocks. As explained above, the 2014 hogfish stock assessment (SEDAR 37) divided the single hogfish stock in the southeast U.S. into three stocks based on genetic information. The Gulf and South Atlantic Councils' SSCs reviewed SEDAR 37 and agreed that there are three stocks of hogfish. Having different management measures for the West Florida stock and the Florida Keys/East Florida stock may cause some confusion for those who fish near the management boundary that separates the two stocks. However, different management measures are necessary because the status of these separate hogfish stocks is different. Of particular concern is the Florida Keys/East Florida stock, which is overfished and undergoing overfishing. Because only a small portion of the Florida Keys/East Florida hogfish stock occurs in the Gulf Council's jurisdiction, the Gulf Council and the South Atlantic Council agreed that the South Atlantic Council would develop and implement measures to end overfishing of and rebuild the Florida Keys/East Florida stock.

Comment 2: It is unclear which permits apply when harvesting Florida Keys/East Florida hogfish and how the different regulations apply when fishing for hogfish in different management areas.

Response: As explained in the proposed rule and in the preamble above, vessels fishing for hogfish in Gulf Federal waters (north and west of the jurisdictional boundary between the Gulf and South Atlantic Councils, as defined at 50 CFR 600.105(c)), are still required to have the appropriate Federal Gulf reef fish permits, and vessels

fishing for hogfish in South Atlantic Federal waters (south and east of the jurisdictional boundary) are still be required to have the appropriate Federal South Atlantic snapper-grouper permits. For example, if a commercial vessel, charter vessel, or headboat is fishing for hogfish at Pulley Ridge, which is in Federal waters of the Gulf off the west coast of Florida and south of 25°09′ N. lat., the vessel is required to possess the applicable Federal Gulf commercial or charter vessel/headboat permit to harvest hogfish. Federal permit holders will continue to be required to follow the existing sale and logbook reporting requirements associated with the respective permits. Maintaining existing permitting requirements minimizes confusion and avoids unnecessarily burdening those fishing for hogfish under Federal permits, while still meeting both Councils' management needs. This final rule includes additional language in 50 CFR 622.20 to clarify that the applicable Gulf Federal permits are required when harvesting Florida Keys/East Florida hogfish in the Gulf EEZ.

Fishermen must adhere to the regulations in place for the area in which they are fishing. If fishing for hogfish in Federal waters off the west coast of Florida and north of 25°09′ N. lat., then the Gulf regulations for the West Florida stock apply. If fishing in Federal waters off the west coast of Florida and south of 25°09′ N. lat., then the South Atlantic regulations for the Florida Keys/East Florida hogfish stock apply. Fishermen fishing for hogfish both north and south of 25°09′ N. lat. during the same trip, must ensure they are in compliance with the applicable regulations as they move from one area to another. Similarly, fishermen transiting through an area must follow the hogfish regulations that apply in that area, regardless of where the hogfish were harvested.

Comment 3: It is not clear why the ACL for the West Florida hogfish stock decreases from 219,000 lb (99,337 kg), round weight, for the 2017 and 2018 fishing years to 159,300 lb (72,257 kg), round weight, in the 2019 fishing year, when the stock is not overfished or undergoing overfishing. It is also not clear whether the decrease in the ACL will allow the fishery to continue to achieve optimum yield.

Response: The West Florida stock ACL decreases in 2019 based on the information provided in SEDAR 37 and the ABC recommendations provided by the Gulf Council's SSC. The results of SEDAR 37 indicate that the biomass of the West Florida hogfish stock is currently above the level needed to maintain MSY, and can therefore support higher catch levels in the short-term, but then need to decrease over time. The ABC recommendations provided by the Gulf Council's SSC addressed the uncertainty associated with long-range projections by providing a higher constant ABC recommendation through the 2018 fishing year (219,000 lb (99,337 kg), round weight), and a lower long-term constant ABC for the following fishing years if no new assessment has been completed (159,300 lb (72,257 kg), round weight). The Gulf Council set the ACLs equal to the ABCs recommended by the SSC, and requested a hogfish stock assessment update in 2018 to reassess the long-term catch recommendations. By setting the catch levels equal to the ABCs, the Council has allowed for the highest yield possible under the current understanding of the stock status and the future projections. The lower ABC and catch level in 2019 and in subsequent fishing years is a precautionary measure to help ensure long-term sustainable catch levels if a new stock assessment is not completed as scheduled.

Comment 4: Because of more restrictive management measures proposed for the Florida Keys/East Florida hogfish stock, fishing effort may shift to the West Florida hogfish stock.

Response: It is difficult to predict if fishermen will shift their effort from one stock to the other. However, if fishermen direct additional effort toward the West Florida hogfish stock, this stock has an ACL and an AM to prevent overfishing and to protect this stock from becoming overfished. The AM for West Florida hogfish stock is triggered if the sum of commercial and recreational landings exceed the ACL during a fishing year. Once the AM is triggered, then during the following fishing year, the commercial and recreational sectors will be closed to fishing if the sum of commercial and recreational hogfish landings reaches or is projected to reach the ACL. The Gulf Council also increased the minimum size limit from 12 inches (30.5 cm), FL, to 14 inches (35.6 cm), FL, which is expected to slow the rate of harvest and reduce the likelihood of a closure as the result of reaching the ACL.

Comment 5: Some commenters questioned the need to change the minimum size limit for the West Florida stock from 12 inches (30.5 cm), FL, to 14 inches (35.6 cm), FL, given that the stock is not overfished or undergoing overfishing. Another commenter suggested that the final rule should increase the minimum size limit to 16 inches (40.6 cm), FL, to protect male hogfish, and fishing should be closed when hogfish are spawning to protect the West Florida stock. This commenter also stated that Amendment 43 should discuss the size when hogfish transition from females to males and discuss a closed spawning season for hogfish.

Response: The Gulf Council decided to raise the minimum size limit to 14 inches (35.6 cm), FL, because this is expected to reduce the harvest rates by the commercial and recreational sectors, and therefore, reduce the likelihood of a closure as the result of reaching the ACL. This minimum size limit increase will also allow hogfish to grow larger and have additional spawning opportunities before they can be harvested and landed.

NMFS disagrees that the minimum size limit should be increased to 16 inches (40.6 cm), FL, and that there should be a closure when hogfish are spawning. The Gulf Council evaluated a 16-inch (40.6-cm), FL, minimum size limit but for the reasons stated above decided to increase the minimum size limit from 12 inches (30.5 cm), FL, to 14 inches (35.6 cm), FL. Amendment 43 notes that the size of female maturity (estimated size at 50 percent maturity) occurs at between 6 and 7.5 inches (15.2 and 19.1 cm), FL, and the size of male transition (estimated size at 50 percent having transitioned to males) occurs at 16.6 inches (42.2 cm), FL. Raising the minimum size limit to 16 inches (40.6 cm), FL, would further reduce the harvest rate and allow more hogfish to transition to males. However, this option was not supported by the Gulf Council's Reef Fish Advisory Panel, and during public hearings several fishermen testified that moving to a 16-inch (40.6 cm), FL, size limit was too great a change and would lead to large numbers of discards. The Council determined, and NMFS agrees, that because the West Florida stock is healthy, it is unnecessary to increase the minimum size limit to 16 inches (40.6 cm), FL.

Amendment 43 also discusses the hogfish spawning season (December through April); however, the Gulf Council did not consider a seasonal closure to protect spawning fish because the West Florida stock is neither overfished nor undergoing overfishing. The measures implemented by this final rule are expected to prevent overfishing but also allow a year-round fishing season for the West Florida stock of hogfish, which will benefit fishermen.

Comment 6: The actual MSY value for the West Florida hogfish stock should be used rather than a proxy.

Response: The decision on whether to use MSY or a proxy, such as the yield at $F_{30\neq SPR}$, is made during the stock assessment process and subsequent review. This decision is based on the type of assessment model and the confidence the assessment scientists have in factors such as recruitment. Using proxies when MSY is not known or when confidence in the estimate of MSY is uncertain is a common practice. In Amendment 43, the Council considered using the point estimate of MSY from the assessment, but chose to use the proxy instead because of uncertainty in the MSY estimates caused by the lack of a discernable relationship between the stock biomass and recruitment. The Gulf Council's decision is consistent with the SSC's ABC recommendations, which are based on this proxy.

Comment 7: Discards need to be accounted for in setting the ACLs.

Response: Discard mortality rates were accounted for in the SEDAR 37 stock assessment, resultant stock projections, and calculations of the ACLs. Different discard mortality rates were developed for the various sectors and components of the Gulf reef fish fishery (*e.g.,* commercial and recreational, spearfishing, and hook-and-line). However, in SEDAR 37, discards were not considered a major source of mortality for hogfish. As discussed in Amendment 43, SEDAR 37 set the discard mortality rate at 100 percent for spearfishing, but because this gear type uses line-of-sight in harvesting fish, the number of regulatory discards was considered to be low. Therefore, hogfish harvested by spearfishing is predominantly counted as catch. Hook-and-line gear catches considerably fewer hogfish than spearfishing, and the discard mortality rate for hogfish attributed to hook-and-line gear was estimated at 10 percent, which was considered low.

Comment 8: Other than the increase in the minimum size limit, no other action for hogfish should be taken. There should be no closed season, reduction in the recreational bag limit, or establishment of a commercial trip limit.

Response: This final rule does not create or revise a closed season, reduce the recreational bag limit, or set a commercial trip limit for the West Florida hogfish stock. In Amendment 37, the South Atlantic Council established a closed season for the Florida Keys/East Florida hogfish stock and, for both the Florida Keys/East Florida and Georgia through North Carolina hogfish stocks, the South Atlantic Council reduced the recreational bag limit, increased in the minimum size limits, and established commercial trip limits. These actions are discussed in Amendment 37 (*http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2015/am37/index.html*), its associated proposed rule (81 FR 91104, December 16, 2016), and its associated final rule published in the same issue of the **Federal Register** as this final rule on July 25, 2017.

Comment 9: It is unclear how eliminating the powerhead exemption for hogfish in the Gulf reef fish stressed area will help the West Florida hogfish stock and if there is any reason for eliminating this exemption other than making the regulations the same for all Gulf reef fish species.

Response: As discussed in Amendment 43, removing the exemption for allowing the harvest of hogfish using powerheads is likely to have a minimal impact on the West Florida hogfish stock, as it will only affect spearfishing for this species in the Gulf reef fish stressed area, defined at 50 CFR 622.35(a). Additionally, powerheads are typically not used to harvest hogfish. The primary purpose of this action is to remove an exemption that should have been removed when hogfish was originally included in the reef fish FMU. However, this action may also improve enforcement by applying the powerhead prohibition to all reef fish in the Gulf reef fish stressed area.

Additional Change to Codified Text Not in Amendment 43

In 2013, NMFS reorganized the regulations in 50 CFR part 622 to improve the organization of the regulations and make them easier to use (78 FR 57534, September 19, 2013). However, during that reorganization, a regulatory reference in the definition of ''charter vessel'' in § 622.2 was inadvertently not updated as needed. The charter vessel definition previously included a reference to § 622.4(a)(2) as the provision that specifies the required commercial permits under the various fishery management plans. Although § 622.4(a)(2) addressed all of the required commercial permits before the 2013 reorganization, after the reorganization that provision referred to operator permits only. The reorganization of the regulations removed the various commercial permit provisions from § 622.4 and placed them in the appropriate subparts throughout part 622. This final rule updates the regulatory reference in the definition of charter vessel in § 622.2 to refer to any commercial permits ''as required under this part.'' This update in language makes the regulatory reference in the definition of charter vessel consistent with the current regulatory definition of headboat in § 622.2.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with the FMP, 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 final rule. Amendment 43 and the preamble to this final rule provide a statement of the need for and objectives of this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. No new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

In compliance with section 604 of the RFA, NMFS prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA follows.

No significant economic issues were raised by public comment, and therefore, no changes to this final rule were made in response to public comments of an economic nature. No comments were received from the Office of Advocacy for the Small Business Administration.

NMFS agrees that the Gulf Council's preferred alternatives will best achieve their objectives for Amendment 43 while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities.

NMFS expects this final rule to directly affect all vessels with a Federal commercial permit for Gulf reef fish that harvest hogfish. A Federal Gulf commercial reef fish permit is required for commercial vessels to harvest reef fish species, including hogfish, in the Gulf EEZ. Over the period of 2010 through 2014, the number of vessels that recorded commercial harvests of hogfish in the Gulf EEZ ranged from 55 in 2010 to 75 in 2014, or an average of 61 vessels per year, based on mandatory Federal logbook data. The average annual revenue per vessel from the harvest of all finfish species during this period by these vessels was approximately $35,600 (this estimate and all subsequent monetary estimates in this analysis are in 2014 dollars), of which approximately $2,200 was derived from the harvest of hogfish.

NMFS has not identified any other small entities that might be directly affected by this final rule. Although

recreational anglers would be directly affected by the actions in this final rule, recreational anglers are not small entities under the RFA. The actions in this final rule will not directly apply to or change the operation of the charter vessel and headboat (for-hire) component of the recreational sector or the service this component provides, which is providing a platform to fish for and retain those fish that are caught within legal allowances. Although angler demand for for-hire services could be affected by the management changes in this final rule, the resultant effects on for-hire businesses would be indirect consequences of this final rule. Indirect effects are outside the scope of the RFA.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing. A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. All commercial fishing vessels expected to be directly affected by this final rule are believed to be small business entities.

This final rule contains four actions specific to the management of the West Florida hogfish stock in the Gulf: defining the hogfish FMU, establishing the stock ACL, setting the minimum size limit, and prohibiting the harvest of hogfish with powerheads in the Gulf reef fish stressed area. Two of these actions, defining the FMU and prohibiting the use of powerheads, are not expected to have any direct economic effects on any small entities.

Defining the FMU is an administrative action that forms the platform from which subsequent regulations, such as the ACL and minimum size limit, are based. Although direct economic effects may result from the implementation of these management measures for a newly defined FMU, these effects would be indirect consequences of defining the FMU. NMFS notes that the establishment of the West Florida hogfish stock boundary would result in the extension of South Atlantic hogfish management measures for the Florida Keys/East Florida hogfish stock into Gulf Federal waters south of the 25°09′ N. lat. line off the west coast of Florida. As a result, vessels with Federal Gulf commercial reef fish permits may experience direct negative economic effects due to the more restrictive hogfish management measures imposed by the South Atlantic Council in the area between the Gulf and South Atlantic Council jurisdictional boundary and the West Florida hogfish stock boundary line at 25°09′ N. lat. off the west coast of Florida. These direct negative economic effects, which are discussed in the final rule implementing South Atlantic Amendment 37 published in the same issue of the **Federal Register** on July 25, 2017, would also be an indirect consequence of defining the FMU.

As explained in the final rule implementing Amendment 37, the data used to assign landings to stock areas and monitor the ACL do not have the spatial resolution to estimate the specific fishing activity that occurs in the area between the Councils' jurisdictional boundary and the new Florida Keys/East Florida hogfish stock boundary at the 25°09′ N. lat. line off the west coast of Florida. Therefore, the analysis conducted for Amendment 37, and summarized in the Amendment 37 final rule, used commercial landings data exclusive to Federal waters of the South Atlantic off the State of Florida as a proxy for commercial landings in the new Florida Keys/East Florida stock area (including the area in the Gulf EEZ). Based on the relatively small size of the area between the Councils' jurisdictional boundary and the new Florida Keys/East Florida hogfish stock boundary at the 25°09′ N. lat. line off the west coast of Florida, as well as the public comments received and South Atlantic Council discussions, NMFS expects commercial hogfish landings from this area in the Gulf EEZ to be below the level that would change any of the assumptions or conclusions in the analysis provided in Amendment 37 and the corresponding final rule.

Prohibiting the use of powerheads to harvest hogfish is not expected to directly affect any small entities because powerheads are not expected to be used to harvest hogfish. The use of powerheads for the harvest of other reef fish species in these areas is currently prohibited and, because of the small size of hogfish, powerheads would be expected to result in excessive damage to the fish and adversely affect its market quality. Thus, NMFS does not expect that any hogfish in the Gulf reef fish stressed area are commercially harvested using powerheads, and the prohibition on the use of powerheads to harvest hogfish is not expected to reduce revenue to any commercial fishermen.

The changes in the West Florida hogfish stock ACL and minimum size limit have independent and interactive effects. The changes in the West Florida hogfish stock ACL are expected to increase total commercial fishing revenue for all vessels during the 2016 through 2018 fishing years by approximately $8,900 per year, followed by a decrease in revenue of approximately $39,300 in 2019, and annually thereafter, until the stock ACL (or other hogfish management aspect) is changed. The revised minimum size limit is expected to reduce commercial harvest by 17 percent averaged over the fishing year and across gear types, resulting in a decrease in commercial revenue each year if vessels are unable to compensate for the reduced harvest of hogfish through increased harvest of other species. Independent of the changes in the West Florida hogfish stock ACL, the increase in the minimum size limit is expected to decrease total commercial revenue for all vessels by approximately $28,500 per year.

In combination, the revisions to the West Florida hogfish stock ACL and minimum size limit are expected to decrease total commercial revenue for all vessels by approximately $21,100 per year for 2016 through 2018, and approximately $61,100 in 2019, and each year thereafter, until the stock ACL (or other management aspect) is changed. As previously stated, these projected reductions in fishing revenue assume commercial fishermen are unable to benefit from the full increase in the ACL due to the increase in the minimum size limit, or compensate for the effects of the larger minimum size limit on their normal harvests (*i.e.,* pre-ACL increase). Averaged across the number of small business entities expected to be directly affected by this action (55–75 entities, or an average of 61 entities per year), the reduction in fishing revenue per vessel each year for 2016 through 2018 is expected to range from $282 (75 entities) to $384 (55 entities) per year, or an average of $347 (61 entities) per year. For 2019, and thereafter, the average reduction in revenue per vessel is expected to range from $814 (75 entities) to $1,111 (55 entities) per year, or an average of $1,001 (61 entities) per year.

Compared to the average annual revenue per vessel from all commercial fishing (approximately $35,600), the expected reduction in revenue per vessel per year as a result of the changes in the West Florida hogfish stock ACL and minimum size limit is expected to be approximately one percent of average annual total fishing revenue for 2016 through 2018. For 2019, and thereafter, the average reduction in annual revenue per vessel is expected to be

approximately three percent of average annual total revenue.

In conjunction with the changes to the ACL for the West Florida hogfish stock, this final rule eliminates the ACT (*i.e.,* a hogfish ACT is not defined). Although this final rule does not define an ACT for West Florida hogfish, the ACT is not currently used as a fishing restraint and would not trigger AMs, and does not affect the harvest of hogfish, or associated revenue, in the Gulf. As a result, not defining an ACT for the West Florida hogfish stock is not expected to have any economic effects on any small entities.

In addition to the four actions that relate to the management of hogfish in the Gulf, this final rule makes a minor revision to the definition of a charter vessel. A regulatory reference within the definition of charter vessel was inadvertently not updated when the regulations at 50 CFR part 622 were reorganized in 2013 (78 FR 57534, September 19, 2013). The revision made in this final rule is editorial in nature and is not expected to have any direct effect on any small entities.

The following discussion describes the alternatives considered in Amendment 43 that were not selected as preferred by the Council.

Because the actions to define the Gulf hogfish FMU, specify the SDC for the West Florida hogfish stock, prohibit the use of powerheads to harvest hogfish in the Gulf reef fish stressed area, and revise the definition of charter vessel are not expected to have any direct adverse economic effects on any small entities, the issue of significant alternatives is not relevant.

Four alternatives, including no action, were considered for the action to set the West Florida hogfish stock ACL. Each of these alternatives included options on whether to set an ACT for the West Florida hogfish stock, and the option selected by the Council was to not set an ACT. As previously discussed, the ACT did not restrict harvest or trigger AMs. Thus, not defining an ACT is not expected to have any direct economic effects, and the issue of significant alternatives (or options) is not relevant.

The first alternative (no action) to the ACLs for the West Florida hogfish stock established by this final rule would have resulted in less revenue to commercial fishermen in 2016 through 2018, and more revenue in 2019 and thereafter than the proposed change. Cumulatively (2016 through 2019 and thereafter), this alternative would have resulted in more commercial fishing revenue than the ACLs in this final rule. However, this alternative was not selected by the Council because it would not enable the increase in stock ACL for the West Florida hogfish stock resulting from SEDAR 37. Under this final rule, the ACL in 2019 will be substantially reduced from the ACL in the 2017 and 2018 fishing years if a new hogfish assessment is not completed prior to 2019 and new ACLs are not implemented. This may suggest the ''no action'' ACL would be preferable to the ACLs established by this final rule. However, retaining the ''no action'' ACL in 2019 and beyond would be inconsistent with the ABC recommendations provided by the Gulf Council's SSC. In addition, the Gulf Council expects a new hogfish stock assessment to be completed in sufficient time to avoid the scheduled reduction to the ACL beginning in the 2019 fishing year.

The second alternative to the ACLs for the West Florida hogfish stock established by this final rule would set the ACL higher in 2016, and reduce it thereafter, until it reached the lowest level in 2019. This alternative would be expected to result in increased commercial fishing revenue in 2016, decreased revenue in 2017 and 2018, and the same revenue in 2019, and thereafter, compared to the ACLs established by this final rule. This alternative was not adopted by the Gulf Council because it would require successive reductions in the ACL in 2017 and 2018 (after the initial increase in 2016), in addition to the reduction in 2019, common to both this alternative and the ACL established by this final rule. The Gulf Council determined that employing a constant ACL for the 2016 through 2018 fishing years would result in greater economic stability for affected fishermen and associated businesses.

Finally, the fourth alternative to the ACLs for the West Florida hogfish stock established by this final rule would set the ACL at the lowest level of these alternatives, resulting in less revenue in 2016 through 2018, and the same revenue in 2019 and thereafter, compared to the ACLs established by this final rule. This alternative was not selected because it would unnecessarily limit hogfish harvest and cause greater economic losses than the ACLs established by this final rule.

Four alternatives, including no action, were considered for the action to change the hogfish minimum size limit. The Gulf Council determined that slowing the hogfish directed harvest rate was prudent to reduce the likelihood that the ACL is exceeded, thus triggering AMs. Exceeding the ACL may require an AM-based closure in the following year, and the Council determined that a closure is more economically harmful than reducing the harvest rate to help ensure a longer open season. Therefore, to reduce the harvest rate, the Gulf Council decided to increase the hogfish minimum size limit.

The first alternative (no action) to the minimum size limit in this final rule would not change the minimum size limit, would not reduce the harvest rate, and would not achieve the Gulf Council's objective. Two other minimum size limits were considered in Amendment 43, each of which are greater than the current minimum size limit and the minimum size limit in this final rule. Because these alternatives would result in a greater minimum size limit than the Gulf Council's selection, each would be expected to result in greater reductions in hogfish harvest and associated revenue. These alternatives were not adopted because the Gulf Council concluded that the resultant reductions in the hogfish harvest rate would be greater than necessary, and would result in excessive adverse economic effects on fishermen and associated businesses.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

Changes to Codified Text From the Proposed Rule

In response to public comment, NMFS includes additional language in part 622 regulations to clarify which Federal permits apply when harvesting Florida Keys/East Florida hogfish in the Gulf EEZ. This final rule adds a definition for ''Florida Keys/East Florida hogfish'', and modifies the language in section 622.20 to clarify that Gulf Federal permits are required for commercial vessels, charter vessels, and headboats to harvest Florida Keys/East Florida hogfish in the Gulf EEZ.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf of Mexico, Hogfish, Recreational, South Atlantic.

Dated: July 19, 2017.

Chris Oliver,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.1, revise the Table 1 entry for ''FMP for the Reef Fish Resources of the Gulf of Mexico'', and add footnote 7 to Table 1 to read as follows:

§ 622.1 Purpose and scope.

* * * * *

TABLE 1 TO § 622.1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
*	*	*
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf.[1 3 4 7]
*	*	*

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.

* * * * * * *

[3] Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel for which a Gulf red snapper IFQ vessel account has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

[4] Regulated area includes adjoining state waters for Gulf groupers and tilefishes harvested or possessed by a person aboard a vessel for which an IFQ vessel account for Gulf groupers and tilefishes has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

* * * * * * *

[7] Hogfish are managed by the FMP in the Gulf EEZ except south of 25°09′ N. lat. off the west coast of Florida. Hogfish in the remainder of the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida are managed under the FMP for the Snapper-Grouper Fishery of the South Atlantic Region.

■ 3. In § 622.2, revise the first two sentences in the definition of *Charter vessel* and add the definition for *Florida Keys/East Florida hogfish* in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under this part, is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew, except for a charter vessel with a commercial vessel permit for Gulf reef fish or South Atlantic snapper-grouper. * * *

* * * * *

Florida Keys/East Florida hogfish means hogfish occurring in the Gulf EEZ from 25°09′ N. lat. off the west coast of Florida and south to the jurisdictional boundary between the Gulf and South Atlantic Councils, as defined at 50 CFR 600.105(c), and continuing in the South Atlantic EEZ from the jurisdictional boundary between the Gulf and South Atlantic Councils to the state boundary between Florida and Georgia.

* * * * *

■ 4. In § 622.20, revise paragraphs (a)(1) introductory text and (b) introductory text to read as follows:

§ 622.20 Permits and endorsements.

(a) *Commercial vessels*—(1) *Commercial vessel permits.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.39, or to sell Gulf reef fish or Florida Keys/East Florida hogfish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A or B of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(1)(i) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish. See §§ 622.21(b)(1) and 622.22(b)(1), respectively, regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes, and paragraph (a)(2) of this section regarding an additional bottom longline endorsement required to fish for Gulf reef fish with bottom longline gear in a portion of the eastern Gulf.

* * * * *

(b) *Charter vessel/headboat permits.* For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Gulf reef fish, in or from the EEZ, a valid charter vessel/headboat permit for Gulf reef fish must have been issued to the vessel and must be on board. For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess Florida Keys/East Florida hogfish in or from the Gulf EEZ, a valid charter vessel/headboat permit for Gulf reef fish must have been issued to the vessel and must be on board.

* * * * *

■ 5. In § 622.34, add paragraph (g) to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(g) *Recreational sector for hogfish in the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida.* See § 622.183(b)(4) for the applicable seasonal closures.

■ 6. In § 622.35, revise paragraph (a)(1) to read as follows:

§ 622.35 Gear restricted areas.

(a) * * *

(1) A powerhead may not be used in the stressed area to take Gulf reef fish. Possession of a powerhead and a mutilated Gulf reef fish in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area.

* * * * *

■ 7. In § 622.37, revise paragraph (c)(2) to read as follows:

§ 622.37 Size limits.

* * * * *

(c) * * *

(2) *Hogfish in the Gulf EEZ except south of 25°09′ N. lat. off the west coast of Florida*—14 inches (40.6 cm), fork length. See § 622.185(c)(3)(ii) for the hogfish size limit in the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida.

* * * * *

■ 8. In § 622.38, revise paragraph (b)(7) to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(7) *Hogfish in the Gulf EEZ except south of 25°09′ N. lat. off the west coast of Florida*—5. See § 622.187(b)(3)(ii) for the hogfish bag and possession limits in the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida.

* * * * *

■ 9. In § 622.41, revise paragraph (p) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(p) *Hogfish in the Gulf EEZ except south of 25°09′ N. lat. off the west coast of Florida.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. For the 2016 through 2018 fishing years, the stock ACL for hogfish in the Gulf EEZ except south of 25°09′ N. lat. off the west coast of Florida is 219,000 lb (99,337 kg), round weight. For the 2019 and subsequent fishing years, the stock ACL for hogfish in the Gulf EEZ except south of 25°09′ N. lat. off the west coast of Florida is 159,300 lb (72,257 kg), round weight. See § 622.193(u)(2) for the ACLs, ACT, and AMs for hogfish in the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida.

* * * * *

■ 10. In § 622.43, add paragraph (c) to read as follows:

§ 622.43 Commercial trip limits.

* * * * *

(c) *Hogfish in the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida*—see § 622.191(a)(12)(ii) for the commercial trip limit.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 622

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 37; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160906822–7547–02]

RIN 0648–BG33

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 37

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in Amendment 37 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 37), as prepared and submitted by the South Atlantic Fishery Management Council (South Atlantic Council). This final rule modifies the fishery management unit (FMU) boundaries for hogfish in the South Atlantic by establishing two hogfish stocks, a Georgia through North Carolina (GA/NC) stock and a Florida Keys/East Florida (FLK/EFL) stock; establishes a rebuilding plan for the FLK/EFL hogfish stock; specifies fishing levels and accountability measures (AMs), and modifies or establishes management measures for the GA/NC and FLK/EFL stocks of hogfish. The purpose of this final rule is to manage hogfish using the best scientific information available while ending overfishing and rebuilding the FLK/EFL hogfish stock.

DATES: This final rule is effective August 24, 2017.

ADDRESSES: Electronic copies of Amendment 37 may be obtained from *www.regulations.gov* or from the SERO Web site at *http://sero.nmfs.noaa.gov*. Amendment 37 includes a final environmental impact statement (EIS), a Regulatory Flexibility Act (RFA) analysis, regulatory impact review, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, NMFS SERO, telephone: 727–824–5305, email: *nikhil.mehta@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic includes hogfish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On July 31, 2015, NMFS published a notice of intent to prepare a draft EIS for Amendment 37 and requested public comment (80 FR 45641). On June 17, 2016, the notice of availability for the draft EIS was published and public comment was also requested (81 FR 39639). The notice of availability for the final EIS for Amendment 37 published on October 28, 2016 (81 FR 75053). On October 7, 2016, NMFS published a Magnuson-Stevens Act notice of availability for Amendment 37 and requested public comment (81 FR 69774). On December 16, 2016, NMFS published a proposed rule for Amendment 37 and requested public comment (81 FR 91104). On December 28, 2016, the Secretary of Commerce (Secretary) approved Amendment 37 under section 304(a)(3) of the Magnuson-Stevens Act. The proposed rule and Amendment 37 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 37 and implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

This final rule revises the hogfish FMU in the FMP by establishing two hogfish stocks, one in Federal waters off Georgia through North Carolina and one in Federal waters in the area off the Florida Keys and east Florida; specifies annual catch limits (ACLs) and AMs; and modifies or establishes management measures for the GA/NC and FLK/EFL stocks of hogfish. All weights of hogfish are described in round weight.

FMU for Hogfish

Hogfish is managed in Federal waters in the South Atlantic region from the jurisdictional boundary between the South Atlantic Council and Gulf of Mexico Fishery Management Council (Gulf Council) (approximately the Florida Keys) to the North Carolina and Virginia state border. This final rule creates two stocks of hogfish in Federal waters and establishes new stock boundaries under the jurisdiction of the South Atlantic Council under the FMP. The first stock is the GA/NC hogfish stock, with a southern boundary extending east from the Florida and Georgia state border to the seaward boundary of the EEZ. The GA/NC stock's management area then extends northward to a line extending east from the North Carolina and Virginia state border to the seaward boundary of the EEZ. The second stock is the FLK/EFL hogfish stock, with a southern boundary at the 25°09′ N. lat. line off the west coast of Florida, which is near Cape Sable. The FLK/EFL stock's management area extends south of 25°09′ N. lat. off the west coast of Florida, then east around South Florida, and then north off the east coast of Florida to a line extending east from the Florida and Georgia state border to the seaward boundary of the EEZ.

In accordance with section 304(f) of the Magnuson-Stevens Act, the Gulf Council requested that the Secretary designate the South Atlantic Council as the responsible Council for management of the FLK/EFL hogfish stock in Gulf of Mexico (Gulf) Federal waters south of 25°09′ N. lat. off the west coast of Florida. The Gulf Council approved Amendment 43 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 43), and selected the same boundary at the 25°09′ N. lat. line off the west coast of Florida, which is near Cape Sable, to separate the FLK/EFL hogfish stock from the hogfish stock managed under the Gulf Council's Reef Fish FMP (West Florida hogfish stock). On November 23, 2016, NMFS published a proposed rule in the **Federal Register** to implement Amendment 43 (81 FR 84538). The Secretary approved Amendment 43 on February 2, 2017, under section 304(a)(3) of the Magnuson-Stevens Act and also approved the Gulf Council's request for the revised boundary under section 304(f) of the Magnuson-Stevens Act. A final rule to implement Amendment 43 published on the same date as this final rule. Therefore, through this final rule, the South Atlantic Council establishes the management measures for the FLK/EFL hogfish stock, including in Gulf Federal waters south of 25°09′ N. lat. off the west coast of Florida. Those commercial vessels and recreational charter vessels and headboats (for-hire) fishing for hogfish anywhere in Gulf Federal waters, *i.e.,* north and west of the jurisdictional boundary between the Gulf and South Atlantic Councils (approximately at the Florida Keys), as defined at 50 CFR 600.105(c), are still required to have the appropriate Federal Gulf reef fish permits, and vessels fishing for hogfish in South Atlantic Federal waters, *i.e.,* south and east of the jurisdictional boundary, are still required to have the appropriate Federal South Atlantic snapper-grouper permits.

All Federal permit holders are still required to follow the sale and reporting requirements associated with the respective permits. Private recreational anglers must also follow applicable management measures implemented by this final rule for FLK/EFL hogfish in Gulf Federal waters south of 25°09′ N. lat. off the west coast of Florida.

As described in Amendment 37, the revised stock boundary at the 25°09′ N. lat. line off the west coast of Florida will aid law enforcement personnel because it coincides with an existing State of Florida management boundary for certain state-managed species and will simplify regulations across adjacent state and Federal management jurisdictions.

ACLs and Optimum Yield for the GA/NC and FLK/EFL Hogfish Stocks

Because the most recent hogfish stock assessment, completed in 2014 through the Southeast Data, Assessment, and Review process (SEDAR 37), was not deemed sufficient to specify an acceptable biological catch (ABC) recommendation for the GA/NC stock of hogfish, the South Atlantic Council's Scientific and Statistical Committee (SSC) applied Level 4 of the South Atlantic Council's ABC control rule to arrive at their ABC recommendation for this stock. Level 4 is appropriate for unassessed stocks with only reliable catch data. Amendment 29 to the Snapper-Grouper FMP updated the South Atlantic Council's ABC control rule, including Level 4 for unassessed stocks (80 FR 30947, June 1, 2015). For the GA/NC hogfish stock, this final rule and Amendment 37 specify an ABC of 35,716 lb (16,201 kg), a total ACL and optimum yield (OY) (equal to 95 percent of the ABC) of 33,930 lb (15,390 kg), and commercial and recreational ACLs based on re-calculated sector allocations of 69.13 percent to the commercial sector and 30.87 percent to the recreational sector. Establishment of the new GA/NC stock required re-calculation of the sector allocations based on the existing formula from the South Atlantic Council's Comprehensive ACL Amendment (77 FR 15916, March 16, 2012), to reflect the appropriate landings for each sector from the relevant geographic region. Through this final rule, the commercial ACL is set at 23,456 lb (10,639 kg) and the recreational ACL is set at 988 fish. For the GA/NC stock of hogfish, the South Atlantic Council decided to specify the ABC, total ACL, and commercial ACL in pounds and the recreational ACL in numbers of fish.

The SSC considered the SEDAR 37 results sufficient to provide an ABC recommendation for the FLK/EFL stock of hogfish, and the South Atlantic Council concurred with their recommendation. The ABC for the FLK/EFL stock is derived from projections in SEDAR 37, and the projections were provided in both pounds and numbers of fish. The South Atlantic Council determined that for the FLK/EFL stock of hogfish, it was more appropriate to specify the ABC, OY, total ACL, and recreational ACL in numbers of fish, and the commercial ACL in pounds (since recreational landings are tracked in numbers of fish and commercial landings are tracked in pounds). Therefore, Amendment 37 specifies an ABC of 17,930 fish for this stock, with annual increases through 2027 when the ABC is 63,295 fish. The OY and total ACL are equal to 95 percent of the ABC. The commercial and recreational ACLs are based on re-calculated sector allocations of 9.63 percent to the commercial sector and 90.37 percent to the recreational sector. As discussed above, the re-calculated sector allocations are based on the South Atlantic Council's existing allocation formula and are necessary to reflect the appropriate landings for each sector from the relevant geographic region of the new stock. For 2017, the total ACL (and OY) is 17,034 fish, the commercial ACL is 3,510 lb (1,592 kg) (which would be 1,345 fish), and the recreational ACL is 15,689 fish. Each of these ACLs increase annually through 2027 as the stock rebuilds. In 2027, the total ACL (and OY) for the FLK/EFL hogfish stock is 60,130 fish, the commercial ACL is 17,018 lb (7,719 kg) (which would be 6,520 fish), and the recreational ACL is 53,610 fish.

When possible, the South Atlantic Council prefers specifying the recreational ACL in numbers of fish and the commercial ACL in pounds. Their rationale is that recreational landings are already tracked in numbers of fish while commercial landings are tracked in pounds. Because Amendment 37 and this final rule also increase the minimum size limits for the GA/NC and FLK/EFL hogfish stocks, specifying certain catch levels in pounds could potentially increase the risk of exceeding the ABCs for the hogfish stocks because larger fish are heavier. Therefore, the South Atlantic Council determined that there would be a lower risk of exceeding the recreational ACLs due to an increase in the minimum size limits if certain catch levels, such as ABC and recreational ACL, were specified in numbers of fish. For the GA–NC stock of hogfish, the recreational ACL was converted from pounds to numbers of fish using an average recreational weight of 10.6 lb (5 kg) per fish in round weight. Appendix N to Amendment 37 includes a detailed account of the methodology used to specify the recreational ACL for the FLK/EFL stock of hogfish in numbers of fish.

AMs for the Commercial and Recreational Sectors for Both the GA/NC and FLK/EFL Hogfish Stocks

This final rule retains the existing in-season and post-season AMs applicable for the single South Atlantic-wide hogfish stock for the commercial sector and applies them to both the GA/NC and FLK/EFL hogfish stocks. The commercial AMs for the GA/NC and FLK/EFL hogfish stocks consist of an in-season closure of the commercial sector if the applicable commercial ACL is met or is projected to be met. If a commercial ACL is exceeded, a post-season AM would reduce the commercial ACL for the applicable hogfish stock by the amount of the commercial ACL overage during the following fishing year if the total ACL (commercial ACL plus recreational ACL) is also exceeded and the applicable hogfish stock is overfished.

This final rule also retains the existing recreational AMs applicable for the single South Atlantic-wide hogfish stock and applies them to both the GA/NC and FLK/EFL hogfish stocks. The recreational AMs for the GA/NC and FLK/EFL hogfish stocks consist of an in-season closure of the recreational sector if the applicable recreational ACL is met or is projected to be met. If a recreational ACL is exceeded, then during the following fishing year, NMFS will monitor for continued increased landings of the applicable hogfish stock. If necessary, NMFS will reduce the length of the recreational season and the recreational ACL for the applicable hogfish stock by the amount of the recreational ACL overage if the total ACL is also exceeded and the applicable hogfish stock is overfished.

Minimum Size Limits for the GA/NC and FLK/EFL Hogfish Stocks

For both the commercial and recreational sectors, this final rule increases the minimum size limit to 17 inches (43.2 cm), FL, for the GA/NC hogfish stock, and 16 inches (40.6 cm), FL, for the FLK/EFL hogfish stock. The South Atlantic Council determined these minimum size limits serve as a precautionary approach to address population stability for hogfish off Georgia through North Carolina, and reduce disruption to spawning, avoid recruitment overfishing, and benefit the

spawning populations off the Florida Keys and east Florida.

Commercial Trip Limit for the GA/NC and FLK/EFL Hogfish Stocks

This final rule establishes commercial trip limits of 500 lb (227 kg) for the GA/NC stock, and 25 lb (11 kg) for the FLK/EFL stock. The South Atlantic Council recommended a 500-lb (227-kg) commercial trip limit for the GA/NC stock to enable commercial harvest in that geographic area to take place year-round. Furthermore, as described in Amendment 37, the majority of commercial fishermen landed 25 lb (11 kg) or less of hogfish per trip in the area off the Florida Keys and east Florida area. The South Atlantic Council determined that implementing a commercial trip limit of 25 lb (11 kg) for the FLK/EFL hogfish stock would restrict some harvest and help to prevent a commercial in-season closure.

Recreational Bag Limits for the GA/NC and FLK/EFL Hogfish Stocks

This final rule establishes a recreational bag limit for each person of one fish per day in Federal waters for the FLK/EFL hogfish stock, and a recreational bag limit for each person of two fish per day in Federal waters for the GA/NC hogfish stock. The South Atlantic Council determined that these bag limits would reduce harvest and help to prevent a recreational in-season closure.

Recreational Fishing Season for the FLK/EFL Hogfish Stock

This final rule establishes a recreational fishing season from May through October for the FLK/EFL hogfish stock, with recreational harvest prohibited from January through April and from November through December during each fishing year. As described in Amendment 37, hogfish spawning activity occurs predominantly during the months of December through April. Analysis in Amendment 37 showed that, in combination with the recreational ACLs, minimum size limit, and recreational bag limit implemented through this final rule, a 6-month recreational fishing season would help to maintain recreational landings within the recreational ACL for the FLK/EFL hogfish stock. The South Atlantic Council determined that specifying a May through October fishing season would protect the overfished FLK/EFL hogfish stock during the peak spawning season, and the ACLs and AMs in this final rule will help ensure overfishing does not occur. The South Atlantic Council decided not to establish a recreational fishing season for the GA/NC hogfish stock because that stock does not seem to be experiencing heavy fishing pressure, and the average recreational landings in recent years have been well below the recreational ACL established by this final rule.

Management Measures Contained in Amendment 37 but Not Codified Through This Final Rule

In addition to the management measures that this final rule implements, Amendment 37 includes actions to specify fishing levels and recreational annual catch targets (ACTs) for the GA/NC and FLK/EFL hogfish stocks, and establish a rebuilding plan for the FLK/EFL hogfish stock.

Maximum Sustainable Yield and Minimum Stock Size Threshold for the GA/NC and FLK/EFL Hogfish Stocks

Amendment 37 specifies the maximum sustainable yield (MSY) for the GA/NC and FLK/EFL stocks of hogfish as equal to the yield produced by the fishing mortality rate at MSY (F_{MSY}) or the F_{MSY} proxy, with the MSY and F_{MSY} proxy recommended by the most recent stock assessment. Based on SEDAR 37, the resulting MSY for the FLK/EFL hogfish stock is 346,095 lb (156,986 kg) (which would be 108,264 fish), and is unknown for the GA/NC hogfish stock. Amendment 37 specifies the minimum stock size threshold (MSST) for these two stocks of hogfish at 75 percent of spawning stock biomass at MSY (SSB_{MSY}), which results in an unknown MSST value for the GA/NC hogfish stock, and an MSST for the FLK/EFL hogfish stock of 1,725,293 lb (782,580 kg).

Recreational ACTs for the GA/NC and FLK/EFL Hogfish Stocks

Amendment 37 specifies a recreational ACT (equal to 85 percent of the recreational ACL) of 840 fish for the GA/NC stock and 13,335 fish for the FLK/EFL stock in 2017. The recreational ACT for the FLK/EFL stock increases annually from 2017 through 2027 as the stock rebuilds. NMFS notes that the recreational ACTs are used only for monitoring and do not trigger an AM.

Rebuilding Plan for the FLK/EFL Hogfish Stock

Because the FLK/EFL hogfish stock is overfished, Amendment 37 establishes a rebuilding plan that sets the ABC equal to the yield at a constant fishing mortality rate and rebuilds the stock in 10 years with a 72.5 percent probability of success. Year 1 of the rebuilding plan is 2017 and 2027 is the last year. The South Atlantic Council's SSC indicated that harvest levels recommended in the Amendment 37 rebuilding plan are sustainable and would achieve the goal of rebuilding the FLK/EFL hogfish stock. The ABC for the FLK/EFL hogfish stock is 17,930 fish in 2017 and increases annually through 2027, when the ABC is 63,295 fish.

Comments and Responses

A total of 33 comments were received on the notice of availability and proposed rule for Amendment 37 from individuals, and commercial, private recreational, and for-hire (charter) recreational fishing entities. The majority of comments were in general opposition to the large number of actions in Amendment 37, but most comments supported the need for some protection of hogfish, especially in the Florida Keys. The majority of comments supporting additional protection for hogfish were in favor of the increase in the minimum size limits for the FLK/EFL stock, but opposed the reduction in the recreational bag limits and recreational fishing season for the FLK/EFL stock. Comments that specifically relate to the actions contained in Amendment 37 and the proposed rule, as well as NMFS' respective responses, are summarized below.

Comment 1: NMFS should not modify the snapper-grouper FMU to create separate stocks of hogfish as proposed in Amendment 37. The regulations proposed by the Gulf Council in Amendment 43 and the proposal by the State of Florida to pass compatible regulations in state waters conflict with Amendment 37. Inconsistent rules for different regions create confusion, lead to costly government administration, and makes compliance difficult.

Response: The South Atlantic Council determined that based on the most recent stock assessment for hogfish, it is appropriate to manage these two stocks of hogfish separately, and NMFS agrees. The most recent stock assessment was completed in 2014 (SEDAR 37), and identified two separate stocks of hogfish in the South Atlantic region, and one stock of hogfish in the Gulf (West Florida hogfish stock). Within the South Atlantic region, one stock of hogfish was identified to exist off North Carolina, South Carolina, and Georgia (GA/NC stock); and a separate stock of hogfish was identified to exist off the Florida Keys and east Florida (FLK/EFL stock). Therefore, the final rule for Amendment 37 modifies the snapper-grouper FMU for hogfish into two stocks in the South Atlantic region (GA/NC and FLK/EFL) based on the best scientific information available.

NMFS disagrees that the regulations specific to the FLK/EFL stock boundary

in Amendment 37 conflict with the stock boundary in Amendment 43 or with the State of Florida's proposed changes to their regulations. The Gulf Council approved Amendment 43, which has the same boundary as the South Atlantic Council's Amendment 37 to separate the FLK/EFL hogfish stock from the West Florida hogfish stock. Both Amendment 37 and Amendment 43 have been approved by the Secretary, and the Gulf Council will continue to manage hogfish in Federal waters north of 25°09′ N. lat. off the west coast of Florida. The South Atlantic Council will establish the management measures for the FLK/EFL hogfish stock, including in Gulf Federal waters south of 25°09′ N. lat. (near Cape Sable, Florida). This new boundary will avoid confusion for the public, and will aid law enforcement and fishermen by making regulations for hogfish consistent off the entire Florida Keys and east coast of Florida.

While some management measures for hogfish in Amendment 43 will be different when compared with those in Amendment 37, the two FMPs concern separate stocks of hogfish, and NMFS disagrees that the management measures in Amendment 37 conflict with the management measures recently approved by the Florida Fish and Wildlife Conservation Commission (FWC). In November 2016, the Florida FWC approved regulations compatible with certain management measures in Amendment 43 and Amendment 37 for minimum size limits and recreational bag limits for hogfish in Florida state waters of the Gulf of Mexico and South Atlantic. These state regulations are identical to the minimum size limits and recreational bag limits implemented by the final rules for Amendment 43 and Amendment 37. The Florida FWC also approved a recreational fishing season in state waters adjacent to the FLK/EFL FMU; this recreational fishing season in state waters is identical to the recreational fishing season specified in Amendment 37 and in this final rule. The Florida FWC intends to file a notice of intent to adopt Federal regulations for hogfish in its state waters of the Gulf and South Atlantic when the final rules to implement Amendment 43 and Amendment 37 publish in the **Federal Register**. Therefore, consistent regulations will apply for hogfish in state and Federal waters off Florida in the respective stock areas. Also, see the response to Comment 2, below, regarding management measures for hogfish in the Gulf and South Atlantic regions.

Comment 2: Modifying the snapper-grouper FMU for hogfish at the 25°09′ N. lat. line off the west coast of Florida in the Gulf will create inconsistent regulations for commercial trip limits on either side of this demarcation. This action will also adversely affect fishers who do not have Federal commercial permits for both South Atlantic snapper-grouper and Gulf reef fish.

Response: NMFS agrees that commercial management measures differ depending on whether hogfish are harvested north or south of 25°09′ N. lat. off the west coast of Florida, as no commercial trip limit applies north of that point in the Gulf. SEDAR 37 determined that the West Florida hogfish stock is neither overfished, nor undergoing overfishing, and the Gulf Council did not select a commercial trip limit for that stock. However, SEDAR 37 concluded that the FLK/EFL stock is overfished and undergoing overfishing. Therefore, the South Atlantic Council determined that a commercial trip limit was needed to help end overfishing and rebuild this stock. The South Atlantic Council determined that implementing a commercial trip limit of 25 lb (11 kg) for the FLK/EFL hogfish stock would restrict some harvest to assist in rebuilding this stock and help to lengthen the commercial season under the reduced commercial ACL.

NMFS disagrees that this final rule will adversely affect fishers not holding both commercial fishing permits. As discussed above, this final rule modifies the snapper-grouper FMU for hogfish and implements consistent regulations across adjacent state and Federal management jurisdictions in the respective stock areas, helps avoid confusion among the public, and assists law enforcement. However, this final rule will not modify the existing Federal commercial permit requirements. Vessels fishing for hogfish in Gulf Federal waters, as defined at 50 CFR 600.105(c), will still be required to have the appropriate Federal Gulf reef fish permits, including when fishing for the FLK/EFL stock managed by the South Atlantic Council between the Councils' jurisdictional boundary and the 25°09′ N. lat. line off the west coast of Florida. Conversely, vessels fishing for hogfish in South Atlantic Federal waters will still be required to have the appropriate Federal South Atlantic snapper-grouper permits. Federal permit holders will continue to be required to follow the existing sale and logbook reporting requirements associated with the respective permits. NMFS recognizes that maintaining existing permitting requirements minimizes confusion and avoids unnecessarily burdening those fishing for hogfish under Federal permits, while still meeting both Councils' management needs.

Comment 3: NMFS should increase the minimum size limit of hogfish to 14 or 15 inches (35.6 and 38.1 cm), fork length (FL), but not to 16 inches (40.6 cm), FL, for the FLK/EFL stock of hogfish. Increasing the minimum size limit to 16 inches (40.6 cm), FL, will result in an increase in discards and discard mortality related to barotrauma, especially when hogfish are harvested from deep water.

Response: As discussed in Amendment 37, the biological benefits to the FLK/EFL hogfish stock are greater with the larger minimum size limit of 16 inches (40.6 cm), FL, compared with 14 or 15 inches (35.6 and 38.1 cm), FL. The minimum size limit of 16 inches (40.6 cm), FL, is comparatively less disruptive to spawning aggregations and helps to rebuild the FLK/EFL hogfish stock. Hogfish begin life as females and eventually become male if they reach an older age, depending on their environmental conditions. Hogfish also form harems; one male will spawn with several females during spawning seasons that last for months. The number and gender of hogfish in a group influences the size and age range at which sexual transition occurs. Removal of the dominant male has the potential to significantly affect harem stability and decrease reproductive potential. Larger minimum size limits provide hogfish more opportunities to form harems and transition from females to males, and the South Atlantic Council determined 16 inches (40.6 cm), FL, is the appropriate minimum size limit for this stock of hogfish. In addition, while NMFS agrees that barotrauma may result in the mortality of fish when brought up to the surface from deep water, bycatch and discards would not be expected to increase substantially as a result of an increase in the minimum size limit to 16 inches (40.6 cm), FL, because the dominant mode of harvest is by spearfishing, which is highly selective, and fishers using this gear would be expected to be able to visually recognize a 16 inch (40.6 cm), FL, fish and, therefore, target legal-sized fish. NMFS is working with the South Atlantic Council on developing methods that could be considered in the future as measures to further reduce mortality resulting from barotrauma (such as removing the minimum size limit for deep-water species, requiring the use of descending devices, and recommending or requiring hook types for various species in the snapper-grouper FMU).

Comment 4: NMFS should not implement a 500-lb (227-kg) commercial

trip limit for the GA/NC stock of hogfish. Very few commercial spearfishers target this stock, which has rarely met the commercial ACL, and the catch history has remained consistent.

Response: As discussed in Amendment 37, 1 percent of commercial trips landed 500 lb (227 kg) or more of hogfish per trip off Georgia through North Carolina during 2012–2014. Average commercial landings during 2012–2014 were less than the commercial ACL for 2017 implemented by this final rule, and the 2017 commercial ACL is not expected to be reached under the 500-lb (227-kg) commercial trip limit under current fishing practices. However, the South Atlantic Council is concerned that commercial fishermen may shift effort from the FLK/EFL stock to the GA/NC stock because of the restrictions to the FLK/EFL stock. Because hogfish are more accessible to fishermen when they aggregate to reproduce, the South Atlantic Council determined that this commercial trip limit is a precautionary measure to help prevent localized depletion of the stock. Additionally, the South Atlantic Council determined a 500-lb (227-kg) commercial trip limit will help to ensure commercial harvest can take place year-round in this area.

Comment 5: A reduction of the recreational bag limit for the FLK/EFL stock of hogfish to 1 fish per person per day is excessive and will deter anglers from taking trips on charter vessels and headboats. The recreational bag limit for the FLK/EFL stock of hogfish should be 2 to 5 fish per person per day. The economic data for headboats in Amendment 37 for this action is inaccurate and flawed. Reducing the recreational bag limit to 3 fish per person per day combined with the actions to reduce the minimum size limit and a recreational fishing season would re-build the FLK/EFL stock of hogfish without having a large economic impact.

Response: The South Atlantic Council chose a recreational bag limit of 1 fish per person per day as their preferred alternative to extend the length of the recreational fishing season, while also helping to end overfishing and rebuild this overfished stock. The data in Amendment 37 show that few fishermen in the South Atlantic region catch more than 1 fish per day on recreational trips. According to data from the Marine Recreational Information Program (MRIP) from private recreational and charter trips during 2012–2014, approximately 60 percent of these trips harvested 1 or no hogfish per person per day, 78 percent harvested 2 hogfish per person per day or less, 14 percent harvested 3 to 4 hogfish per person per day, and only 8 percent of the trips harvested 5 hogfish or more per person per day. Among headboat trips, 87 percent harvested 1 hogfish, 10 percent harvested 2 hogfish, 1 percent harvested 3 hogfish, and 2 percent harvested more than 5 hogfish per vessel per day.

In addition, the recreational bag limit of 1 fish per person per day is predicted to result in a longer recreational fishing season than bag limits of 2 to 5 fish per person per day. Analysis in Amendment 37 concludes that the recreational sector will be open for most of the annual May through October recreational season (182 days open out of 184 calendar days) under the bag limit of 1 fish per person per day.

NMFS disagrees that the economic data in Amendment 37 is inaccurate and flawed. Amendment 37 used the best scientific information available to analyze the economic effects of bag limit reductions on the recreational fishing sector. Trip-level landings estimates from MRIP and average harvest per angler data from the Southeast Region Headboat Survey (SRHS) demonstrated that the majority of anglers kept only 1 hogfish or less per person per trip from 2012 through 2014. Additionally, MRIP data (2012 through 2014) showed that on charter trips, hogfish were typically harvested with other species, and on average, greater numbers of non-hogfish than hogfish species were kept. Therefore, changes to the recreational bag limit, in general, likely would not result in changes in for-hire angler behavior, such as cancellation of pre-booked for-hire trips or a reduction in booking rates for future trips. NMFS acknowledges that uncertainty associated with the recreational survey data exists, and that some for-hire businesses may be negatively affected by the reduction to the bag limit. However, some for-hire businesses may benefit from the longer hogfish recreational season that is expected to result from the reduction in the bag limit. Due to the complex nature of angler behavior and of the for-hire industry, available data are insufficient to quantify all of these potential economic effects on individual for-hire businesses.

Comment 6: NMFS should not implement a closure of the recreational fishing season for the FLK/EFL stock of hogfish. If a closure is implemented, it should include the commercial sector as well.

Response: This final rule establishes a recreational fishing season from May through October for the FLK/EFL hogfish stock, with recreational harvest prohibited from January through April and from November through December during each fishing year to protect spawning fish, maintain landings within the recreational ACL for the FLK/EFL stock, and allow the stock to rebuild. As described in Amendment 37, hogfish spawning activity occurs predominantly during the months of December through April, and begins (and ends) slightly earlier in the Florida Keys than on the West Florida shelf (*e.g.,* from the Florida panhandle south along the west coast of Florida to Naples, Florida). Analysis in Amendment 37 demonstrated that for the FLK/EFL hogfish stock, in combination with the recreational ACL, minimum size limit, and recreational bag limit, a 6-month recreational fishing season would help to maintain recreational landings within the recreational ACL and rebuild this overfished stock.

NMFS disagrees that the seasonal closure should apply to the commercial sector. The South Atlantic Council previously established sector allocations for the hogfish stock ACL of 9.63 percent to the commercial sector and 90.37 percent to the recreational sector. Neither Amendment 37 nor this final rule changes these sector allocations for the FLK/EFL hogfish stock. The South Atlantic Council determined that an increase in the minimum size limit to 16 inches (40.6 cm), FL, and a commercial trip limit of 25 lb (11 kg) would achieve the necessary reduction in commercial harvest to help eliminate overfishing and rebuild the FLK/EFL hogfish stock, and to maintain commercial landings within the commercial ACL.

Comment 7: The FLK/EFL stock of hogfish is not currently overfished. The science and data that claim this stock is overfished is incorrect and is a result of biased sampling methods.

Response: NMFS disagrees. Amendment 37 and this final rule respond to the latest stock assessment for hogfish (SEDAR 37), which determined that the FLK/EFL stock of hogfish is overfished and undergoing overfishing. The SEDAR process is a peer-reviewed cooperative effort to assess the status of stocks in the southeast region, involving the South Atlantic, Caribbean, and Gulf of Mexico Fishery Management Councils; NMFS Southeast Fisheries Science Center (SEFSC), NMFS Southeast Regional Office, and the NMFS Highly Migratory Species Division; and the Atlantic and Gulf States Marine Fisheries Commissions. SEDAR also relies on state agencies and universities throughout the region for research, data collection, and stock assessment expertise. The Florida FWC completed

the stock assessment for hogfish under the SEDAR process, and used landings data from both state and Federal waters. Fisheries-dependent and independent data were also utilized in the stock assessment. Data included commercial harvest by gear type (hook-and-line and spear) and source (trip tickets and logbooks), and recreational harvest by gear type and from private anglers and charter vessels and headboats (MRIP and SRHS). The South Atlantic Council's SSC considered SEDAR 37 as the best scientific information available, and the SEFSC certified Amendment 37 as the best scientific information available.

Additional Change to Codified Text Not in Amendment 37

In addition to the measures described for Amendment 37, this final rule corrects an error in Table 1 to § 622.1—FMPs Implemented Under Part 622. In 2013, the final rule for Amendment 27 to the FMP inadvertently removed two footnotes from the entry for the FMP in Table 1 of § 622.1 (78 FR 78770, December 27, 2013). This final rule corrects that error and inserts those footnotes back into the entry for the FMP in Table 1 of § 622.1.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with Amendment 37, the FMP, 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 final rule. Amendment 37 and the preamble to this final rule provide a statement of the need for and objectives of 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.

In compliance with section 604 of the RFA, NMFS prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA follows.

Public comments relating to socio-economic implications and potential impacts on small businesses are addressed in the response to Comment 5 in the Comments and Responses section of this final rule. No changes to this final rule were made in response to these public comments. No comments were received from the Office of Advocacy for the Small Business Administration.

NMFS agrees that the South Atlantic Council's choice of preferred alternatives will best achieve their objectives for Amendment 37 while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities.

NMFS expects this final rule to directly affect all federally-permitted commercial vessels and recreational anglers that fish for or harvest hogfish in Federal waters of the South Atlantic, and those that fish in Federal waters of the Gulf of Mexico between the Gulf and South Atlantic Council jurisdictional boundary and the new FLK/EFL hogfish stock boundary at the 25°09′ N. lat. line off the west coast of Florida. As discussed in Amendment 37, the data used to assign landings to stock areas and monitor the ACL do not have high enough spatial resolution to estimate the specific fishing activity that occurs in the area between the Councils' jurisdictional boundary and the new FLK/EFL hogfish stock boundary at the 25°09′ N. lat. line off the west coast of Florida. The management boundary for this stock of hogfish was selected by the South Atlantic Council because it coincides with the State of Florida's Pompano Endorsement Zone boundary, and would simplify regulations and aid in the enforcement of management regulations. Based on public testimony and comments, the South Atlantic Council concluded that the boundary line at 25°09′ N. lat. off the west coast of Florida is far enough north of the Florida Keys and far enough south of Naples and Marco Island, Florida, such that it is in an area where fishing for hogfish is not a popular activity. This boundary line would not impact current approaches to ACL monitoring, and it would help simplify regulations for commercial vessels that fish for hogfish in both Gulf and South Atlantic Federal waters around the Florida Keys. In addition, it would be unlikely for fishermen to harvest hogfish belonging to the West Florida stock in the Gulf and then travel south for a long distance to land those fish in the South Atlantic. It is important to note that on the west coast of Florida, there are very few ports in Monroe County north of the Florida Keys, and this area is comprised in large part by the Everglades National Park. Based on the relatively small size of the area between the Councils' jurisdictional boundary and the new FLK/EFL hogfish stock boundary at the 25°09′ N. lat. line off the west coast of Florida, as well as the public comments received and South Atlantic Council discussions, NMFS expects that commercial hogfish landings from this area in the Gulf will be minimal. For all of the aforementioned reasons, the analysis conducted for Amendment 37, and summarized here, used commercial landings data exclusive to Federal waters of the South Atlantic off the State of Florida as a proxy for commercial landings in the new FLK/EFL stock area (including the area in the Gulf EEZ). This data was used to both identify affected vessels and estimate the economic effects of this final rule on those vessels. NMFS expects commercial hogfish landings from the FLK/EFL stock and harvested from the Gulf EEZ to be below the level that would change any of the assumptions or conclusions of the following analysis.

This final rule will not directly apply to or regulate for-hire vessels, because for-hire vessels sell fishing services to recreational anglers and the changes to the hogfish management measures in this final rule will not directly alter the services sold by these vessels. However, the changes will affect when recreational anglers on for-hire trips are allowed to fish for or retain hogfish, as well as the quantity and size of hogfish that are harvested. Any change in demand for for-hire fishing services, and associated economic effects, as a result of this final rule would be a consequence of behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of the final rule. Because the effects on for-hire vessels are indirect, they fall outside the scope of the RFA. For-hire captains and crew are permitted to retain hogfish under the recreational bag limit; however, they are not permitted to sell these fish. As such, for-hire captains and crew are only affected as recreational anglers. For purposes of the RFA, NMFS does not consider recreational anglers to be small entities, so they are outside the scope of this analysis, and only the impacts on commercial vessels will be discussed.

As of May 25, 2016, there were 552 valid or renewable Federal South Atlantic snapper-grouper unlimited commercial permits and 116 valid or renewable 225-lb (102-kg) trip-limited commercial permits. Each of these commercial permits is associated with an individual vessel. Data from the years of 2010 through 2014, the most recent data available at the time the analysis was conducted, were used in Amendment 37 and these data provided the basis for the South Atlantic Council's decisions. Although this final rule applies to all Federal commercial snapper-grouper permit holders, NMFS expects that only the vessels that harvest hogfish will be affected. On average from 2010 through 2014, there

were 135 federally-permitted commercial fishing vessels with reported landings of hogfish. Their average annual vessel-level revenue from all species for 2010 through 2014 was approximately $59,000 (2014 dollars). During this period, there were an average of 62 vessels that harvested hogfish in the GA/NC stock area and 77 vessels that harvested hogfish in the FLK/EFL stock area. Their average annual revenue from all species (2010 through 2014) was approximately $83,000 and $44,000 (2014 dollars) in the two stock areas, respectively. Some of these vessels reported hogfish landings from both stock areas and are, therefore, included in the vessel counts for both stock areas. The maximum annual revenue for all species reported by a single one of the 135 vessels identified above, in 2014, was approximately $1 million (2014 dollars).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. All of the commercial vessels directly regulated by this final rule are believed to be small entities based on the NMFS size standard.

No other small entities that will be directly affected by this final rule have been identified.

There are currently 668 federally-permitted commercial vessels eligible to fish for the snapper-grouper species managed under the FMP. Based on the analysis included in Amendment 37, NMFS expects 135 of these vessels will be affected by this final rule (approximately 20 percent). Because all entities expected to be affected by this final rule are small entities, NMFS has determined that this final rule will affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

This final rule modifies the snapper-grouper FMU for hogfish, specifying two stocks of hogfish in the EEZ: (1) a GA/NC stock from the Georgia/Florida state boundary north to the North Carolina/Virginia state boundary, and (2) a FLK/EFL stock from the Florida/Georgia state boundary on the east coast of Florida, south around the Florida Keys, and then north to the 25°09′ N. lat. line off the west coast of Florida. Amendment 37 also specifies MSY and MSST values for each of these stocks. For both the GA/NC and FLK/EFL stocks, MSY is set equal to the yield produced by F_{MSY} or the F_{MSY} proxy ($F_{30\neq SPR}$) and MSST is set equal to 75 percent of SSB_{MSY}. Specifying separate hogfish stocks, as well as management reference points (MSY and MSST) for those stocks, is not expected to directly alter the current harvest of the hogfish resource. Therefore, these changes are not expected to have any direct economic effects on any small entities. They do, however, influence other components of this final rule that are expected to have direct economic effects.

This final rule also establishes a total ACL of 33,930 lb (15,390 kg) for the GA/NC stock of hogfish, which is equal to 95 percent of the ABC recommended by the Council's SSC. Using the existing allocation formula specified in the Comprehensive ACL Amendment and landings data specific to the GA/NC stock area, the commercial ACL for the GA/NC stock of hogfish will be set constant at 23,456 lb (10,639 kg). Based on average annual landings for 2012 through 2014 off Georgia through North Carolina, the commercial sector would be expected to land only 20,534 lb (9,314 kg) under the status quo in 2017, with an estimated ex-vessel value of $76,797 (2014 dollars). Because the commercial ACL is greater than the estimated status quo commercial landings for 2017, it is not expected to have any short-term direct negative economic effects on commercial vessels. Due to increasing uncertainty as projections extend further into the future, status quo commercial landings estimates for years subsequent to 2017 were not calculated. The commercial ACL for the GA/NC stock in this final rule provides the potential for landings to increase by 2,922 lb (1,325 kg) relative to average historical commercial landings (2012 through 2014). Using the average annual hogfish price per pound from 2012 through 2014, this represents a potential increase in ex-vessel revenue of $10,928 (2014 dollars) overall. Divided by the average number of commercial vessels that harvested hogfish in the GA/NC stock area from 2010 through 2014, this would be an increase of approximately $176 per vessel.

In addition, Amendment 37 establishes a rebuilding plan, beginning in 2017, for the FLK/EFL stock, which sets ABC equal to the yield at a constant fishing mortality rate and rebuilds the stock in 10 years with a 72.5 percent probability of rebuilding success. This rebuilding plan provides the basis for setting ACLs but does not directly alter the current harvest of the hogfish resource. Therefore, it is not expected to have direct economic effects on any small entities.

This final rule also establishes a total ACL, in numbers of fish, for the FLK/EFL stock of hogfish for 2017 through 2027. The total ACL each year will be set equal to 95 percent of the ABC values specified in the rebuilding plan. In 2017, the total ACL will be 17,034 fish and will increase each year until reaching 60,130 fish in 2027. Using the existing allocation formula specified in the Comprehensive ACL Amendment and landings data specific to the FLK/EFL stock area, the commercial ACL for the FLK/EFL stock of hogfish will be set at 3,510 lb (1,592 kg) in 2017 and will increase each year until reaching 17,018 lb (7,719 kg) in 2027. In Amendment 37, a time series model was fit to historical landings data (1997 through 2014) for the FLK/EFL stock area in order to project commercial landings under the status quo in 2017. The commercial sector would be expected to land an estimated 20,380 lb (9,244 kg) of hogfish under the status quo in 2017, worth $76,213 (2014 dollars). Due to increasing uncertainty as projections extend further into the future, status quo commercial landings estimates for years subsequent to 2017 were not calculated. Assuming the commercial ACL for FLK/EFL hogfish is harvested in full, it will represent a reduction in ex-vessel revenue of $63,086 (2014 dollars), or 83 percent, relative to estimated 2017 status quo revenue. This assumes that ex-vessel revenue from other commercially harvested species will not be substituted for the loss in hogfish revenue. Dividing the aforementioned reduction in ex-vessel revenue by the average number of commercial vessels that harvested hogfish in the FLK/EFL stock area from 2010 through 2014, results in a decrease of approximately $819 (2014 dollars) per vessel. NMFS assumes that ex-vessel revenue from FLK/EFL hogfish will increase relative to the annual increases in the commercial ACL from 2017 through 2027, and NMFS expects the negative economic effects of this final rule on commercial vessels to decrease each year after 2017.

This final rule increases the commercial minimum size limit for both stocks of hogfish as well. The minimum size limit for the GA/NC stock is increased from 12 inches (30.5 cm), FL, to 17 inches (43.2 cm), FL, and the minimum size limit for the FLK/EFL stock is increased from 12 inches (30.5 cm), FL, to 16 inches (40.6 cm), FL.

The minimum size limit increase in this final rule for the GA/NC stock was estimated to reduce commercial landings by only 406 lb (184 kg) in 2017. This translates into a $1,478 (2014 dollars) reduction in ex-vessel revenue overall, or $24 per vessel. This assumes that ex-vessel revenue from other species will not be substituted for the loss in hogfish revenue. Under the commercial ACL for GA/NC hogfish, the season is expected to be open year-round and is not expected to change as a result of the minimum size limit. Assuming effort, harvest rates, and hogfish prices remain constant, then the expected economic effects of the minimum size limit in future years will be equivalent to those of 2017.

For the FLK/EFL stock, the minimum size limit increase is not expected to reduce aggregate commercial landings or ex-vessel revenue in 2017. This assumes that ex-vessel hogfish prices will be unresponsive to temporal changes in landings. In subsequent years, as the commercial ACL for the FLK/EFL stock increases, the minimum size limit in this final rule will be more likely than the status quo minimum size limit to prevent the full harvest of the commercial ACL and result in a reduction in aggregate ex-vessel revenue. Under the minimum size limit of 16 inches (40.6 cm), FL, the 2017 fishing season is expected to be open 35 days longer than under the current minimum size limit of 12 inches (30.5 cm), FL. Because fewer legal-sized fish will be available for harvest, this final rule may increase harvest costs, and in turn, reduce profitability for some vessels. Conversely, a longer season for FLK/EFL hogfish may have positive economic effects for other vessels by expanding the number of species available for harvest later in the fishing year. Individual vessels are expected to experience varying levels of economic effects, depending on their fishing practices, profit maximization strategies, and ability to substitute revenue from other species for hogfish revenue. These economic effects cannot be estimated with available data.

This final rule also establishes commercial trip limits for each stock of hogfish. The commercial trip limit is set at 500 lb (227 kg) for the GA/NC stock and 25 lb (11 kg) for the FLK/EFL stock. Currently, there is no commercial trip limit for hogfish in the South Atlantic.

For the GA/NC stock, the commercial trip limit was estimated to result in a $4,470 (2014 dollars) decrease in ex-vessel revenue relative to the status quo. This assumes that ex-vessel revenue from other commercially harvested species will not be substituted for the loss in hogfish revenue. Based on historical harvest rates for 2012 through 2014, it is expected that the commercial trip limit of 500 lb (227 kg) will only affect spearfishing trips. On average (2010 through 2014), there were 11 vessels with Federal commercial snapper-grouper permits that reported taking at least 1 hogfish trip in the GA/NC stock area, where the majority of revenue from that trip was attributed to spearfishing. The average annual revenue from all species from 2010 through 2014 for these vessels was $61,479 (2014 dollars). If the estimated reduction in ex-vessel revenue was borne entirely by these vessels, it would result in a loss of $406 per vessel, or less than 1 percent of their average annual revenue from all species from 2010 through 2014. When the commercial trip limit and minimum size limit for the GA/NC stock in this final rule are analyzed together, the combined effect on all vessels that fish for hogfish in the corresponding stock area is estimated to be a reduction in aggregate ex-vessel revenue of $5,741 (2014 dollars).

For the FLK/EFL stock, the commercial trip limit in this final rule is not expected to reduce aggregate commercial landings or ex-vessel revenue in 2017. This conclusion assumes that prices will not change as a result of a change in the timing of landings. In subsequent years, as the commercial ACL for the FLK/EFL stock increases, the commercial trip limit of 25 lb (11 kg) will be more likely to prevent full harvest of the commercial ACL and result in a reduction in ex-vessel revenue relative to no trip limit. Under the commercial trip limit, the 2017 fishing season is expected to be open 33 days longer than what would be expected under the commercial ACL of 3,510 lb (1,592 kg) with no commercial trip limit implemented. Because more trips will be required to harvest the same amount of fish, the commercial trip limit could reduce profitability for some vessels. Conversely, a longer commercial fishing season in the FLK/EFL stock area may have positive economic effects for other vessels by expanding the number of species available for harvest later in the fishing year. On average (2010 through 2014), 37 vessels with Federal commercial snapper-grouper permits took at least 1 trip with hogfish landings in excess of 25 lb (11 kg). Trips with hogfish landings in excess of 25 lb (11 kg) accounted for approximately 28 percent of all hogfish trips reported for the FLK/EFL stock area, on average, from 2010 through 2014. Approximately 66 percent of these were spearfishing trips, 23 percent were trips that used hook-and-line gear, and the remaining 11 percent were trips that used other fishing gear types. Historically (2012 through 2014), 10.1 percent of hogfish landings on hook-and-line trips and approximately 29.4 percent of hogfish landings on spearfishing trips were harvested on trips in excess of the 25 lb (11 kg) commercial trip limit in this final rule. These statistics suggest that spearfishing trips may be more adversely affected, on average, by the commercial trip limit than hook-and-line trips. However, specific economic effects estimates categorized by fishing gear are not currently available due to the high degree of model uncertainty at the gear level. Individual vessels are expected to experience varying levels of economic effects, depending on their fishing practices, profit maximization strategies, and ability to substitute other species revenue for hogfish revenue. These economic effects cannot be estimated with available data.

Finally, this final rule establishes commercial AMs for the GA/NC and the FLK/EFL stocks of hogfish. These AMs will close the commercial sector for the applicable hogfish stock for the remainder of the fishing year if commercial landings of the applicable stock reach, or are projected to reach, the respective commercial ACL. Additionally, if the commercial ACL is exceeded, NMFS will reduce the stock-specific commercial ACL in the following fishing year by the amount of the commercial ACL overage, only if hogfish is overfished and the total ACL (commercial ACL and recreational ACL) for the respective stock is exceeded. The AMs in this final rule are the same as the previous commercial AMs that were in place for the single hogfish stock in the South Atlantic. NMFS assumes that the commercial AMs in this final rule will maintain landings within the commercial ACL for each stock, so no direct economic effects, aside from those already discussed under the ACLs in this final rule, are expected to occur. If the AMs do not maintain commercial landings at or below the commercial ACL, then there will be an increase in ex-vessel revenue in the fishing year the AMs are triggered and the commercial sector closes. Additionally, if the conditions are met for a reduction in the following year's commercial ACL by the amount of the commercial ACL overage, a reduction in ex-vessel revenue in the following fishing year would be expected. The status of the GA/NC stock is currently unknown, so both conditions necessary for a reduction in the following year's commercial ACL

will not be met and this provision will only affect the FLK/EFL stock. Because of the timeliness of commercial landings data for federally-permitted vessels, overages and corresponding economic effects will likely be small, should they occur.

In summary, when all of the hogfish management changes in this final rule are analyzed together, in the 2017 fishing year they will result in an estimated reduction in ex-vessel revenue of $5,741 (2014 dollars) for all vessels combined that harvest hogfish from the GA/NC stock and $63,086 for all vessels combined that harvest hogfish from the FLK/EFL stock. The changes to the minimum size limit and commercial trip limit also have the potential to reduce profitability by increasing harvest costs, although these economic effects cannot be estimated with available data. In fishing years subsequent to 2017, if hogfish landings from the GA/NC stock increase to reach the commercial ACL, the increase in landings would offset the loss in revenue from the new minimum size limit and commercial trip limit, and would generate an increase in ex-vessel revenue of $5,187 (2014 dollars). For the vessels that harvest hogfish from the FLK/EFL stock, NMFS assumes that ex-vessel revenue from hogfish will increase relative to the annual increases in the commercial ACL from 2017 through 2027. This will lessen the negative economic effects of this final rule on commercial vessels each year.

The following discussion describes the alternatives that were not selected as preferred by the South Atlantic Council.

The actions to designate two separate stocks of hogfish in the South Atlantic, set management reference points (MSY and MSST) for those stocks, and establish a rebuilding plan for the FLK/EFL stock of hogfish are not expected to have any direct economic effects on any small entities, and therefore, the issue of significant alternatives is not relevant.

Two alternatives were considered for the action to specify a stock ACL and OY for the GA/NC stock of hogfish. The first alternative, the no action alternative, would retain the single South Atlantic-wide hogfish stock ACL and would not be expected to alter current harvest or use of the resource. This alternative was not selected by the South Atlantic Council because it would not adhere to the best scientific information available from the most recent hogfish stock assessment. The second alternative is the preferred alternative, which establishes a stock ACL specific to the GA/NC stock of hogfish. This alternative includes three sub-alternatives. The first sub-alternative would set the ACL equal to OY, where OY equals ABC. This sub-alternative would result in a commercial ACL for the GA/NC hogfish stock of 24,690 lb (11,199 kg), which is approximately 5 percent greater than the commercial ACL in this final rule. Because status quo landings are not expected to exceed any of the sub-alternative commercial ACL values in the short term, the first sub-alternative would not be expected to have any direct economic effects. However, it would allow for greater potential landings and ex-vessel revenue in the future compared to the preferred alternative in this final rule. The first sub-alternative was not selected as preferred by the South Atlantic Council, because the Council determined it was prudent to include a buffer in the GA/NC stock ACL to account for management uncertainty. The second sub-alternative is the preferred sub-alternative in this final rule and it sets the GA/NC stock ACL equal to OY, where OY equals 95 percent of ABC. The third sub-alternative would set the GA/NC stock ACL equal to OY, where OY equals 90 percent of ABC. This sub-alternative would result in a GA/NC stock ACL that is approximately 5 percent less than the GA/NC stock ACL included in this final rule. Based on projected landings for 2017, this would not be expected to have direct economic effects on small entities; however, the potential for future increases in ex-vessel revenue would be less than under this final rule. Because allowable harvest and potential ex-vessel revenue would be lower than that under the preferred alternative, this alternative was not selected by the South Atlantic Council.

Two alternatives were considered for the action to specify commercial and recreational ACLs and OY for the FLK/EFL stock of hogfish. The first alternative, the no action alternative, would retain the single South Atlantic-wide hogfish stock ACL and would not be expected to alter current harvest or use of the resource. This alternative was not selected by the South Atlantic Council, because it would not adhere to the best scientific information available from the most recent hogfish stock assessment. The second alternative is the preferred alternative, which establishes commercial and recreational ACLs specific to the FLK/EFL stock of hogfish. This alternative includes three sub-alternatives. The first sub-alternative would set the ACL equal to OY, where OY equals ABC. The commercial ACL for the FLK/EFL stock would be 3,695 lb (1,676 kg) in 2017, and would increase annually up to 17,914 lb (8,126 kg) in 2027. Under the first sub-alternative, the commercial ACL would be approximately 5 percent greater each year than under the preferred sub-alternative. Assuming the entire commercial ACL is harvested annually, hogfish landings and ex-vessel revenue would also be 5 percent greater under the first sub-alternative than under the preferred sub-alternative. As such, the first sub-alternative would be expected to have less negative economic effects on small entities than this final rule.

However, it was not selected as preferred by the South Atlantic Council, because they determined it was prudent to include a buffer in the FLK/EFL stock ACL to account for management uncertainty. The second sub-alternative is the preferred sub-alternative, which sets the FLK/EFL stock ACL equal to OY, where OY equals 95 percent of ABC. The third sub-alternative would set the FLK/EFL stock ACL equal to OY, where OY equals 90 percent of ABC. This sub-alternative would result in commercial and recreational ACLs that are approximately 5 percent less each year than under the preferred sub-alternative and, therefore, would be expected to have more direct negative economic effects on small entities than this final rule. Because allowable harvest and expected ex-vessel revenue would be lower than that under the preferred alternative, this alternative was not selected by the South Atlantic Council.

Three alternatives were considered for the action to increase the commercial and recreational minimum size limits for the GA/NC and FLK/EFL stocks of hogfish. The first alternative, the no action alternative, would retain the South Atlantic-wide hogfish minimum size limit of 12 inches (30.5 cm), FL, for both sectors. This would not be expected to alter commercial harvest rates relative to the status quo, so no direct economic effects to small entities would be expected to occur. This alternative was not selected by the South Atlantic Council, because it would fail to acknowledge important biological differences between the two stocks of hogfish, as well as stock-specific management needs.

The second alternative, which was selected as preferred, increases the commercial and recreational minimum size limit for the GA/NC stock. The second alternative contains six sub-alternatives. The first sub-alternative would increase the minimum size limit from 12 inches (30.5 cm), FL, to 16 inches (40.6 cm), FL. This would be expected to result in an annual

reduction in commercial ex-vessel revenue of only $479 (2014 dollars), which is $1,041 less than the reduction expected under the minimum size limit in this final rule. This sub-alternative was not selected as preferred because it would be expected to result in fewer hogfish reaching sexual maturity, fewer hogfish transitioning to males, and more negative biological effects than the minimum size limit in this final rule. The second sub-alternative is the preferred sub-alternative, which sets the commercial and recreational minimum size limit for the GA/NC stock at 17 inches (43.2 cm), FL. The third through the fifth sub-alternatives would set the commercial and recreational minimum size limit at 18, 19, and 20 inches (45.7, 48.3, and 50.8 cm), FL, respectively. These sub-alternatives were not selected because they would be expected to result in a greater decrease in commercial ex-vessel revenue than the minimum size limit in this final rule. The sixth sub-alternative would set the commercial and recreational minimum size limit at 15 inches (38.1 cm), FL, in the first year of implementation, 18 inches (45.7 cm), FL, in the second year, and 20 inches (50.8 cm), FL, in the third year. This sub-alternative would be expected to have a smaller direct negative economic effect on small entities than the minimum size limit in this final rule in the first year of implementation only, and a larger direct negative economic effect thereafter. The sixth sub-alternative was not selected by the South Atlantic Council, because there was little public support for step-up size limit increases, and it would not aid in simplifying regulations.

The third alternative, also selected as preferred, increases the commercial and recreational minimum size limit for the FLK/EFL stock. The third alternative contains five sub-alternatives. The first and second sub-alternatives would increase the commercial and recreational minimum size limit to 14 and 15 inches (35.6 and 38.1 cm), FL, respectively. These sub-alternatives would not be expected to affect aggregate ex-vessel revenue in the short-term; however, by allowing for potentially higher catch rates, they would be less likely to negatively affect profitability than the minimum size limit in this final rule. The specific effects on profitability cannot be estimated with available data. These sub-alternatives were not selected by the South Atlantic Council, because they would be expected to result in fewer hogfish reaching sexual maturity, fewer hogfish transitioning to males, and more negative biological effects than the minimum size limit in this final rule. The third sub-alternative is the preferred sub-alternative, which increases the commercial and recreational minimum size limit to 16 inches (40.6 cm), FL. The fourth sub-alternative would increase the minimum size limit to 17 inches (43.2 cm), FL, which would be more likely to negatively affect profitability than the minimum size limit in this final rule and, therefore, was not selected as preferred. The fifth sub-alternative would set the commercial and recreational minimum size limit at 14 inches (35.6 cm), FL, in the first year of implementation and 16 inches (40.6 cm), FL, in the third year. This sub-alternative would provide for a more gradual increase in the minimum size limit up to 16 inches (40.6 cm), FL, which would be expected to have less negative economic effects than the minimum size limit in this final rule in the first 2 years of implementation and equivalent effects in the third year and beyond. The fifth sub-alternative was not selected by the Council, because it would have fewer immediate biological benefits to the FLK/EFL hogfish stock, which is currently overfished.

Three alternatives were considered for the action to establish commercial trip limits for the GA/NC and FLK/EFL stocks of hogfish. Under the first alternative, the no action alternative, there would be no commercial trip limit specified for either stock. This would not be expected to alter commercial harvest rates relative to the status quo, so no direct economic effects to small entities would be expected to occur. This alternative was not selected by the South Atlantic Council, because they decided it was necessary to implement stock-specific commercial trip limits in order to successfully maintain commercial landings of hogfish within the commercial ACL and to end overfishing of the FLK/EFL stock.

The second alternative, which was selected as preferred, establishes a commercial trip limit for the GA/NC stock. The second alternative contains five sub-alternatives. The first and second sub-alternatives would set the commercial trip limit at 100 lb (45 kg) and 250 lb (113 kg), respectively, which would be expected to reduce aggregate annual landings and ex-vessel revenue by 43 percent and 19 percent, respectively. These reductions in ex-vessel revenue would be larger than what would be expected under the commercial trip limit in this final rule and, thus, the first and second sub-alternatives were not selected. The third sub-alternative was selected as preferred and it sets the commercial trip limit at 500 lb (227 kg), which was estimated to reduce ex-vessel revenue by 6 percent. The fourth sub-alternative would set the commercial trip limit at 700 lb (318 kg). This sub-alternative would be expected to reduce ex-vessel revenue by only 3 percent, which would translate into $2,287 (2014 dollars) more in aggregate ex-vessel revenue than under the commercial trip limit in this final rule. The fifth sub-alternative would not specify a commercial trip limit, which would be expected to have no effect on status quo hogfish landings or ex-vessel revenue. Under the fifth sub-alternative, ex-vessel revenue would be $4,470 (2014 dollars) greater than what would be expected under the commercial trip limit for the GA/NC stock in this final rule. The fourth and fifth sub-alternatives were not selected as preferred because the South Atlantic Council chose to take a precautionary approach to setting the commercial trip limit for the GA/NC stock in order to prevent effort shifts as a result of more stringent commercial regulations needed to end overfishing of the FLK/EFL stock. Additionally, the vast majority of commercial trips in Georgia and the Carolinas do not land more than 500 lb (227 kg) of hogfish per trip.

The third alternative, also selected as preferred, establishes a commercial trip limit for the FLK/EFL stock. The third alternative contains six sub-alternatives. The first sub-alternative was selected as preferred and it sets the commercial trip limit at 25 lb (11 kg). Sub-alternatives 2 through 5 would set the commercial trip limit at 50 lb (23 kg), 100 lb (45 kg), 150 lb (68 kg), and 200 lb (91 kg), respectively. The sixth sub-alternative would not specify a commercial trip limit. These sub-alternatives for commercial trip limits would not be expected to affect aggregate ex-vessel revenue in the short term, given the low commercial ACL for the FLK/EFL stock included in this final rule. However, for each incremental increase in the commercial trip limit, the likelihood of direct negative effects on profitability would be reduced. Because of the commercial ACL increases included in this final rule, sub-alternatives 2 through 6 may provide for greater aggregate annual ex-vessel hogfish revenue and increased profitability on hogfish trips in the medium to long term, relative to the commercial trip limit in this final rule. These economic effects cannot be estimated with available data. However, sub-alternatives 2 through 6 were not selected by the South Atlantic Council because, given the overfished status of the FLK/EFL stock, the South Atlantic

Council wanted to be conservative in setting the commercial trip limit in order to end overfishing and prevent commercial ACL overages.

Four alternatives were considered for the action to establish commercial and recreational AMs for the GA/NC and the FLK/EFL stocks of hogfish. The first alternative, the no action alternative, would retain the AMs for the single South Atlantic-wide hogfish stock for both sectors. This alternative was not selected by the South Atlantic Council because stock-specific AMs would be required to ensure landings are maintained within the commercial ACL for each stock. The second alternative was selected as preferred and it specifies commercial AMs for GA/NC and FLK/EFL stocks that are equivalent to the existing AMs for the single South Atlantic stock. The third and fourth alternatives pertain exclusively to recreational anglers and therefore no direct economic effects on any small entities would be expected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. The agency shall explain the actions that a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

Changes to Codified Text From the Proposed Rule

In response to public comment, NMFS includes additional language in part 622 regulations to clarify the commercial trip limit when harvesting Florida Keys/East Florida hogfish in the Gulf EEZ. This final rule adds language in § 622.191 to clarify the applicability of the commercial trip limit when vessels fish for hogfish in the Gulf EEZ between 25°09′ N. lat. off the west coast of Florida and the Councils' jurisdictional boundary, as specified in § 600.105(c).

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf of Mexico, Hogfish, Recreational, South Atlantic.

Dated: July 19, 2017.

Chris Oliver,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.1, revise the Table 1 entry for ''FMP for the Snapper-Grouper Fishery of the South Atlantic Region'', and add footnote 8 to Table 1 to read as follows:

§ 622.1 Purpose and scope.

* * * * *

TABLE 1 TO § 622.1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* * *	* * *	* *
FMP for the Snapper-Grouper Fishery of the South Atlantic Region.	SAFMC	South Atlantic.[1 2 6 8]
* * *	* * *	* *

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.

[2] Black sea bass and scup are not managed by the FMP or regulated by this part north of 35°15.9′ N. lat., the latitude of Cape Hatteras Light, NC.

* * * * * * *

[6] Nassau grouper in the South Atlantic EEZ and the Gulf EEZ are managed under the FMP.

* * * * * * *

[8] Hogfish in the Gulf EEZ are managed under the FMP from the South Atlantic and Gulf of Mexico intercouncil boundary specified in § 600.105(c) and south of 25°09′ N. lat. off the west coast of Florida. Hogfish in the remainder of the Gulf EEZ are managed under the FMP for the Reef Fish Resources of the Gulf of Mexico.

■ 3. In § 622.183, add paragraph (b)(4) to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(4) Hogfish recreational sector off the Florida Keys and east coast of Florida. From January through April and from November through December each year, the recreational harvest or possession of hogfish in or from the South Atlantic EEZ off the Florida Keys and east coast of Florida, and in the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida is prohibited, and the bag and possession limits are zero.

* * * * *

■ 4. In § 622.185, revise paragraph (c)(3) to read as follows:

§ 622.185 Size limits.

* * * * *

(c) * * *

(3) *Hogfish.* (i) In the South Atlantic EEZ off Georgia, South Carolina, and North Carolina—17 inches (43.2 cm), fork length.

(ii) In the South Atlantic EEZ off the Florida Keys and east coast of Florida, and in the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida—16 inches (40.6 cm), fork length.

* * * * *

■ 5. In § 622.187, revise paragraph (b)(3) to read as follows:

§ 622.187 Bag and possession limits.

* * * * *

(b) * * *

(3) *Hogfish.* (i) In the South Atlantic EEZ off Georgia, South Carolina, and North Carolina—2.

(ii) In the South Atlantic EEZ off the Florida Keys and east coast of Florida, and in the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida—1.

* * * * *

■ 6. In § 622.191, add paragraph (a)(12) and paragraph (b) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(12) *Hogfish.* (i) Until the commercial ACL specified in § 622.193(u)(1)(iii)(A) is reached or is projected to be reached off Georgia, South Carolina, and North Carolina, 500 lb (227 kg), round weight.

(ii) Until the commercial ACL specified in § 622.193(u)(2)(iii)(A) is reached or is projected to be reached off the Florida Keys and east coast of Florida, and south of 25°09′ N. lat. off the west coast of Florida, 25 lb (11 kg), round weight.

(iii) See § 622.193(u)(1)(i) or (u)(2)(i) for the limitations regarding hogfish after a commercial ACL is reached.

(b) When a vessel fishes for hogfish on a trip in the Gulf EEZ south of 25°09′ N. lat. off the west coast of Florida, the vessel trip limit specified in paragraph (a)(12)(ii) of this section applies, provided persons aboard are not subject to the bag limit. See § 622.11(a) and § 622.187(a) for applicability of the bag limit.

■ 7. In § 622.193, revise paragraph (u) to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(u) *Hogfish*—(1) *Hogfish off Georgia, South Carolina, and North Carolina (Georgia-North Carolina)*—(i) *Commercial sector.* (A) If commercial landings for the Georgia-North Carolina hogfish stock, as estimated by the SRD, reach or are projected to reach the commercial ACL specified in paragraph (u)(1)(iii)(A) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of hogfish in or from the South Atlantic EEZ off Georgia, South Carolina, and North Carolina is prohibited, and harvest or possession of this species is limited to the bag and possession limits. These bag and possession limits apply to the Georgia-North Carolina hogfish stock on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(B) If commercial landings for the Georgia-North Carolina hogfish stock, as estimated by the SRD, exceed the commercial ACL specified in paragraph (u)(1)(iii)(A) of this section, and the combined commercial and recreational ACL specified in paragraph (u)(1)(iii)(C) of this section is exceeded during the same fishing year, and the Georgia-North Carolina hogfish stock is overfished based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the commercial ACL for the stock in the following fishing year by the amount of the commercial ACL overage in the prior fishing year.

(ii) *Recreational sector.* (A) If recreational landings for the Georgia-North Carolina hogfish stock, as estimated by the SRD, reach or are projected to reach the recreational ACL specified in paragraph (u)(1)(iii)(B) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year regardless if the stock is overfished, unless NMFS determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limits for hogfish in or from the South Atlantic EEZ off Georgia, South Carolina, and North Carolina are zero.

(B) If recreational landings for the Georgia-North Carolina hogfish stock, as estimated by the SRD, exceed the recreational ACL specified in paragraph (u)(1)(iii)(B) of this section, then during the following fishing year recreational landings will be monitored for a persistence in increased landings. If necessary, the AA will file a notification with the Office of the Federal Register to reduce the length of the following recreational fishing season and recreational ACL in the following fishing year by the amount of the recreational ACL overage if the Georgia-North Carolina hogfish stock is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, and the combined commercial and recreational ACL is exceeded during the same fishing year to ensure recreational landings do not exceed the recreational ACL in the following fishing year. NMFS will use the best scientific information available to determine if reducing the length of the recreational fishing season and recreational ACL is necessary. When a recreational sector is closed as a result of NMFS reducing the length of the following recreational fishing season and ACL, the bag and possession limits for hogfish in or from the South Atlantic EEZ off Georgia, South Carolina, and North Carolina are zero.

(iii) *ACLs for the Georgia-North Carolina stock.* This stock includes hogfish off Georgia, South Carolina, and North Carolina. All weights are given in round weight.

(A) *Commercial ACL*—23,456 lb (10,639 kg).

(B) *Recreational ACL*—988 fish.

(C) The combined commercial and recreational ACL for the Georgia-North Carolina hogfish stock is 33,930 lb (15,390 kg).

(2) *Hogfish off the Florida Keys and east coast of Florida, and south of 25°09′ N. lat. off the west coast of Florida (Florida Keys-East Florida)*—(i) *Commercial sector.* (A) If commercial landings for the Florida Keys-East Florida hogfish stock, as estimated by the SRD, reach or are projected to reach the applicable commercial ACL specified in paragraph (u)(2)(iii)(A) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of hogfish in or from the EEZ off the Florida Keys and east coast of Florida, and south of 25°09′ N. lat. off the west coast of Florida is prohibited, and harvest or possession of this species is limited to the bag and possession limits. These bag and possession limits apply for this hogfish stock on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(B) If commercial landings for the Florida Keys-East Florida hogfish stock, as estimated by the SRD, exceed the applicable commercial ACL specified in paragraph (u)(2)(iii)(A) of this section, and the applicable combined commercial and recreational ACL specified in paragraph (u)(2)(iii)(C) of this section is exceeded during the same fishing year, and the stock is overfished based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the commercial ACL for the stock in the following fishing year by the amount of the applicable commercial ACL overage in the prior fishing year.

(ii) *Recreational sector.* (A) If recreational landings for the Florida Keys-East Florida hogfish stock, as estimated by the SRD, reach or are projected to reach the applicable recreational ACL specified in paragraph (u)(2)(iii)(B) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year regardless if the stock is overfished, unless NMFS determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limits for hogfish in

or from the EEZ off the Florida Keys and east coast of Florida, and south of 25°09′ N. lat. off the west coast of Florida are zero.

(B) If recreational landings for the Florida Keys-East Florida hogfish stock, as estimated by the SRD, exceed the applicable recreational ACL specified in paragraph (u)(2)(iii)(B) of this section, then during the following fishing year recreational landings will be monitored for a persistence in increased landings. If necessary, the AA will file a notification with the Office of the Federal Register to reduce the length of the following applicable recreational fishing season and recreational ACL in the following fishing year by the amount of the recreational ACL overage if the Florida Keys-East Florida hogfish stock is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, and the applicable combined commercial and recreational ACL is exceeded during the same fishing year to ensure recreational landings do not exceed the recreational ACL in the following fishing year. NMFS will use the best scientific information available to determine if reducing the length of the recreational fishing season and recreational ACL is necessary. When a recreational sector is closed as a result of NMFS reducing the length of the following recreational fishing season and ACL, the bag and possession limits for hogfish in or from the EEZ off the Florida Keys and east coast of Florida, and south of 25°09′ N. lat. off the west coast of Florida are zero.

(iii) *ACLs for the Florida Keys-East Florida stock.* This stock includes hogfish off the Florida Keys and east coast of Florida, and south of 25°09′ N. lat. off the west coast of Florida.

(A) *Commercial ACL.* See the following table. All weights are given in round weight.

Year	Commercial ACL
2017	3,510 lb (1,592 kg).
2018	4,524 lb (2,052 kg).
2019	5,670 lb (2,572 kg).
2020	6,926 lb (3,142 kg).
2021	8,277 lb (3,754 kg).
2022	9,703 lb (4,401 kg).
2023	11,179 lb (5,071 kg).
2024	12,677 lb (5,750 kg).
2025	14,167 lb (6,426 kg).
2026	15,621 lb (7,086 kg).
2027	17,018 lb (7,719 kg).

(B) *Recreational ACL.* See the following table. The recreational ACL is in numbers of fish.

Year	Recreational ACL
2017	15,689
2018	18,617
2019	21,574
2020	25,086
2021	29,096
2022	33,358
2023	37,671
2024	41,934
2025	46,046
2026	49,949
2027	53,610

(C) *Combined commercial and recreational ACL.* See the following table. The combined commercial and recreational ACL is in numbers of fish.

Year	Combined commercial and recreational ACL
2017	17,034
2018	20,350
2019	23,746
2020	27,740
2021	32,267
2022	37,076
2023	41,954
2024	46,791
2025	51,474
2026	55,934
2027	60,130

* * * * *

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FEDERAL REGISTER PAGES AND DATE, JULY

30721–30946 3
30947–31240 5
31241–31428 6
31429–31714 7
31715–31886 10
31887–32122 11
32123–32226 12
32227–32446 13
32447–32612 14
32613–32760 17
32761–32986 18
32987–33438 19
33439–33774 20
33775–34250 21
34251–34382 24
34383–34596 25

CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Ch. VI 32493

3 CFR

Proclamations:
9626 33437
9627 33769

Executive Orders:
12675 (Superseded by EO 13803)
13761 (Amended by 13804) 32611
13803 31429
13804 32611
13805 34383

Administrative Orders:
Memorandums:
Memorandum of June 29, 2017 31237
Memorandum of June 29, 2017 31239
Notices:
Notice of July 19, 2017 33773
Notice of July 20, 2017 34249

5 CFR

1800 32447

Proposed Rules:
630 32263

6 CFR

5 32613

7 CFR

205 31241
956 31244
984 33775

Proposed Rules:
Subtitles A 32649
Subtitles B 32649
986 33829

8 CFR

103 31887
212 31887
214 32988
274a 31887

9 CFR

557 30721

Proposed Rules:
Ch. I 32649
Ch. II 32649
Ch. III 32649

10 CFR

50 32934
72 .....31433, 34387
170 33000
171 33000
429 .....31890, 32227
430 32227
431 .....31808, 31890
1703 30722

Proposed Rules:
72 31512
429 34427
431 34427

12 CFR

1024 30947
1026 30947
1040 .....33002, 33004, 33007
1101 30724
1223 34388

Proposed Rules:
704 30774
930 30776
932 30776
1003 33455
1277 30776
1282 .....31009, 31514

14 CFR

1 34397
13 31440
23 .....32614, 32616, 32618
39 .....30949, 30953, 30955, 30958, 30961, 31245, 31250, 31892, 31899, 31901, 32447, 32620, 32622, 32626, 32629, 33002, 33004, 33007, 33439, 33778, 33780, 33782, 33785, 33787, 34251, 34257, 34259
63 34397
71 .....30964, 31440, 32450, 33790, 33791, 33792, 33794, 33795, 33796, 33798
97 .....32228, 32230
121 34397
125 34397
135 34397
147 34397
170 34397
1264 32123
1271 32123

Proposed Rules:
23 30798
33 30800
39 .....30802, 31535, 32494, 32496, 32498, 32501, 32503, 32507, 32650, 32652, 32654, 32656, 32658, 33465, 34449, 34453
71 .....31030, 31031, 31033, 31034, 32149, 32151, 33833, 33834, 33836, 33837, 34272
73 30805

15 CFR

742 31442

744 31442
772 31442
774 31442
Proposed Rules:
2301 32776

16 CFR

1 30966
803 32123
Proposed Rules:
1245 31035

17 CFR

Proposed Rules:
230 33839

19 CFR

4 32232
10 32232
12 32452
18 32232
113 32232
122 32232
123 32232
141 32232
191 32232
192 32232
Proposed Rules:
24 32661
101 ....30807, 32669
111 32661

20 CFR

404 34400
416 34400
655 32988

21 CFR

1 30730
11 ....30730, 34401
17 34402
73 30731
101 ....30730, 34401
1308 32453
1310 32457
Proposed Rules:
1308 32153

22 CFR

Proposed Rules:
Ch. I 32493

24 CFR

982 ....32461, 32463
983 ....32461, 32463

25 CFR

515 34402

26 CFR

1 33441
31 33441
300 33009
Proposed Rules:
1 ....32281, 33467, 34456
31 33467

28 CFR

Proposed Rules:
Ch. XI 32493

29 CFR

1910 31252
4022 32463
Proposed Rules:
2509 31278
2510 31278
2550 31278

30 CFR

938 31715

31 CFR

Proposed Rules:
1010 31537

32 CFR

706 ....30967, 31717
Proposed Rules:
644 33470

33 CFR

100 ....31449, 31903, 32135, 32241, 33799
117 ....30735, 30736, 30968, 31253, 31254, 31255, 31906, 31907, 32464, 32761, 33448, 33799, 33802, 34404
147 33799
165 ....30736, 30739, 30741, 30743, 30745, 30969, 30971, 30973, 31255, 31257, 31260, 31450, 31452, 31454, 31455, 31719, 31903, 31908, 32135, 32242, 32244, 32246, 32247, 32465, 32467, 32469, 32472, 32632, 32634, 33449, 33451, 33799, 33803, 34261, 34404, 34405, 34407
Proposed Rules:
Ch. I 31545, 31928, 32510, 32513, 32514, 32515, 32779
100 31733
117 ....31036, 32157, 32777
Ch. II 33470

34 CFR

104 31910
105 31910
200 31690
222 31910
299 31690
300 31910
361 31910
373 31910
385 31910
668 ....30975, 31910, 32762
674 31910

36 CFR

Proposed Rules:
312 33470
327 33470
328 33470
330 33470
331 33470

37 CFR

2 33804

38 CFR

17 34408
74 32137
Proposed Rules:
61 34457

39 CFR

233 32474
265 ....30798, 32766
447 33806
3020 32636
Proposed Rules:
3010 31736
3050 ....31929, 31930

40 CFR

52 ....30747, 30749, 30758, 30767, 30770, 30976, 31457, 31458, 31462, 31464, 31722, 31913, 31916, 32474, 32480, 32641, 32644, 32762, 32771, 33012, 33014, 33807
60 32644
61 32644
80 ....32779, 32780
81 ....30976, 31722
82 33809
180 ....30979, 30982, 30987, 30990, 30993, 31468, 31471, 31722, 32482
271 ....32249, 32253
300 ....31263, 32646
441 30997
702 ....33726, 33753
770 ....31267, 31922
Proposed Rules:
52 ....30809, 30812, 30814, 30815, 31546, 31547, 31736, 31739, 31741, 31931, 32282, 32284. 32287, 32294, 32517, 32669, 32671, 32673, 32782, 33026, 33028, 33030, 33032, 33471, 33851
62 32301
80 ....32783, 34206
261 32519
271 ....32303, 32304, 32305
300 31281
770 31932

41 CFR

Proposed Rules:
51-11 33852

42 CFR

71 31728
405 32256
409 ....31729, 32256
410 31729
418 31729
431 ....31158, 32256
440 31729
447 32256
457 31158
482 32256
483 32256
484 31729
485 ....31729, 32256
488 ....31729, 32256
489 32256
Proposed Rules:
88 32312
405 33950
410 33950
413 31190
414 ....31190, 33950
416 33558
419 33558
424 33950
425 33950

43 CFR

8360 31268
Proposed Rules:
3160 34464

44 CFR

64 33453

46 CFR

Ch. I 32488
Proposed Rules:
Ch. I 31545, 31928, 32510, 32511, 32513, 32514, 32515, 32779, 32780
Ch. III 31545, 31928, 32510, 32514, 32515, 32779, 32780

47 CFR

1 ....32260, 33825
25 32260
36 32489
73 ....32260, 33825
74 ....32260, 33825
90 31270
Proposed Rules:
1 31282
32 31282
64 ....31743, 33856, 34471
65 31282

48 CFR

1501 33016
1504 33016
1509 33016
1515 33016
1516 33016
1517 33016
1519 33016
1535 33016
1552 33016
1553 33016
1816 34416
1852 34416
Proposed Rules:
6 32493

49 CFR

269 31476
578 ....32139, 32140
1152 30997
1300 31271
Proposed Rules:
Ch. IV 31545, 31928, 32510, 32511, 32513, 32514, 32515, 32779, 32780

50 CFR

21 34419
92 34263
622 ....31489, 31924, 34573, 34583
635 32490
648 ....31491, 32145, 33827
660 31494
679 ....31925, 32262, 33024
Proposed Rules:
17 33035
648 33036

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List June 30, 2017

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