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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2016–BT–STD–0007]

RIN 1904–AD65

Energy Conservation Program: Energy Conservation Standards for Direct Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final determination.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including direct heating equipment. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this final determination, DOE is finalizing its determination that more-stringent energy conservation standards for direct heating equipment are not economically justified and is therefore not amending its energy conservation standards.

DATES: The effective date of this rule is December 16, 2016.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/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.

A link to the docket Web page can be found at *https://www.regulations.gov/docket?D=EERE-2016-BT-STD-0007.* The docket Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program Staff at (202) 586–6636 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov*

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I. Summary of the Determination

DOE has determined that energy conservation standards should not be amended for direct heating equipment (DHE). DOE has concluded that the DHE market characteristics are largely similar to those analyzed in the previous rulemaking and the technologies available for improving DHE energy efficiency have not advanced significantly since the previous rulemaking analyses [1] (concluding with the publication of a final rule on April 16, 2010, hereafter ''April 2010 Final Rule''). 75 FR 20112. In addition, DOE believes the conclusions reached in the April 2010 Final Rule regarding the benefits and burdens of more stringent standards for DHE are still relevant to the DHE market today. Therefore, DOE has determined that amended energy conservation standards would not be economically justified.

A. Authority

Title III, Part B [2] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Public Law 94–163 (codified at 42 U.S.C. 6291–6309) established the Energy Conservation Program for Consumer Products Other Than Automobiles.[3] This program covers most major household appliances (collectively referred to as ''covered products'') including DHE, which are the subject of this document. (42 U.S.C. 6292 (a)(9)) EPCA prescribed initial energy conservation standards for DHE and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(e)(3) and (4)) DOE is issuing this final determination pursuant to that requirement, in addition to the requirement under 42 U.S.C. 6295(m), which states that DOE must periodically review its already established energy conservation standards for a covered product not later than six years after issuance of any final rule establishing or amending such standards. As a result of such review, DOE must either publish a notice of proposed rulemaking to amend

[1] With the exception of condensing technology for fan-type wall furnaces, discussed in section II.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[3] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act, Public Law 114–11 (April 30, 2015).

the standards or publish a notice of determination indicating that the existing standards do not need to be amended. (42 U.S.C. 6295(m)(1)(A) and (B))

Pursuant to the requirements set forth under EPCA, any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) Moreover, DOE may not prescribe a standard: (1) For certain products, including DHE, if no test procedure has been established for the product,[4] or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

Finally, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for vented home heating equipment address standby mode fossil-fuel energy use only.

B. Background

1. Current Standards

In the April 2010 Final Rule, DOE prescribed the current energy conservation standards for DHE manufactured on and after April 16, 2013. 75 FR 20112. These standards are set forth in DOE's regulations at 10 CFR 430.32(i)(2) and are shown in Table I–1.[5]

TABLE I–1—FEDERAL ENERGY CONSERVATION STANDARDS FOR DHE

[10 CFR 430.32(i)(2)]

Product class	Annual fuel utilization efficiency, April 16, 2013 (percent)
Gas wall fan type up to 42,000 Btu/h	75
Gas wall fan type over 42,000 Btu/h	76
Gas wall gravity type up to 27,000 Btu/h	65
Gas wall gravity type over 27,000 Btu/h up to 46,000 Btu/h	66
Gas wall gravity type over 46,000 Btu/h	67
Gas floor up to 37,000 Btu/h	57
Gas floor over 37,000 Btu/h	58
Gas room up to 20,000 Btu/h	61
Gas room over 20,000 Btu/h up to 27,000 Btu/h	66
Gas room over 27,000 Btu/h up to 46,000 Btu/h	67
Gas room over 46,000 Btu/h	68

2. History of Rulemakings for Direct Heating Equipment

EPCA, as codified, initially set forth energy conservation standards for certain DHE product classes that are the subject of this document and directed DOE to conduct two subsequent rulemakings to determine whether the existing standards should be amended. (42 U.S.C. 6295(e)(3) and (4)) The first of these two rulemakings included both DHE and pool heaters and concluded with the April 2010 Final Rule (codified at 10 CFR 430.32(i) and (k)). 75 FR 20112. With respect to DHE, the first rulemaking amended the energy conservation standards for vented home heating equipment, a subset of DHE, and consolidated some of the product classes from the previous standards established by EPCA. Compliance with the amended standards was required beginning on April 16, 2013. *Id.* DOE did not issue standards for unvented home heating equipment, a subset of DHE, finding that such standards would produce insignificant energy savings. 75 FR 20112, 20130.

This rulemaking satisfies the statutory requirement under EPCA to (1) conduct a second round of review of the DHE

[4] The DOE test procedures for DHE appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix O and 10 CFR part 430, subpart B, appendix G (appendix G).

[5] DOE notes that DHE is defined at 10 CFR 430.2 as vented home heating equipment and unvented home heating equipment; however, the existing energy conservation standards apply only to product classes of vented home heating equipment. There are no existing energy conservation standards for unvented home heating equipment.

standards (42 U.S.C. 6295(e)(4)(B)) and (2) publish either a notice of determination that standards for DHE do not need to be amended or a notice of proposed rulemaking proposing to amend the DHE energy conservation standards (42 U.S.C. 6295(m)(1)). To initiate this rulemaking,[6] DOE issued a Request for Information (RFI) in the **Federal Register** on March 26, 2015 (hereafter ''March 2015 RFI''). 80 FR 15922. Through that RFI, DOE requested data and information pertaining to its planned technical and economic analyses for DHE and pool heaters.

Subsequently, on April 11, 2016, DOE published in the **Federal Register** a Notice of Proposed Determination (April 2016 NOPD) to not amend its energy conservation standards for DHE. 81 FR 21276. Due to the lack of advancement in the DHE industry since the April 2010 Final Rule in terms of product offerings, available technology options and associated costs, and declining shipment volumes, DOE believed that amending the DHE energy conservation standards would impose a substantial burden on manufacturers of DHE, particularly to small manufacturers. DOE also tentatively concluded that energy conservation standards for unvented home heating equipment, a form of DHE, would likely result in negligible energy savings and therefore did not propose standards for this product. In this final determination, DOE finalizes its proposed determination from the April 2016 NOPD.

II. Rationale

A. Previous Rulemaking

In the most recent DOE rulemaking for DHE energy conservation standards, DOE initially proposed standards for vented home heating products in a NOPR published on December 11, 2009 (''December 2009 NOPR'') that represented a six AFUE percentage point (weighted-average across all product classes) increase over the standards established by EPCA and codified at 42 U.S.C. 6295(e)(3). 74 FR 65852 (December 11, 2009). In response to the December 2009 NOPR several commenters presented the following concerns:

- Shipments of DHE were low, therefore energy savings potential was low;
- Low shipments would make it difficult to recoup manufacturers' expenditures related to complying with amended standards;
- Product offerings may be reduced;
- Manufacturers may leave the market entirely; and
- Employment in the industry may be negatively impacted due to reduced product lines and/or insufficient return on investment required to meet amended standards.

In the April 2010 Final Rule, DOE also found that:

- The industry had gone through considerable consolidation, with three businesses controlling the vast majority of the market;
- Consolidation was driven by the decrease in shipments;
- Product lines were predominantly maintained to provide replacements, not new construction; and
- Small business manufacturers could be disproportionately disadvantaged by a more stringent standard due to low shipment volumes and a high ratio of anticipated investment costs to annual earnings.

DOE ultimately rejected TSL 3 and all higher TSLs in the April 2010 Final Rule on the grounds that capital conversion costs would lead to a large reduction in INPV and that small businesses would be disproportionately impacted. DOE also noted that the life-cycle cost (LCC) and payback period analyses (PBP) for TSL 4 and higher suggested that benefits to consumers were outweighed by initial costs. 75 FR 20112, 20215–20218 (April 16, 2010). DOE, therefore, adopted standards at TSL 2 for vented home heating equipment. Compliance with the adopted standards (codified at 10 CFR 430.32(i)(2)) was required for all vented home heating equipment manufactured on or after April 16, 2013.

B. April 2016 Proposal Not To Amend

In the April 2016 NOPD DOE found that few changes to the industry and product offerings had occurred since the April 2010 Final Rule and therefore the conclusions presented in that final rule were still valid. First, DOE conducted a review of the current DHE market, including product literature and product listings in the DOE Compliance Certification Management System (CCMS) database and Air-Conditioning, Heating, and Refrigeration Institute (AHRI) product directory.[7] DOE found that the number of models offered in each of the DHE product classes has decreased overall since the previous rulemaking. This supported the notion that the DHE market was shrinking and that product lines were mainly maintained as replacements for existing DHE units, and that new product lines generally were not being developed.

Second, DOE examined available technologies used to improve the efficiency of DHE. DOE contractors analyzed current products through product teardowns and engaged in manufacturer interviews to obtain further information in support of its analysis. In response to the March 2015 RFI, AHRI commented that the current energy conservation standards are close to if not at the maximum technology level for most product classes of DHE. (Docket EERE–2015–BT–STD–0003: AHRI, No. 7 at p. 4) During confidential manufacturer interviews, DOE received similar feedback regarding the small potential for improving efficiency over current standards for most product classes. Moreover, manufacturers suggested that because these units are primarily sold as replacement units, new designs or prototypes are generally not being pursued. DOE noted in the April 2016 NOPD that the same technology options (namely improved heat exchanger, induced draft, electronic ignition, and a two-speed blower for wall fan-type furnaces) were considered as part of the previous DHE rulemaking analysis, and agreed that the technology options available for DHE likely have limited potential for achieving energy savings.[8] Furthermore, the costs of technology options were anticipated to be similar or higher than in the previous rulemaking analysis due to reduced shipments and therefore the purchasing power of DHE manufacturers.

In addition to these technology options, DOE also noted that a condensing fan-type wall furnace with two input capacities (17,500 Btu/h with a 90.2% AFUE rating, and 35,000 Btu/h with a 91.8% AFUE rating) had become available since the last rulemaking. DOE must set amended standards that result in the maximum improvement in energy efficiency that is technologically feasible (42 U.S.C.

[6] Although the March 2015 RFI and the previous energy conservation standards rulemaking included both DHE and pool heaters, DOE subsequently elected to conduct separate rulemakings for each of these products. This rulemaking pertains solely to the energy conservation standards for DHE.

[7] The AHRI directory for DHE can be found at: *https://www.ahridirectory.org/ahridirectory/pages/dht/defaultSearch.aspx*. The DOE CCMS database can be found at: *http://www.regulations.doe.gov/certification-data/*.

[8] DOE notes that for room heaters with input capacity up to 20,000 Btu/h, the maximum AFUE available on the market increased from 59% in 2009 (only one unit at this input capacity was available on the market at that time) to 71% in 2015. DOE believes that this is due to heat exchanger improvements only because these units do not use electricity. Due to the small input capacity, DOE does not believe that this increase in AFUE (based on heat exchanger improvements relative to input capacity) is representative of or feasible for other room heater product classes.

6295(p)(1)) and economically justified. (42 U.S.C. 6295(o)(2)(A)) DOE generally considers technologies available in the market or in prototype products in its list of technologies for improving efficiency. Therefore, DOE determined that this condensing fan-type wall furnace represented the max-tech efficiency level for fan-type wall furnaces for this rulemaking. DOE received feedback during manufacturer interviews regarding the manufacturer production cost for the condensing unit that indicated that condensing models are significantly more expensive to manufacture than non-condensing models. Manufacturer feedback also indicated that shipments of these units are so low as to be negligible, as consumers are not willing to pay the high initial cost for such products. Furthermore, only one manufacturer currently makes a condensing fan-type wall furnace and others would need to make substantial investments in order to produce these units on a scale large enough to support a Federal minimum standard. Therefore, DOE concluded that this technology option, which was not considered in the analysis for the April 2010 Final Rule, would not be economically justified today when analyzed for the Nation as a whole. DOE believes that severe manufacturer impacts would be expected if an energy conservation standard were adopted at this level.

Finally, DOE acknowledged in the April 2016 NOPD that the DHE industry had seen further consolidation, with the total number of manufacturers declining from six to four. Furthermore, according to manufacturers,[9] shipments further decreased since the April 2010 Final Rule, and therefore it would be more difficult for manufacturers to recover capital expenditures resulting from increased standards. DOE acknowledged that DHE units continue to be produced primarily as replacements and that the market is small, and expected that shipments would continue to decrease and amended standards would likely accelerate the trend of declining shipments. Moreover, DOE anticipated that small business impacts resulting from amended standards could be significant, as two of the four remaining manufacturers subject to DHE standards are small businesses. DOE believed that its conclusions regarding small businesses from the April 2010 Final Rule (*i.e.,* that small businesses would be likely to reduce product offerings or leave the DHE market entirely if the standard was set above the level adopted in that rulemaking) were still valid concerns.

In light of these considerations, DOE proposed in the April 2016 NOPD not to amend its energy conservation standards for DHE. DOE tentatively concluded that amended standards for DHE could not be economically justified based on low and declining shipments, lack of cost-effective technology options, and the potential for severe impacts on small businesses.

C. Comments Received

In response to the April 2016 NOPD, DOE received five comment submissions from Tyler McAnelly (individual), the American Public Gas Association (APGA), the Association of Home Appliance Manufacturers (AHAM), the California Investor Owned Utilities (CA IOUs), and the Air-conditioning, Heating, and Refrigeration Institute (AHRI).[10]

APGA, AHAM, and AHRI supported DOE's tentative determination that amended standards for DHE would not be economically justified. (APGA, No. 4 at p. 1–2; AHAM, No. 5 at p. 2; AHRI, No. 7 at p. 1–2) APGA reiterated that because the market is small, any increase in the standard would result in significant impacts on manufacturers. (APGA, No. 4 at p. 1) AHRI agreed that model offerings had been reduced and suggested that this was a result of the last rulemaking. (AHRI, No. 7 at p. 1) They agreed with DOE's determination that an amended standard set at a condensing efficiency level for fan-type wall furnaces would severely impact manufacturers. (AHRI, No. 7 at p. 1) They also presented their estimates of the percent change in total shipments for the years 2010–2015 compared with the total shipments over the period 2001–2006, estimating that wall furnace shipments were 21% less, direct vent wall furnace (a form of wall furnace) shipments were 31% less, and room heater shipments were 44% less. (AHRI, No. 7 at p. 2)

McAnelly suggested that amended standards for DHE may be technologically feasible, may save a significant amount of energy such that DOE should not wait until such standards are economically justified, and that therefore DOE should consider adopting amended standards for DHE. (McAnelly, No. 3 at p. 1) In response, DOE notes that it is required by statute (42 U.S.C. 6295(o)(2)(A)) to establish energy conservation standards that are both technologically feasible and economically justified, and therefore cannot legally amend standards that cannot be shown to be economically justified based on the seven criteria found at 42 U.S.C. 6295(o)(2)(B).

In response to the April 2016 NOPD, the CA IOUs urged DOE to consider energy conservation standards for portable electric heaters (a form of unvented home heating equipment). They cited reports indicating both a growing market, the overall energy use for these products, and the prevalence of thermostats and their potential to save energy. They also suggested that DOE modify the test procedure for unvented home heating equipment in order to reflect energy savings due to control features like thermostats, occupancy sensors, automatic shut-off, and network capabilities. (CA IOUs, No. 6 at p. 1–2)

The DOE test procedure for unvented home heating equipment (appendix G), includes a calculation of annual energy consumption based on a single assignment of active mode hours for unvented heaters that are used as the primary heating source for the home. For unvented heaters that are not used as the primary heating source for the home, there are no provisions for calculating either the energy efficiency or annual energy consumption. Pursuant to 42 U.S.C. 6295(o)(3) DOE is prohibited from prescribing a new or amended standard for a covered consumer product if a test procedure has not been prescribed for that consumer product. As such, DOE cannot consider standards for these products at this time. DOE may consider amending the test procedures and establishing standards for unvented home heating equipment in the future.

III. Final Determination Not To Amend

DOE did not receive any comments or data suggesting that DOE's initial analysis of the DHE market in the April 2016 NOPD was inaccurate. Therefore, due to the lack of advancement in the DHE industry since the April 2010 Final Rule in terms of product offerings, available technology options and associated costs, and declining shipment volumes, DOE continues to believe that amending the DHE energy conservation standards would impose a substantial burden on manufacturers of DHE, particularly to small manufacturers. DOE rejected higher TSLs during the previous DHE rulemaking due to significant impacts on industry profitability, risks of accelerated industry consolidation, and the likelihood that small manufacturers would experience disproportionate impacts that could lead them to

[9] Information obtained during confidential manufacturer interviews.

[10] All public comment submissions can be found at: *https://www.regulations.gov/docket?D=EERE-2016-BT-STD-0007.*

discontinue product lines or exit the market altogether. DOE believes that the market and the manufacturers' circumstances are similar to those found when DOE last evaluated amended energy conservation standards for DHE for the April 2010 Final Rule. As such, DOE believes that amended energy conservation standards for DHE would not be economically justified at any level above the current standard level because benefits of more stringent standards would not outweigh the burdens. Therefore, DOE has determined not to amend the DHE energy conservation standards.

As discussed in section I.A, EPCA requires DOE to incorporate standby mode and off mode energy use into a single amended or new standard (if feasible) or prescribe a separate standard for standby mode and off mode energy consumption in any final rule establishing or revising a standard for a covered product, adopted after July 1, 2010. (42 U.S.C. 6295(gg)(3)(A)–(B)) Because DOE is not amending standards for DHE in this rule, DOE is not required to adopt amended standards that include standby and off mode energy use. DOE notes that fossil fuel energy use in standby mode and off mode is already included in the AFUE metric, and DOE anticipates that electric standby and off mode energy use is small in comparison to fossil fuel energy use.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This final determination is not subject to review under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993).

B. Review Under the Regulatory Flexibility Act

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

DOE reviewed this final determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. In this final determination, DOE finds that amended energy conservation standards for DHE would not be economically justified at any level above the current standard level because benefits of more stringent standards would not outweigh the burdens. This determination does not establish amended energy conservation standards for DHE. On the basis of the foregoing, DOE certifies that this determination will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an FRFA for this final determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This final determination, which determines that amended energy conservation standards for DHE would not be economically justified at any level above the current standard level because benefits of more stringent standards would not outweigh the burdens, and imposes no new information or record keeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In this final determination, DOE determines that amended energy conservation standards for DHE would not be economically justified at any level above the current standard level because benefits of more stringent standards would not outweigh the burdens. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, codified at 42 U.S.C. 4321 *et seq.* is not required at this time because standards are not being adopted.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. As this final determination determines that amended standards are not likely to be warranted for DHE, there is no impact on the policymaking discretion of the states. Therefore, no action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.* This final determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these UMRA requirements do not apply.

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

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

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this final determination will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

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

K. Review Under Executive Order 13211

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

Because this final determination determines that amended standards for DHE are not warranted, it is not a significant energy action, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' Id. at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www.energy.gov/eere/buildings/peer-review.*

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final determination.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on October 7, 2016.

David J. Friedman,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

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DEPARTMENT OF ENERGY

10 CFR Part 710

[Docket No. DOE–HQ–2012–0001–0274]

RIN 1992–AA36

Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its regulations which set forth the policies and procedures for resolving questions concerning eligibility for DOE access authorization. The revisions update and provide added clarity throughout the regulations, and streamline the process for resolving access authorization eligibility determinations. Additionally, DOE is updating references to DOE Offices and officials to reflect the current DOE organizational structure.

DATES: This rule is effective November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Mark R. Pekrul, Office of Departmental Personnel Security, (202) 586–4097, *mark.pekrul@hq.doe.gov;* or Christina Pak, Office of the General Counsel, (202) 586–4114, *christina.pak@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Comments and Responses
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A. Review Under Executive Order 12866 and 13563
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H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13211
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Approval by the Office of the Secretary of Energy
L. Congressional Notification

I. Background

The Department of Energy is publishing this final rule in order to update and clarify DOE's policies and procedures for the denial and revocation of access authorizations.

10 CFR part 710 had not been substantively updated since 2001 (66 FR 47062, Sept. 11, 2001). Since that time, as the Department has gained operational experience under the existing rule, revisions to update and clarify provisions in the rule became appropriate. On April 19, 2016, DOE issued a notice of proposed rulemaking (NOPR) to propose the updating of part 710 (81 FR 22920). The NOPR proposed amending the existing rule to: (1) Accord primacy to the national Adjudicative Standards when determining eligibility for access authorization; (2) clarify that DOE can, in exigent circumstances, suspend an access authorization without recourse to certain administrative procedures; (3) permit individuals subject to criminal proceedings to suspend access authorization revocation proceedings under this part, subject to certain conditions; (4) limit the ability of the Appeal Panel to consider new evidence on appeal of a decision by the Department's Office of Hearings and Appeals or the Manager to deny or revoke access authorization; (5) introduce a one-year waiting period before an individual, previously the subject of denial or revocation of access authorization, may be reconsidered for access authorization; (6) add to part 710 the requirements of Presidential Policy Directive 19, which provides appeal rights to the Department's Office of Inspector General under certain circumstances; (7) revise, delete, and add definitions for certain terms used in the regulation; and (8) update references to DOE Offices and officials to reflect the current DOE organizational structure.

As described below, DOE makes only a few minor changes to the existing rule that are different than those proposed in the NOPR. Details of those change to the existing rule are summarized in Section II. DOE's responses to public comments received on the NOPR are discussed in Section III.

Laws, regulations and directives which may apply to part 710 include, but are not limited to: The Atomic Energy Act of 1954; Executive Order 13467 (73 FR 38103, June 30, 2008; Executive Order 12968 (60 FR 40245, August 2, 1995, as amended); Executive Order 13526 (75 FR 707, January 5, 2010); Executive Order 10865 (25 FR 1583, February 24, 1960, as amended); Executive Order 10450 (18 FR 2489, April 27, 1954, as amended); Presidential Policy Directive 19 (October 10, 2012).

II. Summary of Comments and Responses

DOE published a NOPR on April 19, 2016 (81 FR 22920), inviting public comments on proposed regulatory changes in the NOPR. In response to the publication of the NOPR, DOE received the following comments:

1. A commenter indicated that the need for the rule is not clearly addressed and that it seems the new rule will slow down rather than streamline the process.

Response: DOE disagrees with both observations. The rule is needed to ensure DOE has an efficient, effective and fair program for determining whether individuals are eligible for access classified matter, and to provide due process procedures for those who are determined ineligible for such access. The rule is also necessary to implement certain existing requirements (see § 710.1, Purpose). Further, in many ways, as described in section II of this final rulemaking, the rule does bring greater efficiencies to the process.

Response: As the commenter failed to provide any specific suggested edits or other indication of language he or she wished changed or added, DOE will not alter the wording of the rule in response to this comment.

2. Another commenter expressed concern with the proposed changes to §§ 710.29 and 710.30 of the previous rule that would limit the introduction of new evidence on appeal. The commenter notes that the changes would not allow for an individual to show continued rehabilitation after the closing of the administrative record. DOE acknowledges that the changes to §§ 710.29 and 710.30 would mean that an individual would not be able to show continued rehabilitation after the closing of the administrative record. However, the DOE does not believe the Appeal Panel is the appropriate venue for the consideration of new evidence, including evidence that may demonstrate continued rehabilitation or reformation. The introduction of new information should be limited to the administrative review hearing where an Administrative Judge can assign proper weight to new information by questioning the individual and other witnesses about the evidence and consulting with the DOE psychologist or psychiatrist, as appropriate, about the relevance and significance of the information. These changes would be consistent with the policies governing the introduction of new evidence during the appeal process at other federal agencies. For example, the Defense Office of Hearings and Appeals (DOHA) makes industrial security clearance determinations for contractor employees of Department of Defense organizations and approximately 20 other federal agencies and organizations. The Appeal Board that decides appeals from decisions issued by DOHA is prohibited from receiving or considering new evidence. Response: Not accepted.

In addition to the foregoing comments, DOE has determined that, for purposes of clarity and consistency with the previous rule, the term ''appeal'' as used in §§ 710.9(e) and 710.21(c)(2) to refer to a federal employee's right to request further review by the Office of the Inspector General (OIG) should be replaced with ''request for review'' or ''review'' since the term ''appeal'' does

not accurately reflect the role of the OIG under part 710. OIG is not an appellate body with authority to correct or order the reversal of a security clearance decision.

III. Section-by-Section Analysis

DOE amends 10 CFR part 710 as follows:

The title of this part is revised to delete the words ''CRITERIA AND'' to reflect the proposed deletion of the criteria in current § 710.8, and because the term ''Procedures'' adequately describes the content of the rule. Additionally, the heading, Subpart A, ''General Criteria and Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material,'' is deleted. Previously, the entire body of this rule was denominated as Subpart A to Part 710. In this revision, each existing undesignated subpart heading is designated as an individual subpart, in accordance with the U.S. Government Printing Office's Document Drafting Handbook.

1. The current heading ''GENERAL PROVISIONS'' located above current § 710.1 is revised to add ''SUBPART A —'' at the beginning.

2. Section 710.1 ''Purpose'' deletes references to the specific types of individuals to which this part applies since this information is set forth in § 710.2; and updates the applicable legal authorities.

3. Section 710.2 ''Scope'' clarifies that determining eligibility for an individual's access authorization requires application of the national Adjudicative Guidelines, and reference to ''criteria'' is deleted.

4. Section 710.3 ''Reference'' deletes the reference to the Atomic Energy Act and replaces it with a reference to the Adjudicative Guidelines.

5. Section 710.4 ''Policy'' replaces the phrase ''criteria for determining eligibility for access authorization and'' with ''procedures'' in paragraph (a) to reflect the deletion of the criteria in current § 710.8. Previous § 710.4(c) is renumbered § 710.32(b)(1). Previous § 710.4(d) is renumbered § 710.32(b)(2). Previous paragraphs (e) and (f) are deleted since the situations addressed in those paragraphs are already covered in the rule. Previous paragraph (g) is renumbered § 710.32(c).

6. In § 710.5 ''Definitions'' a number of new or revised definitions are added. In addition, the terms contained in this section have been re-ordered so that they are listed in alphabetical order; previous § 710.5(b) would be deleted as unnecessary.

The term ''DOE Counsel'' is amended to delete the requirement that such an individual be subject to a favorably adjudicated background investigation. Instead, the requirement that such an individual must hold a DOE Q access authorization, the grant of which is predicated on a favorably adjudicated background investigation, is added.

The term ''Administrative Judge'' is amended in the same fashion and for the same reasons as the definition of ''DOE Counsel,'' and also to delete the requirement that this person be a ''senior management official.''

The term ''Director'' is added and defined as the Director, Office of Departmental Personnel Security, to reflect organizational changes within the DOE's personnel security program.

The terms ''Local Director of Security'' and ''Manager'' are revised to reflect organizational changes throughout DOE.

The term ''national security information'' is deleted as it does not appear anywhere in this rule.

7. The previous heading ''CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL'' located above previous § 710.6 is revised to add ''SUBPART B—'' at the beginning, and to delete ''CRITERIA AND'' to reflect the deletion of the criteria in proposed § 710.8.

8. Section 710.6 ''Cooperation by the individual.''

(1) Paragraph (a)(1) revises the language for clarity but does not change it substantively.

(2) Paragraph (a)(2) updates the reference to polygraph examinations to be consistent with the intent of 10 CFR part 709, and updates terms as in paragraph (a)(1), described above.

(3) Paragraph (b) reflects current DOE organizational structures.

(4) Paragraph (c) clarifies the process by which an individual could appeal decisions taken by DOE under proposed paragraphs (a)(1) and (a)(2).

9. The previous § 710.7 ''Application of the criteria'' removes references to the criteria and clarifies that all determinations of eligibility for access authorization at DOE will be made in accordance with the national Adjudicative Guidelines. DOE has for several decades utilized the criteria previously in § 710.8 to determine eligibility for access authorization. When the national Adjudicative Guidelines were introduced in 1997, DOE began using them in conjunction with the criteria previously in § 710.8. This revision makes all access authorization determinations in reliance solely on the Adjudicative Guidelines. The previous title ''Application of the criteria'' is revised to replace ''criteria'' with ''Adjudicative Guidelines.'' Additionally, the previous § 710.9(a) is renumbered § 710.7(d) to clearly indicate how information obtained by DOE may be considered derogatory under the Adjudicative Guidelines and used to determine access authorization eligibility. The last sentence of the previous § 710.7(a) is moved to the beginning of § 710.7(d) where it more logically fits.

10. Previous § 710.8 ''Criteria'' is removed in its entirety, since exclusive reliance on the national Adjudicative Guidelines for making access authorization eligibility determinations renders this section unnecessary.

11. The previous § 710.9 ''Action on derogatory information'' is renumbered § 710.8.

(1) Previous paragraph (a) is moved to § 710.7(d) as indicated in the discussion of § 710.7.

(2) Paragraph (a)—previously paragraph (b)—removes the specific reference to a DOE mental evaluation as an example of actions that can be taken to resolve derogatory information. Since a mental evaluation is just one of many actions DOE can take to resolve derogatory information, DOE is deleting the example to avoid any misperception that DOE is limited to this action.

(3) Previous paragraph (e) is renumbered as paragraph (d) and is revised to reflect changes in the DOE organizational structure.

12. Previous § 710.10 ''Suspension of access authorization'' is renumbered § 710.9.

(1) Paragraph (b) clarifies that the Department can take immediate action to suspend an individual's access authorization, without taking actions to investigate derogatory information, when there are immediate threats to the national security or to the safety and security of a DOE facility or employee. An individual whose access authorization has been suspended under these circumstances is entitled to due process protections as set forth in part 710 before the Department makes a final decision on the individual's eligibility for access authorization.

(2) Previous paragraph (b) is renumbered as paragraph (c). Paragraph (c) clarifies the responsibilities of the Manager upon the recommendation of a Local Director of Security that an individual's access authorization should be suspended.

(3) Paragraph (e) is added to reflect the requirements of Presidential Policy Directive 19, and provides that a Federal employee who believes action to

suspend his or her access authorization was taken as retaliation for having made a protected disclosure of information may submit a request for review of the decision to the Department's Office of the Inspector General.

13. The previous heading, ''ADMINISTRATIVE REVIEW,'' located above previous § 710.20, is predesignated as Subpart C by adding, ''SUBPART C—'' at the beginning.

14. 710.20 ''Purpose of administrative review'' remains unchanged except for an editorial revision clarifying that the procedures in proposed Subpart C ''govern'' and not just ''establish methods for'' the conduct of administrative review proceedings under this part.

15. Section 710.21 ''Notice to the individual''

(1) Paragraph (b)(7) clarifies that the Administrative Judge has the option of conducting administrative review hearings via video teleconferencing. The use of video teleconferencing for this purpose has been piloted with successful results. Additionally, paragraph (b)(7) includes information previously contained in § 710.34, ''Attorney representation,'' which is deleted. The previous § 710.34 addressed the responsibility of the individual to provide DOE with notice of representation by an attorney, so the substance of § 710.34 fits better in paragraph (b)(7) since it already addresses the individual's right to attorney representation.

(2) Paragraph (b)(8) clarifies that in the event that an individual fails to file a timely written request for a hearing before an Administrative Judge, the Manager shall issue a final decision to revoke or deny an individual's access authorization.

(3) Previous paragraphs (c)(1) and (c)(3) are renumbered as paragraphs (b)(10) and (b)(11), respectively, for better flow.

(4) Paragraphs (b)(12)(i) through (iii) address the rights of individuals who, at the time they receive a notification letter pursuant to § 710.21, are the subject of criminal proceedings for a felony offense or for an offense which is punishable by more than a year in prison. The addition clarifies that individuals in that situation have the right to decide whether to continue with or withdraw from the Administrative Review process. Under the previous rule, the discretion to continue with the Administrative Review process resided with DOE. Under the revision, the individual concerned decides to either (1) proceed with Administrative Review, requiring him/her to participate fully in the process, or (2) withdraw from the Administrative Review process, resulting in the administrative withdrawal of the individual's access authorization. Once the individual's criminal law matter concludes, a request for access authorization could be resubmitted.

(5) Paragraph (c)(2), embodying the requirements of Presidential Policy Directive 19, is added providing that a Federal employee who believes action to deny or revoke access authorization under the Administrative Review process was taken as retaliation for having made a protected disclosure of information may submit a request for review of the decision to the Department's Office of the Inspector General.

16. Section 710.22 ''Initial Decision Process'' clarifies, in paragraph (c)(4), that if the individual does not exercise his/her right to appeal the initial decision of a Manager to deny or revoke access authorization within 30 calendar days of that decision, the Manager's initial decision would become final action not subject to further review or appeal.

17. Section 710.25 ''Appointment of Administrative Judge; prehearing conference; commencement of hearings'' clarifies the authority of the Administrative Judge to conduct hearings via video teleconferencing and shorten the time limit for the Administrative Judge to commence a hearing, from 90 days to 60 days from the date the individual's request for hearing is received by the Office of Hearings and Appeals. This change reflects the DOE Office of Hearings and Appeals' current internal procedures for commencing a hearing.

18. Section 710.26(d) was proposed to be amended to delete ''if possible'' after ''All witnesses shall be subject to cross-examination,'' and add ''except as provided in § 710.26(l)'' in its place. Upon review, the reference to § 710.26(l) is not necessary, so this change is not being made in the revised rule.

19. Section 710.27 ''Administrative Judge's decision'' indicates that the Administrative Judge shall render a decision as to the granting or restoring of an individual's access authorization within 30 calendar days from the date of receipt of the hearing transcript. This change reflects the DOE Office of Hearings and Appeals' current internal procedures for issuing a decision.

20. Section 710.28 ''Action on the Administrative Judge's decision'' clarifies that an Administrative Judge's decision shall constitute final action not subject to review or further appeal if a written request for a review of the decision by the Appeal Panel is not filed within a timely manner with the Director. Additionally, paragraph (c) addresses the process by which the Department may appeal a decision by the Administrative Judge to grant or to continue an individual's access authorization, to comport with the process in previous paragraph (b) which addresses how the individual may appeal a decision by the Administrative Judge to deny or revoke access authorization.

21. Section 710.29 ''Final appeal process'' reflects, in paragraph (e), that an appeal decision would be based solely upon information in the administrative record at the time of the Manager's decision or the Administrative Judge's initial decision. Consequently, previous paragraphs (h), (i) and (j) are deleted in their entirety. Paragraphs (a) through (d) are revised to reflect the current Departmental organization and to more clearly describe the process by which an Appeal Panel is convened. Paragraph (f) is revised to clarify that the Appeal Panel's decision is not subject to further review or appeal.

22. Previous § 710.30 ''New evidence'' is deleted to reflect that an appeal decision is based solely upon information in the administrative record at the time of the Manager's decision or the Administrative Judge's initial decision.

23. Section 710.30 ''Action by the Secretary,'' previously § 710.31 and renumbered § 710.30 in the revised rule, states that the Secretary's responsibilities could be delegated in accordance with Executive Orders 12968 and 10865. Also, references to previous § 710.29(h) and (i) are deleted since those sections are deleted.

24. Section 710.31 ''Reconsideration of Access Eligibility.'' This section, renumbered from § 710.32, provides for a minimum of one year between a final decision to deny or revoke access authorization and the time when an individual may apply for reconsideration. Previously, part 710 contained no time limit and many individuals sought reconsideration within days of receiving a final decision denying or revoking the individual's access authorization. Further, individuals had been permitted to file a request for reconsideration repeatedly, even after previous reconsideration requests have been denied. A one-year time limit conveys clear expectations to the individual as to when a reconsideration request could be accepted and would reduce the undue burden on the Department of considering multiple close-in-time appeals. In addition, paragraph (d) more

clearly describes the reconsideration process.

25. The previous heading, ''TERMINATIONS,'' located above previous § 710.33 is predesignated as Subpart D by adding, ''SUBPART D—'' at the beginning.

26. Section 710.32 ''Terminations.'' This section, is renumbered from § 710.33. Section 710.32(a), previously § 710.33, clarifies that if the procedures of this part are terminated after an unfavorable initial agency decision has been rendered, any subsequent requests for access authorization for an individual would be processed as a review of the decision by the Appeal Panel, unless a minimum of one year has elapsed. Section 710.32(b)(1), previously § 710.4(c), indicates that the type of criminal proceedings for which DOE may take action to terminate processing an access authorization application include felony offenses and offenses punishable by one year of imprisonment or longer. Previously, this threshold was six months; this change to one year is consistent with the one-year time frame in § 710.21. Section 710.32(b)(2) and § 710.32(c), are renumbered from previous § 710.4(d) and (g), respectively.

27. Previous § 710.34 ''Notice to individual'' is deleted. The substance of previous § 710.34 is added to § 710.21.

28. Section 710.33 ''Time frames,'' previously § 710.35, is renumbered as § 710.33.

29. Section 710.34 ''Acting Officials,'' previously § 710.36, reflects organizational changes within the Department and permits the Deputy Associate Under Secretary for Environment, Health, Safety and Security greater flexibility to delegate his/her responsibilities under part 710. Previously, these responsibilities could only be exercised by persons in security-related Senior Executive Service positions. The change permits the Deputy Associate Under Secretary for Environment, Health, Safety and Security to delegate his/her authorities under part 710 to persons in senior security-related positions. It is expected that only persons in GS–15 or Senior Executive Service positions would meet this requirement. This change enhances the Department's ability to effectively manage the Administrative Review process prescribed by part 710.

Appendices

The national Adjudicative Guidelines are Appendix A.

IV. Procedural Requirements

A. Review Under Executive Orders 12866 and 13563

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

DOE has also reviewed the regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that this rule is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

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

has made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov.*

This rule amends procedures that apply to the determination of eligibility of individuals for access to classified information and access to special nuclear material. The rule applies to individuals, and would not apply to ''small entities,'' as that term is defined in the Regulatory Flexibility Act. As a result, the rule does not have a significant economic impact on a substantial number of small entities.

Accordingly, DOE certifies that the rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required.

D. Review Under the Paperwork Reduction Act

This rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the previous rule are strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

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

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking does not impose a Federal mandate on State, local or tribal governments or on the private sector.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well being. This rule, has no impact on family well-being. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

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

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

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

K. Approval by the Office of the Secretary of Energy

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

L. Congressional Notification

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

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear energy.

Issued in Washington, DC, on September 30, 2016.

Elizabeth Sherwood-Randall,

Deputy Secretary.

■ For the reasons set out in the preamble, DOE is revising part 710 of title 10 of the Code of Federal Regulations as set forth below.

PART 710—PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER AND SPECIAL NUCLEAR MATERIAL

Subpart A—General Provisions

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710.2 Scope.
710.3 Reference.
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710.5 Definitions.

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710.33 Time frames.
710.34 Acting officials.

Appendix A—Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 30, 2005)

Authority: 42 U.S.C. 2165, 2201, 5815, 7101, *et seq.,* 7383h–l; 50 U.S.C. 2401 *et seq.;* E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR Chap. IV; E.O. 13526, 3 CFR 2010 Comp., pp. 298–327 (or successor orders); E.O. 12968, 3 CFR 1995 Comp., p. 391.

Subpart A—General Provisions

§ 710.1 Purpose.

(a) This part establishes the procedures for determining the eligibility of individuals described in § 710.2 for access to classified matter or special nuclear material, pursuant to the Atomic Energy Act of 1954, or for access to national security information in accordance with Executive Order 13526 (Classified National Security Information).

(b) This part implements: Executive Order 12968, 60 FR 40245 (August 2, 1995), as amended; Executive Order 13526, 75 FR 707 (January 5, 2010); Executive Order 10865, 25 FR 1583 (February 24, 1960), as amended; Executive Order 10450, 18 FR 2489 (April 27, 1954), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information approved by the President (the ''Adjudicative Guidelines''; see Appendix A of this part).

§ 710.2 Scope.

The procedures outlined in this rule require the application of the Adjudicative Guidelines (see § 710.7) in determining eligibility for access authorization for:

(a) Employees (including consultants) of, and applicants for employment with, contractors and agents of the DOE;

(b) Access permittees of the DOE and their employees (including consultants) and applicants for employment;

(c) Employees (including consultants) of, and applicants for employment with, the DOE; and

(d) Other persons designated by the Secretary of Energy.

§ 710.3 Reference.

The Adjudicative Guidelines are set forth in Appendix A to this part.

§ 710.4 Policy.

(a) It is the policy of DOE to provide for the security of its programs in a manner consistent with traditional American concepts of justice and fairness. To this end, the Secretary has established procedures that will afford those individuals described in § 710.2 the opportunity for administrative review of questions concerning their eligibility for access authorization.

(b) It is also the policy of DOE that none of the procedures established for determining eligibility for access authorization shall be used for an improper purpose, including any attempt to coerce, restrain, threaten, intimidate, or retaliate against individuals for exercising their rights under any statute, regulation or DOE directive. Any DOE officer or employee violating, or causing the violation of this policy, shall be subject to appropriate disciplinary action.

§ 710.5 Definitions.

(a) As used in this part:

Access authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.

Administrative Judge means a DOE attorney appointed by the Director, Office of Hearings and Appeals, pursuant to § 710.25 of this part. An Administrative Judge shall be a U.S. citizen and shall hold a Q access authorization.

Classified matter means the material of thought or expression that is classified pursuant to statute or Executive Order.

Director means the Director, DOE Office of Departmental Personnel Security.

DOE Counsel means a DOE attorney assigned to represent DOE in proceedings under this part. DOE Counsel shall be a U.S. citizen and shall hold a Q access authorization.

Local Director of Security means the individual with primary responsibility for safeguards and security at the Chicago, Idaho, Oak Ridge, Richland, and Savannah River Operations Offices; for Naval Reactors, the individual(s) designated under the authority of the Director of the Naval Nuclear Propulsion Program; for the National Nuclear Security Administration (NNSA), the individual designated in writing by the Chief, Defense Nuclear Security; and for DOE Headquarters cases the Director, Office of Headquarters Personnel Security Operations.

Manager means the senior Federal official at the Chicago, Idaho, Oak Ridge, Richland, or Savannah River Operations Offices; for Naval Reactors, the individual designated under the authority of the Director of the Naval Nuclear Propulsion Program; for the NNSA, the individual designated in writing by the NNSA Administrator or Deputy Administrator; and for DOE Headquarters cases, the Director, Office of Headquarters Security Operations.

Secretary means the Secretary of Energy, as provided by section 201 of the Department of Energy Organization Act.

Special nuclear material means plutonium, uranium enriched in the isotope 233, or in the isotope 235, and any other material which, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, has been determined to be special nuclear material, but does not include source material; or any material artificially enriched by any of the foregoing, not including source material.

(b) [Reserved]

Subpart B—Eligibility for Access to Classified Matter or Special Nuclear Material

§ 710.6 Cooperation by the individual.

(a)(1) It is the responsibility of the individual to provide full, frank, and truthful answers to DOE's relevant and material questions, and when requested, to furnish or authorize others to furnish information that the DOE deems pertinent to the individual's eligibility for access authorization. This obligation to cooperate applies when completing security forms, during the course of a personnel security background investigation or reinvestigation, and at any stage of DOE's processing of the individual's access authorization request, including but not limited to, personnel security interviews, DOE-sponsored mental health evaluations, and other authorized DOE investigative activities under this part. The individual may elect not to cooperate; however, such refusal may prevent DOE from reaching an affirmative finding required for granting or continuing

access authorization. In this event, any access authorization then in effect may be administratively withdrawn or, for applicants, further processing may be administratively terminated.

(2) It is the responsibility of an individual subject to 10 CFR 709.3(d) to consent to and take a polygraph examination required by part 709. A refusal to consent to or take such an examination may prevent DOE from reaching an affirmative finding required for continuing access authorization. In this event, any access authorization then in effect may be administratively withdrawn.

(b) If the individual believes that the provisions of paragraph (a) of this section have been inappropriately applied, the individual may file a written appeal of the action with the Director within 30 calendar days of the date the individual was notified of the action.

(c) Upon receipt of the written appeal, the Director shall conduct an inquiry as to the circumstances involved in the action and shall, within 30 calendar days of receipt of the written appeal, notify the individual, in writing, of his/her decision. If the Director determines that the action was inappropriate, the Director shall notify the Manager that access authorization must be reinstated or, for applicants, that the individual must continue to be processed for access authorization. If the Director determines the action was appropriate, the Director shall notify the individual of this fact in writing. The Director's decision is final and not subject to further review or appeal.

§ 710.7 Application of the adjudicative guidelines.

(a) The decision on an access authorization request is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.

(b) All such determinations shall be based upon application of the Adjudicative Guidelines, or any successor national standard issued under the authority of the President.

(c) Each Adjudicative Guideline sets forth a series of concerns that may create a doubt regarding an individual's eligibility for access authorization. In resolving these concerns, all DOE officials involved in the decision-making process shall consider: The nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

(d) If the reports of investigation of an individual or other reliable information tend to establish the validity and significance of one or more areas of concern as set forth in the Adjudicative Guidelines, such information shall be regarded as derogatory and create a question as to the individual's access authorization eligibility. Absent any derogatory information, a favorable determination will be made as to access authorization eligibility.

§ 710.8 Action on derogatory information.

(a) If a question arises as to the individual's access authorization eligibility, the Local Director of Security shall authorize the conduct of an interview with the individual, or other appropriate actions and, on the basis of the results of such interview or actions, may authorize the granting of the individual's access authorization. If, in the opinion of the Local Director of Security, the question as to the individual's access authorization eligibility has not been favorably resolved, the Local Director of Security shall submit the matter to the Manager with a recommendation that authority be obtained to process the individual's case under administrative review procedures set forth in this part.

(b) If the Manager agrees that unresolved derogatory information is present and that appropriate attempts to resolve such derogatory information have been unsuccessful, the Manager shall notify the Director of the proposal to conduct an administrative review proceeding, accompanied by an explanation of the security concerns and a duplicate Personnel Security File. If the Manager believes that the derogatory information has been favorably resolved, the Manager shall direct that access authorization be granted for the individual. The Manager may also direct the Local Director of Security to obtain additional information prior to deciding whether to grant the individual access authorization or to submit a request for authority to conduct an administrative review proceeding. A decision in the matter shall be rendered by the Manager within 10 calendar days of its receipt.

(c) Upon receipt of the Manager's notification, the Director shall review the matter and confer with the Manager on:

(1) The institution of administrative review proceedings set forth in §§ 710.20 through 710.30;

(2) The granting of access authorization; or

(3) Other actions as the Director deems appropriate.

(d) The Director shall act pursuant to one of these options within 30 calendar days of receipt of the Manager's notification unless an extension is granted by the Deputy Associate Under Secretary for Environment, Health, Safety and Security.

§ 710.9 Suspension of access authorization.

(a) If derogatory information is received, the Local Director of Security shall authorize action(s), to be taken on an expedited basis, to resolve the question pursuant to § 710.8(a). If the question as to the individual's continued access authorization eligibility is not resolved in favor of the individual, the Local Director of Security shall submit the matter to the Manager with the recommendation that the individual's access authorization be suspended pending the final determination resulting from the procedures set forth in this part.

(b) If the information received is determined to represent an immediate threat to national security or to the safety or security of a DOE facility or employee, or is determined to be so serious in nature that action(s) to resolve the matter as set forth in § 710.8(b) are not practical or advisable, the Local Director of Security shall immediately submit the matter to the Manager with a recommendation that the individual's access authorization be suspended pending the final determination resulting from the procedures set forth in this part. The Manager shall either authorize the immediate suspension of access authorization, or shall direct the Local Director of Security to take action(s) as set forth in § 710.8(b), in an expedited manner, to resolve the matter.

(c) The Manager shall, within two working days of receipt of the recommendation from the Local Director of Security to suspend the individual's DOE access authorization:

(1) Approve the suspension of access authorization; or

(2) Direct the continuation of access authorization, or

(3) Take or direct other such action(s) as the Manager deems appropriate.

(d) Upon suspension of an individual's access authorization pursuant to paragraph (c)(1) of this section, the individual, the individual's employer, any other DOE office or program having an access authorization interest in the individual, and, if known, any other government agency where the individual holds an access authorization, security clearance, or access approval, or to which the DOE has certified the individual's DOE access authorization, shall be notified immediately in writing. The appropriate DOE database for tracking access authorizations and related actions shall also be updated. Notification to the individual shall reflect, in general terms, the reason(s) why the suspension has been affected. Pending final determination of the individual's eligibility for access authorization from the operation of the procedures set forth in this part, the individual shall not be afforded access to classified matter, special nuclear material, or unescorted access to security areas that require the individual to possess a DOE access authorization.

(e) Written notification to the individual shall include, if the individual is a Federal employee, notification that if the individual believes that the action to suspend his/her access authorization was taken as retaliation against the individual for having made a protected disclosure, as defined in Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information,* or any successor directive issued under the authority of the President, the individual may submit a request for review of this matter directly to the DOE Office of the Inspector General. Such a request shall have no impact upon the continued processing of the individual's access authorization eligibility under this part.

(f) Following the decision to suspend an individual's DOE access authorization pursuant to paragraph (c)(1) of this section, the Manager shall immediately notify the Director in writing of the action and the reason(s) therefor. In addition, the Manager, within 10 calendar days of the date of suspension (unless an extension of time is approved by the Director), shall notify the Director in writing of his/her proposal to conduct an administrative review proceeding, accompanied by an explanation of its basis and a duplicate Personnel Security File.

(g) Upon receipt of the Manager's notification, the Director shall review the matter and confer with the Manager on:

(1) The institution of administrative review procedures set forth in §§ 710.20 through 710.30; or

(2) The reinstatement of access authorization; or

(3) Other actions as the Director deems appropriate.

(h) The Director shall act pursuant to one of these options within 30 calendar days of the receipt of the Manager's notification unless an extension is granted by the Deputy Associate Under Secretary for Environment, Health, Safety and Security.

Subpart C—Administrative Review

§ 710.20 Purpose of administrative review.

These procedures govern the conduct of the administrative review of questions concerning an individual's eligibility for access authorization when it is determined that such questions cannot be favorably resolved by interview or other action.

§ 710.21 Notice to the individual.

(a) Unless an extension is authorized in writing by the Director, within 30 calendar days of receipt of authority to institute administrative review procedures, the Manager shall prepare and deliver to the individual a notification letter approved by the local Office of Chief Counsel, or the Office of the General Counsel for Headquarters cases. Where practicable, the letter shall be delivered to the individual in person.

(b) The letter shall state:

(1) That reliable information in the possession of DOE has created a substantial doubt concerning the individual's eligibility for access authorization.

(2) The information which creates a substantial doubt regarding the individual's access authorization eligibility (which shall be as comprehensive and detailed as the national security permits) and why that information creates such doubt.

(3) That the individual has the option to have the substantial doubt regarding eligibility for access authorization resolved in one of two ways:

(i) By the Manager, without a hearing, on the basis of the existing information in the case; or

(ii) By personal appearance before an Administrative Judge (a ''hearing'').

(4) That, if the individual desires a hearing, the individual must, within 20 calendar days of the date of receipt of the notification letter, make a written request for a hearing to the Manager from whom the letter was received.

(5) That the individual may also file with the Manager the individual's written answer to the reported information which raises the question of the individual's eligibility for access authorization, and that, if the individual requests a hearing without filing a written answer, the request shall be deemed a general denial of all of the reported information.

(6) That, if the individual so requests, a hearing shall be scheduled before an Administrative Judge, with due regard for the convenience and necessity of the parties or their representatives, for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization. The Administrative Judge shall decide whether the hearing will be conducted via video teleconferencing.

(7) That, if a hearing is requested, the individual will have the right to appear personally before an Administrative Judge or, at the discretion of the Administrative Judge, via video teleconferencing; to present evidence in his/her own behalf, through witnesses, or by documents, or both; and, subject to the limitations set forth in § 710.26(g), to be present during the entire hearing and be accompanied, represented, and advised by counsel or other representative of the individual's choosing and at the individual's own expense at every stage of the proceedings. Such representative or counsel, if applicable, shall be identified in writing to the Administrative Judge and DOE Counsel and authorized by the individual to receive all correspondence, transcripts and other documents pertaining to the proceedings under this part.

(8) That the individual's failure to file a timely written request for a hearing before an Administrative Judge in accordance with paragraph (b)(4) of this section, unless time deadlines are extended for good cause, shall be considered as a relinquishment by the individual of the right to a hearing provided in this part, and that in such event a final decision to deny or revoke the individual's access authorization shall be made by the Manager.

(9) That in any proceedings under this subpart DOE Counsel will participate on behalf of and representing DOE and that any statements made by the individual to DOE Counsel may be used in subsequent proceedings;

(10) The individual's access authorization status until further notice;

(11) The name and telephone number of the designated DOE official to contact for any further information desired concerning the proceedings, including an explanation of the individual's rights under the Freedom of Information Act and Privacy Act;

(12) If applicable, that if the individual is currently the subject of criminal charges for a felony offense or an offense punishable by imprisonment of one year or more, the individual must elect either to continue with the Administrative Review process and have the substantial doubt regarding eligibility for access authorization resolved by the Manager or by a hearing, or to withdraw from the Administrative Review process.

(i) If the individual elects to continue with the Administrative Review process a determination as to the individual's access authorization shall be made by the Manager or by an Administrative Judge via a hearing. The individual will be expected to participate fully in the process. Any refusal to cooperate, answer all questions, or provide requested information may prevent DOE from reaching an affirmative finding required for granting or continuing access authorization.

(ii) If the individual elects to withdraw from the Administrative Review process, the individual's access authorization shall be administratively withdrawn. Such action shall be taken in accordance with applicable procedures set forth in pertinent Departmental directives. Any future requests for access authorization for the individual must be accompanied by documentary evidence of resolution of the criminal charges.

(iii) The individual must, within 20 calendar days of receipt of the notification letter, indicate in writing his/her decision to continue or to withdraw from the Administrative Review process. Such notification must be made to the Manager from whom the notification letter was received.

(c) The notification letter referenced in paragraph (b) of this section shall also:

(1) Include a copy of this part, and

(2) For Federal employees only, indicate that if the individual believes that the action to process the individual under this part was taken as retaliation against the individual for having made a protected disclosure, as defined in Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information,* or any successor directive issued under the authority of the President, the individual may submit a request for review of this matter directly to the DOE Office of the Inspector General. Such a request shall have no impact upon the continued processing of the individual's access authorization eligibility under this part.

§ 710.22 Initial decision process.

(a) The Manager shall make an initial decision as to the individual's access authorization eligibility based on the existing information in the case if:

(1) The individual fails to respond to the notification letter by filing a timely written request for a hearing before an Administrative Judge or fails to respond to the notification letter after requesting an extension of time to do so;

(2) The individual's response to the notification letter does not request a hearing before an Administrative Judge; or

(3) The Administrative Judge refers the individual's case to the Manager in accordance with § 710.25(e) or § 710.26(b).

(b) Unless an extension of time is granted by the Director, the Manager's initial decision as to the individual's access authorization eligibility shall be made within 15 calendar days of the date of receipt of the information in paragraph (a) of this section. The Manager shall either grant or deny, or reinstate or revoke, the individual's access authorization.

(c) A letter reflecting the Manager's initial decision shall be signed by the Manager and delivered to the individual within 15 calendar days of the date of the Manager's decision unless an extension of time is granted by the Director. If the Manager's initial decision is unfavorable to the individual, the individual shall be advised:

(1) Of the Manager's unfavorable decision and the reason(s) therefor;

(2) That within 30 calendar days from the date of receipt of the letter, the individual may file a written request for a review of the Manager's initial decision, through the Director, to the DOE Headquarters Appeal Panel (Appeal Panel);

(3) That the Director may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a review of the case by the Appeal Panel; and

(4) That if the written request for a review of the Manager's initial decision by the Appeal Panel is not filed within 30 calendar days of the individual's receipt of the Manager's letter, the Manager's initial decision in the case shall be final and not subject to further review or appeal.

§ 710.23 Extensions of time by the manager.

The Manager may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a hearing, and/or the time for filing a written answer to the matters contained in the notification letter. The Manager shall notify the Director, in writing, when such extensions have been approved.

§ 710.24 Appointment of DOE Counsel.

(a) Upon receipt from the individual of a written request for a hearing, a DOE attorney shall forthwith be assigned by the Manager to act as DOE Counsel.

(b) DOE Counsel is authorized to consult directly with the individual if he/she is not represented by counsel, or with the individual's counsel or other representative if so represented, to clarify issues and reach stipulations with respect to testimony and contents of documents and physical evidence. Such stipulations shall be binding upon the individual and the DOE Counsel for the purposes of this part.

§ 710.25 Appointment of Administrative Judge; prehearing conference; commencement of hearings.

(a) Upon receipt of a request for a hearing, the Manager shall in a timely manner transmit that request to the Office of Hearings and Appeals, and identify the DOE Counsel. The Manager shall at the same time transmit a copy of the notification letter and the individual's response to the Office of Hearings and Appeals.

(b) Upon receipt of the hearing request from the Manager, the Director, Office of Hearings and Appeals, shall appoint, as soon as practicable, an Administrative Judge.

(c) Immediately upon appointment, the Administrative Judge shall notify the individual and DOE Counsel of his/her identity and the address to which all further correspondence should be sent.

(d) The Administrative Judge shall have all powers necessary to regulate the conduct of proceedings under this part, including, but not limited to, establishing a list of persons to receive service of papers, issuing subpoenas for witnesses to attend the hearing or for the production of specific documents or physical evidence, administering oaths and affirmations, ruling upon motions, receiving evidence, regulating the course of the hearing, disposing of procedural requests or similar matters, and taking other actions consistent with the regulations in this part. Requests for subpoenas shall be liberally granted except where the Administrative Judge finds that the issuance of subpoenas would result in evidence or testimony that is repetitious, incompetent, irrelevant, or immaterial to the issues in the case. The Administrative Judge may take sworn testimony, sequester witnesses, and control the dissemination or reproduction of any

record or testimony taken pursuant to this part, including correspondence, or other relevant records or physical evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(e) The Administrative Judge shall determine the day, time, and place for the hearing and shall decide whether the hearing will be conducted via video teleconferencing. Hearings will normally be held at or near the relevant DOE facility, unless the Administrative Judge determines that another location would be more appropriate. Normally the location for the hearing will be selected for the convenience of all participants. In the event the individual fails to appear at the time and place specified, without good cause shown, the record in the case shall be closed and returned to the Manager, who shall then make an initial determination regarding the eligibility of the individual for DOE access authorization in accordance with § 710.22(a)(3).

(f) At least 7 calendar days prior to the date scheduled for the hearing, the Administrative Judge shall convene a prehearing conference for the purpose of discussing stipulations and exhibits, identifying witnesses, and disposing of other appropriate matters. The conference will usually be conducted by telephone.

(g) Hearings shall commence within 60 calendar days from the date the individual's request for a hearing is received by the Office of Hearings and Appeals. Any extension of the hearing date past 60 calendar days from the date the request for a hearing is received by the Office of Hearings and Appeals shall be decided by the Director, Office of Hearings and Appeals.

§ 710.26 Conduct of hearings.

(a) In all hearings conducted under this part, the individual shall have the right to be represented by a person of his/her own choosing, at the individual's own expense. The individual is responsible for producing witnesses in his/her own behalf, including requesting the issuance of subpoenas, if necessary, or presenting testimonial, documentary, or physical evidence before the Administrative Judge to support the individual's defense to the derogatory information contained in the notification letter. With the exception of procedural or scheduling matters, the Administrative Judge is prohibited from initiating or otherwise engaging in *ex parte* discussions about the case during the pendency of proceedings under this part.

(b) Unless the Administrative Judge finds good cause for deferring issuance of a decision, in the event that the individual unduly delays the hearing, such as by failure to meet deadlines set by the Administrative Judge, the record shall be closed, and an initial decision shall be made by the Manager on the basis of the record in the case per § 710.22(a)(3).

(c) Hearings shall be open only to DOE Counsel, duly authorized representatives of DOE, the individual and the individual's counsel or other representatives, and such other persons as may be authorized by the Administrative Judge. Unless otherwise ordered by the Administrative Judge, witnesses shall testify in the presence of the individual but not in the presence of other witnesses.

(d) DOE Counsel shall assist the Administrative Judge in establishing a complete administrative hearing record in the proceeding and bringing out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Administrative Judge. The individual shall be afforded the opportunity of presenting testimonial, documentary, and physical evidence, including testimony by the individual in the individual's own behalf. The proponent of a witness shall conduct the direct examination of that witness. All witnesses shall be subject to cross-examination, if possible. Whenever reasonably possible, testimony shall be given in person.

(e) The Administrative Judge may ask the witnesses any questions which the Administrative Judge deems appropriate to assure the fullest possible disclosure of relevant and material facts.

(f) During the course of the hearing, the Administrative Judge shall rule on all objections raised.

(g) In the event it appears during the course of the hearing that classified matter may be disclosed, it shall be the duty of the Administrative Judge to assure that disclosure is not made to persons who are not authorized to receive it, and take other appropriate measures.

(h) Formal rules of evidence shall not apply, but the Federal Rules of Evidence may be used as a guide for procedures and principles designed to assure production of the most probative evidence available. The Administrative Judge shall admit into evidence any matters, either oral or written, which are material, relevant, and competent in determining issues involved, including the testimony of responsible persons concerning the integrity of the individual. In making such determinations, the utmost latitude shall be permitted with respect to relevancy, materiality, and competency. The Administrative Judge may also exclude evidence which is incompetent, immaterial, irrelevant, or unduly repetitious. Every reasonable effort shall be made to obtain the best evidence available. Subject to §§ 710.26(l), 710.26(m), 710.26(n) and 710.26(o), hearsay evidence may, at the discretion of the Administrative Judge and for good cause show, be admitted without strict adherence to technical rules of admissibility and shall be accorded such weight as the Administrative Judge deems appropriate.

(i) Testimony of the individual and witnesses shall be given under oath or affirmation. Attention of the individual and each witness shall be directed to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(j) The Administrative Judge shall endeavor to obtain all the facts that are reasonably available in order to arrive at a decision. If, prior to or during the proceedings, in the opinion of the Administrative Judge, the derogatory information in the notification letter is not sufficient to address all matters into which inquiry should be directed, the Administrative Judge may recommend to the Manager concerned that, in order to give more adequate notice to the individual, the notification letter should be amended. Any amendment shall be made with the concurrence of the local Office of Chief Counsel or the Office of the General Counsel in Headquarters cases. If, in the opinion of the Administrative Judge, the circumstances of such amendment may involve undue hardship to the individual because of limited time to respond to the new derogatory information in the notification letter, an appropriate adjournment shall be granted upon the request of the individual.

(k) A written or oral statement of a person relating to the characterization in the notification letter of any organization or person other than the individual may be received and considered by the Administrative Judge without affording the individual an opportunity to cross-examine the person making the statement on matters relating to the characterization of such organization or person, provided the individual is given notice that such a statement has been received and may be considered by the Administrative Judge, and is informed of the contents of the statement, provided such notice is not prohibited by paragraph (g) of this section.

(l) Any oral or written statement adverse to the individual relating to a controverted issue may be received and

considered by the Administrative Judge without affording an opportunity for cross-examination in either of the following circumstances:

(1) The head of the agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of the informant's identity would be substantially harmful to the national interest;

(2) The Secretary or the Secretary's special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency as to the reliability of the person and the accuracy of the statement concerned, that:

(i) The statement concerned appears to be reliable and material; and

(ii) Failure of the Administrative Judge to receive and consider such statement would, in view of the access sought to classified matter or special nuclear material, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify:

(A) Due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the individual, or

(B) Due to some other specified cause determined by the Secretary to be good and sufficient.

(m) Whenever procedures under paragraph (l) of this section are used:

(1) The individual shall be given a summary or description of the information which shall be as comprehensive and detailed as the national interest permits, and

(2) Appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such person(s).

(n) Records compiled in the regular course of business, or other evidence other than investigative reports obtained by DOE, may be received and considered by the Administrative Judge subject to rebuttal without authenticating witnesses, provided that such information has been furnished to DOE by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary to safeguard classified matter or special nuclear material.

(o) Records compiled in the regular course of business, or other evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the individual, may be received and considered by the Administrative Judge, provided that:

(1) The Secretary or the Secretary's special designee for that particular purpose has made a preliminary determination that such evidence appears to be material;

(2) The Secretary or the Secretary's special designee for that particular purpose has made a determination that failure to receive and consider such evidence would, in view of the access sought to classified matter or special nuclear material, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of such evidence furnished by the investigative agency shall be considered.

(p) The Administrative Judge may request the Local Director of Security to arrange for additional investigation on any points which are material to the deliberations of the Administrative Judge and which the Administrative Judge believes need further investigation or clarification. In this event, the Administrative Judge shall set forth in writing those issues upon which more evidence is requested, identifying where possible persons or sources from which the evidence should be sought. The Local Director of Security shall make every effort through appropriate sources to obtain additional information upon the matters indicated by the Administrative Judge.

(q) A written transcript of the entire hearing shall be made and, except for portions containing classified matter, a copy of such transcript shall be furnished to the individual without cost.

(r) Whenever information is made a part of the record under the exceptions authorized by paragraphs (l) or (o) of this section, the record shall contain certificates evidencing that the determinations required therein have been made.

§ 710.27 Administrative Judge's decision.

(a) The Administrative Judge shall carefully consider the entire record of the proceeding and shall render a decision, within 30 calendar days of the receipt of the hearing transcript, as to whether granting or restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. In resolving a question concerning the eligibility of an individual for access authorization under these procedures, the Administrative Judge shall consider the factors stated in § 710.7(c) to determine whether the findings will be favorable or unfavorable.

(b) In reaching the findings, the Administrative Judge shall consider the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, their credibility, and the authenticity and accuracy of documentary evidence, or lack of evidence on any material points in issue. If the individual is, or may be, handicapped by the non-disclosure to the individual of undisclosed information or by lack of opportunity to cross-examine confidential informants, the Administrative Judge shall take that fact into consideration. The possible adverse impact of the loss of the individual's access authorization upon the DOE program in which the individual works shall not be considered by the Administrative Judge.

(c) The Administrative Judge shall make specific findings based upon the record as to the validity of each instance of derogatory information contained in the notification letter and the significance which the Administrative Judge attaches to it. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings.

(d) The Administrative Judge's decision shall be based on the Administrative Judge's findings of fact. If, after considering all of the factors set forth in § 710.7(c) in light of the Adjudicative Guidelines, the Administrative Judge is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or reinstate access authorization for the individual, the Administrative Judge shall render a favorable decision; otherwise, the Administrative Judge shall render an unfavorable decision. Within 15 calendar days of the Administrative Judge's written decision, the Administrative Judge shall provide copies of the decision and the administrative record to the Manager and the Director.

§ 710.28 Action on the Administrative Judge's decision.

(a) Within 10 calendar days of receipt of the decision and the administrative record, unless an extension of time is granted by the Director, the Manager shall:

(1) Notify the individual in writing of the Administrative Judge's decision;

(2) Advise the individual in writing of the appeal procedures available to the individual in paragraph (b) of this

section if the decision is unfavorable to the individual;

(3) Advise the individual in writing of the appeal procedures available to the Manager and the Director in paragraph (c) of this section if the decision is favorable to the individual; and

(4) Provide the individual and/or his/her counsel or other representative a copy of the Administrative Judge's decision and the administrative record.

(b) If the Administrative Judge's decision is unfavorable to the individual:

(1) The individual may file with the Director a written request for further review of the decision by the Appeal Panel along with a statement required by paragraph (e) of this section within 30 calendar days of the individual's receipt of the Manager's notice;

(2) The Director may, for good cause shown, extend the time for filing a request for further review of the decision by the Appeal Panel at the written request of the individual, provided the request for an extension of time is filed by the individual within 30 calendar days of receipt of the Manager's notice;

(3) The Administrative Judge's decision shall be final and not subject to review or appeal if the individual does not:

(i) File a written request for a review of the decision by the Appeal Panel or for an extension of time to file a written request for review of the decision by the Appeal Panel in accordance with paragraphs (b)(1) or (b)(2) of this section, or

(ii) File a written request for review of the decision by the Appeal Panel after having been granted an extension of time to do so.

(c) If the Administrative Judge's decision is favorable to the individual:

(1) The Manager, with the concurrence of the Director, shall grant or reinstate the individual's access authorization within 30 calendar days of the Administrative Judge's decision becoming final, or

(2) The Manager or the Director may file a written request with the Deputy Associate Under Secretary for Environment, Health, Safety and Security for review of the decision by the Appeal Panel, along with statement required by paragraph (e) of this section, within 30 calendar days of the individual's receipt of the Manager's notice.

(3) The Deputy Associate Under Secretary for Environment, Health, Safety and Security may, for good cause shown, extend the time for filing a request for review of the decision by the Appeal Panel at the request of the Manager or Director, provided the request for an extension of time is filed by the Manager or Director within 30 calendar days of the receipt of the Manager's notice;

(4) The Administrative Judge's decision shall constitute final action, and not be subject to review or appeal, if the Manager or Director does not:

(i) File a written request for review of the decision by the Appeal Panel or for an extension of time to file a written request for review of the decision by the Appeal Panel in accordance with paragraphs (c)(2) or (c)(3) of this section, or

(ii) File a written request for a review of the decision by the Appeal Panel after having been granted an extension of time to do so.

(d) A copy of any request for review of the individual's case by the Appeal Panel filed by the Manager or the Director shall be provided to the individual by the Manager.

(e) The party filing a request for review by the Appeal Panel shall include with the request a statement identifying the issues upon which the appeal is based. A copy of the request and statement shall be served on the other party, who may file a response with the Appeal Panel within 20 calendar days of receipt of the statement.

§ 710.29 Final appeal process.

(a) The Appeal Panel shall be convened by the Deputy Associate Under Secretary for Environment, Health, Safety and Security to review and render a final decision in access authorization eligibility cases referred by the individual, the Manager, or the Director in accordance with §§ 710.22 or 710.28.

(b) The Appeal Panel shall consist of three members, each of whom shall be a DOE Headquarters employee, a United States citizen, and hold a DOE Q access authorization. The Deputy Associate Under Secretary for Environment, Health, Safety and Security shall serve as a permanent member of the Appeal Panel and as the Appeal Panel Chair. The second member of the Appeal Panel shall be a DOE attorney designated by the General Counsel. The head of the DOE Headquarters element which has cognizance over the individual whose access authorization eligibility is being considered may designate an employee to act as the third member on the Appeal Panel; otherwise, the third member shall be designated by the Chair. Only one member of the Appeal Panel shall be from the security field.

(c) In filing a written request for a review by the Appeal Panel in accordance with §§ 710.22 and 710.28, the individual, or his/her counsel or other representative, shall identify the issues upon which the appeal is based. The written request, and any response, shall be made a part of the administrative record. The Director shall provide staff support to the Appeal Panel as requested by the Chair.

(d) Within 15 calendar days of the receipt of the request for review of a case by the Appeal Panel, the Chair shall arrange for the Appeal Panel members to convene and review the administrative record or provide a copy of the administrative record to the Appeal Panel members for their independent review.

(e) The Appeal Panel shall consider only that evidence and information in the administrative record at the time of the Manager's or the Administrative Judge's initial decision.

(f) Within 45 calendar days of receipt of the administrative record, the Appeal Panel shall render a final decision in the case. If a majority of the Appeal Panel members determine that it will not endanger the common defense and security and will be clearly consistent with the national interest, the Chair shall grant or reinstate the individual's access authorization; otherwise, the Chair shall deny or revoke the individual's access authorization. The Appeal Panel's written decision shall be made a part of the administrative record and is not subject to further review or appeal.

(g) The Chair, through the Director, shall inform the individual in writing, as well as the individual's counsel or other representative, of the Appeal Panel's final decision. A copy of the correspondence shall also be provided to the other panel members and the Manager.

§ 710.30 Action by the Secretary.

(a) Whenever an individual has not been afforded an opportunity to cross-examine witnesses who have furnished information adverse to the individual under the provisions of §§ 710.26(l) or (o), the Secretary may issue a final decision to deny or revoke access authorization for the individual after personally reviewing the administrative record and any additional material provided by the Chair. The Secretary's authority may, in accordance with applicable provisions of Executive Order 12968, be delegated to the Deputy Secretary where the effected individual is a Federal employee. The Secretary's authority, in accordance with applicable provisions of Executive Order 10865, may not be delegated where the effected individual is a contractor employee.

This authority may be exercised only when the Secretary determines that the circumstances described in § 710.26(l) or (o) are present, and such determination shall be final and not subject to review or appeal.

(b) Whenever the Secretary issues a final decision as to an individual's access authorization eligibility, the individual and other concerned parties shall be notified in writing by the Chair of that decision and of the Secretary's findings with respect to each instance of derogatory information contained in the notification letter and each substantial issue identified in the statement in support of the request for review to the extent allowed by the national security.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Secretary to issue subpoenas or to deny or revoke access to classified matter or special nuclear material.

§ 710.31 Reconsideration of access eligibility.

(a) If, pursuant to the procedures set forth in §§ 710.20 through 710.30, the Manager, Administrative Judge, Appeal Panel, or the Secretary has made a decision granting or reinstating an individual's access authorization, eligibility shall be reconsidered as a new administrative review under the procedures set forth in this part when previously unconsidered derogatory information is identified, or the individual violates a commitment upon which the DOE previously relied to favorably resolve an issue of access authorization eligibility.

(b) If, pursuant to the procedures set forth in §§ 710.20 through 710.31, the Manager, Administrative Judge, Appeal Panel, or the Secretary has made a decision denying or revoking the individual's access authorization, eligibility may be reconsidered only when the individual so requests in writing, when there is a bona fide offer of employment requiring access authorization, and when there is either material and relevant new evidence which the individual and the individual's representatives were without fault in failing to present earlier, or convincing evidence of rehabilitation or reformation.

(1) A request for reconsideration shall be accepted when a minimum of one year has elapsed since the date of the Manager's, Administrative Judge's, Appeal Panel's or Secretary's final decision, or of a previous denial of reconsideration. Requests must be submitted in writing to the Deputy Associate Under Secretary for Environment, Health, Safety and Security, and must include an affidavit setting forth in detail the new evidence or evidence of rehabilitation or reformation.

(2) If the Deputy Associate Under Secretary for Environment, Health, Safety and Security approves the request for reconsideration of an individual's access authorization eligibility, he/she shall so notify the individual, and shall direct the Manager to take appropriate actions to determine whether the individual is eligible for access authorization.

(3) If the Deputy Associate Under Secretary for Environment, Health, Safety and Security denies the request for reconsideration of an individual's access authorization eligibility, he/she shall so notify the individual in writing. Such a denial is final and not subject to review or appeal.

(4) If, pursuant to the provisions of § 710.31(2), the Manager determines the individual is eligible for access authorization, the Manager shall grant access authorization.

(5) If, pursuant to the provisions of § 710.31(2), the Manager determines the individual remains ineligible for access authorization, the Manager shall so notify the Director in writing. If the Director concurs, the Director shall notify the individual in writing. This decision is final and not subject to review or appeal. If the Director does not concur, the Director shall confer with the Manager on further actions.

(6) Determinations as to eligibility for access authorization pursuant to paragraphs (f) or (g) of this section may be based solely upon the mitigation of derogatory information which was relied upon in a final decision to deny or to revoke access authorization. If, pursuant to the procedures set forth in paragraph (d) of this section, previously unconsidered derogatory information is identified, a determination as to eligibility for access authorization must be subject to a new Administrative Review proceeding.

Subpart D—Miscellaneous

§ 710.32 Terminations.

(a) If the individual is no longer an applicant for access authorization or no longer requires access authorization, the procedures of this part shall be terminated without a final decision as to the individual's access authorization eligibility, unless a final decision has been rendered prior to the DOE being notified of the change in the individual's pending access authorization status. Where the procedures of this part have been terminated pursuant to this paragraph after an unfavorable initial agency decision as to the individual's access authorization eligibility has been rendered, any subsequent request for access authorization for the individual will be processed as a request for a review of the initial agency decision by the Appeal Panel and a final agency decision will be rendered pursuant to § 710.29, unless a minimum of one year has elapsed since the date of the initial agency decision.

(b) With regard to applicants (individuals for whom DOE has not yet approved access authorization), DOE may administratively terminate processing an application for access authorization under the following circumstances:

(1) If the applicant is currently the subject of criminal proceedings for a felony offense or an offense that is punishable by a term of imprisonment of one year or longer, or is awaiting or serving a form of probation, suspended or deferred sentencing, or parole. Once all judicial proceedings on the criminal charges have been finally resolved, and the term (if any) of imprisonment, probation, or parole has been completed, DOE processing of a request for access authorization shall resume upon receipt by DOE of a written request therefor, provided that the individual has a bona fide offer of employment requiring access authorization.

(2) If sufficient information about the individual's background cannot be obtained to meet the investigative scope and extent requirements for the access authorization requested.

(c) If an individual believes that the provisions of paragraph (b) of this section have been inappropriately applied, a written appeal may be filed with the Director within 30 calendar days of the date the individual was notified of the action. The Director shall act on the written appeal as described in § 710.6(c).

§ 710.33 Time frames.

Statements of time established for processing aspects of a case under this part are the agency's desired time frames in implementing the procedures set forth in this part. However, failure to meet the time frames shall have no impact upon the final disposition of an access authorization by a Manager, Administrative Judge, the Appeal Panel, or the Secretary, and shall confer no procedural or substantive rights upon an individual whose access authorization eligibility is being considered.

§ 710.34 Acting officials.

Except for the Secretary, the responsibilities and authorities conferred in this part may be exercised by persons who have been designated in writing as acting for, or in the temporary capacity of, the following DOE positions: The Local Director of Security; the Manager; the Director, or the General Counsel. The responsibilities and authorities of the Deputy Associate Under Secretary for Environment, Health, Safety and Security may be exercised by persons in senior security-related positions within the Office of Environment, Health, Safety and Security who have been designated in writing as acting for, or in the temporary capacity of, the Deputy Associate Under Secretary for Environment, Health, Safety and Security, with the approval of the Associate Under Secretary for Environment, Health, Safety and Security.

Appendix A—Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 30, 2005)

1. *Introduction.* The following adjudicative guidelines are established for all U.S. government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs, and are to be used by government departments and agencies in all final clearance determinations. Government departments and agencies may also choose to apply these guidelines to analogous situations regarding persons being considered for access to other types of protected information.

Decisions regarding eligibility for access to classified information take into account factors that could cause a conflict of interest and place a person in the position of having to choose between his or her commitment to the United States, including the commitment to protect classified information, and any other compelling loyalty. Access decisions also take into account a person's reliability, trustworthiness and ability to protect classified information. No coercive policing could replace the self-discipline and integrity of the person entrusted with the nation's secrets as the most effective means of protecting them. When a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working in a secure environment where protecting classified information is paramount.

2. *The Adjudicative Process.*

(a) The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudication process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

(1) The nature, extent, and seriousness of the conduct;

(2) The circumstances surrounding the conduct, to include knowledgeable participation;

(3) The frequency and recency of the conduct;

(4) The individual's age and maturity at the time of the conduct;

(5) The extent to which participation is voluntary;

(6) The presence or absence of rehabilitation and other permanent behavioral changes;

(7) The motivation for the conduct;

(8) The potential for pressure, coercion, exploitation, or duress; and

(9) The likelihood of continuation or recurrence.

(b) Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.

(c) The ability to develop specific thresholds for action under these guidelines is limited by the nature and complexity of human behavior. The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person.

(1) Guideline A: Allegiance to the United States;

(2) Guideline B: Foreign Influence;

(3) Guideline C: Foreign Preference;

(4) Guideline D: Sexual Behavior;

(5) Guideline E: Personal Conduct;

(6) Guideline F: Financial Considerations;

(7) Guideline G: Alcohol Consumption;

(8) Guideline H: Drug Involvement;

(9) Guideline I: Psychological Conditions;

(10) Guideline J: Criminal Conduct;

(11) Guideline K: Handling Protected Information;

(12) Guideline L: Outside Activities;

(13) Guideline M: Use of Information Technology Systems.

(d) Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Notwithstanding the whole-person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

(e) When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

(1) Voluntarily reported the information;

(2) Was truthful and complete in responding to questions;

(3) Sought assistance and followed professional guidance, where appropriate;

(4) Resolved or appears likely to favorably resolve the security concern:

(5) Has demonstrated positive changes in behavior and employment;

(6) Should have his or her access temporarily suspended pending final adjudication of the information.

(f) If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

Guideline A: Allegiance To the United States

3. *The Concern.* An individual must be of unquestioned allegiance to the United States. The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

4. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Involvement in, support of, training to commit, or advocacy of any act of sabotage, espionage, treason, terrorism, or sedition against the United States of America;

(b) Association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;

(c) Association or sympathy with persons or organizations that advocate, threaten, or use force or violence, or use any other illegal or unconstitutional means, in an effort to:

(1) Overthrow or influence the government of the United States or any state or local government;

(2) Prevent Federal, state, or local government personnel from performing their official duties;

(3) Gain retribution for perceived wrongs caused by the Federal, state, or local government;

(4) Prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

5. *Conditions that could mitigate security concerns include:*

(a) The individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;

(b) The individual's involvement was only with the lawful or humanitarian aspects of such an organization;

(c) Involvement in the above activities occurred for only a short period of time and

was attributable to curiosity or academic interest;

(d) The involvement or association with such activities occurred under such unusual circumstances, or so much times has elapsed, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or loyalty.

Guideline B: Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercioon by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

7. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) Connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(c) Counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

(d) Sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

(e) A substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;

(f) Failure to report, when required, association with a foreign national;

(g) Unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) Indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion;

(i) Conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

8. *Conditions that could mitigate security concerns include:*

(a) The nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) There is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) Contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) The foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) The individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country;

(f) The value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Guideline C: Foreign Preference

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

10. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) Possession of a current foreign passport;

(2) Military service or a willingness to bear arms for a foreign country;

(3) Accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) Residence in a foreign country to meet citizenship requirements;

(5) Using foreign citizenship to protect financial or business interests in another country;

(6) Seeking or holding political office in a foreign country;

(7) Voting in a foreign election;

(b) Action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest;

(d) Any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

11. *Conditions that could mitigate security concerns include:*

(a) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) The individual has expressed a willingness to renounce dual citizenship;

(c) Exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) Use of a foreign passport is approved by the cognizant security authority;

(e) The passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

(f) The vote in a foreign election was encouraged by the United States Government.

Guideline D: Sexual Behavior

12. *The Concern.* Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in the Guideline may be raised solely on the basis of the sexual orientation of the individual.

13. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

(b) A pattern of compulsive, self-destructive, or high-risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;

(c) Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

(d) Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

14. *Conditions that could mitigate security concerns include:*

(a) The behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;

(b) The sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(c) The behavior no longer serves as a basis for coercion, exploitation, or duress;

(d) The sexual behavior is strictly private, consensual, and discreet.

Guideline E: Personal Conduct

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance

process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) Refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation;

(b) Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

16. *Conditions that could raise a security concern and may be disqualifying also include:*

(a) Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) Deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) Disruptive, violent, or other inappropriate behavior in the workplace;

(3) A pattern of dishonesty or rule violations;

(4) Evidence of significant misuse of Government or other employer's time or resources;

(e) Personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as:

(1) Engaging in activities which, if known, may affect the person's personal, professional, or community standing, or

(2) While in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) Violation of a written or recorded commitment made by the individual to the employer as a condition of employment;

(g) Association with persons involved in criminal activity.

17. *Conditions that could mitigate security concerns include:*

(a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) Association with persons involved in criminal activities has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Guideline F: Financial Considerations

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

19. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Inability or unwillingness to satisfy debts;

(b) Indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.

(c) A history of not meeting financial obligations;

(d) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) Consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) Financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

(g) Failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) Unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income;

(i) Compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, ''chasing losses'' (*i.e.,* increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

20. *Conditions that could mitigate security concerns include:*

(a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The conditions that resulted in the financial problem were largely beyond the person's control (*e.g.* loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) The person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) The affluence resulted from a legal source of income.

Guideline G: Alcohol Consumption

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

22. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) Diagnosis by a duly qualified medical professional (*e.g.,* physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(f) Relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program;

(g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

23. *Conditions that could mitigate security concerns include:*

(a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) The individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

(d) The individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Guideline H: Drug Involvement

24. *The Concern.* Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (*e.g.,* marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) Inhalants and other similar substances

(b) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

25. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any drug abuse (see above definition);

(b) Testing positive for illegal drug use;

(c) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) Diagnosis by a duly qualified medical professional (*e.g.,* physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

(f) Failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) Any illegal drug use after being granted a security clearance;

(h) Expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

26. *Conditions that could mitigate security concerns include:*

(a) The behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) A demonstrated intent not to abuse any drugs in the future, such as:

(1) Dissociation from drug-using associates and contacts;

(2) Changing or avoiding the environment where drugs were used;

(3) An appropriate period of abstinence;

(4) A signed statement of intent with automatic revocation of clearance for any violation;

(c) Abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended;

(d) Satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Guideline I: Psychological Conditions

27. *The Concern.* Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (*e.g.,* clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

28. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;

(b) An opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness;

(c) The individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, *e.g.* failure to take prescribed medication.

29. *Conditions that could mitigate security concerns include:*

(a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) The past emotional instability was a temporary condition (*e.g.,* one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;

(e) There is no indication of a current problem.

Guideline J: Criminal Conduct

30. *The Concern.* Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

31. *Conditions that could raise a security concern and may be disqualifying include:*

(a) A single serious crime or multiple lesser offenses;

(b) Discharge or dismissal from the Armed Forces under dishonorable conditions;

(c) Allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

(d) Individual is currently on parole or probation;

(e) Violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

32. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) The person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) Evidence that the person did not commit the offense;

(d) There is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Guideline K: Handling Protected Information

33. *The Concern.* Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

34. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Deliberate or negligent disclosure of classified or other protected information to unauthorized persons, including but not limited to personal or business contacts, to the media, or to persons present at seminars, meetings, or conferences;

(b) Collecting or storing classified or other protected information in any unauthorized location;

(c) Loading, drafting, editing, modifying, storing, transmitting, or otherwise handling classified reports, data, or other information on any unapproved equipment including but not limited to any typewriter, word processor, or computer hardware, software, drive, system, gameboard, handheld, ''palm'' or pocket device or other adjunct equipment;

(d) Inappropriate efforts to obtain or view classified or other protected information outside one's need to know;

(e) Copying classified or other protected information in a manner designed to conceal or remove classification or other document control markings;

(f) Viewing or downloading information from a secure system when the information is beyond the individual's need to know;

(g) Any failure to comply with rules for the protection of classified or other sensitive information;

(h) Negligence or lax security habits that persist despite counseling by management;

(i) Failure to comply with rules or regulations that results in damage to the National Security, regardless of whether it was deliberate or negligent.

35. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the behavior, or it happened so infrequently or under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;

(c) The security violations were due to improper or inadequate training.

Guideline L: Outside Activities

36. *The Concern.* Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

37. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any employment or service, whether compensated or volunteer, with:

(1) The government of a foreign country;

(2) Any foreign national, organization, or other entity;

(3) A representative of any foreign interest;

(4) Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology;

(b) Failure to report or fully disclose an outside activity when this is required.

38. *Conditions that could mitigate security concerns include:*

(a) Evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States;

(b) The individual terminates the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

Guideline M: Use of Information Technology Systems

39. *The Concern.* Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

40. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Illegal or unauthorized entry into any information technology system or component thereof;

(b) Illegal or unauthorized modification, destruction, manipulation or denial of access to information, software, firmware, or hardware in an information technology system;

(c) Use of any information technology system to gain unauthorized access to another system or to a compartmented area within the same system;

(d) Downloading, storing, or transmitting classified information on or to any unauthorized software, hardware, or information technology system;

(e) Unauthorized use of a government or other information technology system;

(f) Introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without authorization, when prohibited by rules, procedures, guidelines or regulations.

(g) Negligence or lax security habits in handling information technology that persist despite counseling by management;

(h) Any misuse of information technology, whether deliberate or negligent, that results in damage to the national security.

41. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) The misuse was minor and done only in the interest of organizational efficiency and effectiveness, such as letting another person use one's password or computer when no other timely alternative was readily available;

(c) The conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324 and 329

RIN 3064–AE30

Regulatory Capital Rules, Liquidity Coverage Ratio: Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule that amends the definition of ''qualifying master netting agreement'' under the regulatory capital rules and the liquidity coverage ratio rule. In this final rule, the FDIC also is amending the definitions of ''collateral agreement,'' ''eligible margin loan,'' and ''repo-style transaction'' under the regulatory capital rules. These amendments are designed to ensure that the regulatory capital and liquidity treatment of certain financial contracts generally would not be affected by implementation of special resolution regimes in non-U.S. jurisdictions that are substantially similar to the U.S. resolution framework or by changes to the International Swaps and Derivative Association (ISDA) Master Agreement that provide for contractual submission to such regimes. The Office of the Comptroller of the Currency (OCC) and the Board of

Governors of the Federal Reserve System (Federal Reserve) issued in December 2014, a joint interim final rule that is substantially identical to this final rule.

DATES: The final rule is effective October 17, 2016.

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SUPPLEMENTARY INFORMATION:

I. Summary

The regulatory capital rules of the Federal Reserve, the OCC, and the FDIC (collectively, the agencies) permit a banking organization to measure exposure from certain types of financial contracts on a net basis, provided that the contracts are subject to a ''qualifying master netting agreement'' that provides for certain rights upon a counterparty default.[1] The agencies, by rule, have defined a qualifying master netting agreement[2] as a netting agreement that, among other things, permits a banking organization to terminate, apply close-out netting, and promptly liquidate or set-off collateral upon an event of default of the counterparty (default rights), thereby reducing its counterparty exposure and market risks. On the whole, measuring the amount of exposure of these contracts on a net basis, rather than a gross basis, results in a lower measure of exposure, and thus, a lower capital requirement, under the regulatory capital rules. Similarly, the Liquidity Coverage Ratio (LCR) Rule[3] allows a banking organization to net the inflows and outflows associated with derivative transactions subject to a qualifying master netting agreement, which generally results in a more accurate measure of cash outflows than if a banking organization were to calculate its derivatives inflows and outflows on a gross basis.

The agencies' current definition of ''qualifying master netting agreement'' recognizes that default rights may be stayed if the financial company is in receivership, conservatorship, or resolution under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[4] or under the Federal Deposit Insurance Act (FDI Act).[5] Accordingly, transactions conducted under netting agreements where default rights may be stayed under Title II of the Dodd-Frank Act or the FDI Act may qualify for the favorable capital treatment described above. However, the FDIC's current definition of ''qualifying master netting agreement'' does not recognize that default rights may be stayed where a master netting agreement is subject to limited stays under non-U.S. special resolution regimes or where counterparties agree through contract that a special resolution regime would apply. When the FDIC adopted the current definition of ''qualifying master netting agreement,'' no other jurisdiction had adopted a special resolution regime, and no banking organizations had communicated to the FDIC an intent to enter into contractual amendments to clarify that bilateral over-the-counter (OTC) derivatives transactions are subject to certain provisions of certain U.S. and foreign special resolution regimes.

Regarding non-U.S. special resolution regimes that provide a limited stay of termination rights and other remedies in financial contracts, in 2014, the European Union (EU) finalized the Bank Recovery and Resolution Directive (BRRD), which prescribes aspects of a special resolution regime that EU member nations should implement. For the BRRD to be fully implemented, each member nation of the EU must transpose the BRRD requirements into local law. The implementation of the BRRD by EU member nations was permitted as early as January 1, 2015, and the transposition process is largely complete.

Regarding contractual amendments between counterparties to OTC derivatives, various U.S. banking organizations have adhered to the 2015 Universal ISDA Resolution Stay Protocol (ISDA Protocol),[6] which is a multilateral amendment mechanism that provides for cross-border application of temporary stays under special resolution regimes (including Title II of the Dodd-Frank Act and the FDI Act). The ISDA Protocol would apply the provisions of Title II of the Dodd-Frank Act or the FDI Act, as appropriate, concerning stays of termination rights and other remedies in qualified financial contracts entered into by U.S. financial companies, including insured banks, if counterparties to such transactions are not subject to U.S. law. It would also apply similar provisions of the laws and regulations of certain EU member countries that have implemented the BRRD to counterparties of financial companies in those countries. Thus, the ISDA Protocol would limit the rights of counterparties to exercise termination rights and other remedies in financial contracts to the same extent that those rights would be limited under the sovereign resolution regime applicable to their counterparties or, in certain circumstances, their counterparties' affiliates.

In addition, the ISDA Protocol provides for limited stays of termination rights and other remedies for cross-defaults resulting from affiliate insolvency proceedings under a limited number of U.S. insolvency regimes. ISDA Master Agreements[7] and securities financing transactions (documented under industry standard documentation for such transactions)[8]

[1] See 12 CFR part 3 (OCC); 12 CFR part 217 (Federal Reserve); 12 CFR part 324 (FDIC). The term ''banking organization'' includes national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies domiciled in the United States not subject to the Federal Reserve's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), as well as top-tier savings and loan holding companies domiciled in the United States, except for certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

[2] See 12 CFR 3.2 (OCC); 12 CFR 217.2 (Federal Reserve); 12 CFR 324.2 (FDIC).

[3] See 12 CFR part 50 (OCC); 12 CFR part 249 (Federal Reserve); 12 CFR part 329 (FDIC).

[4] See 12 U.S.C. 5390(c)(8)–(16).

[5] See 12 U.S.C. 1821(e)(8)–(13). The definition would also recognize that default rights may be stayed under any similar insolvency law applicable to government sponsored enterprises (GSEs). Generally under the agencies' regulatory capital rules, government-sponsored enterprise means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. See 12 CFR 3.2 (OCC); 12 CFR 217.2 (Federal Reserve); 12 CFR 324.2 (FDIC).

[6] See ISDA Protocol at *http://assets.isda.org/media/f253b540-25/958e4aed.pdf/.*

[7] The ISDA Master Agreement is a form of agreement that governs OTC derivatives transactions and is used by a significant portion of the parties to bilateral OTC derivatives transactions, including large, internationally active banking organizations. Furthermore, the ISDA Master Agreement generally creates a single legal obligation that provides for the netting of all individual transactions covered by the agreement.

[8] The ISDA Protocol is an expansion of the ISDA 2014 Resolution Stay Protocol and covers securities financing transactions in addition to over-the-counter derivatives documented under ISDA Master Agreements. As between adhering parties, the ISDA Protocol replaces the ISDA 2014 Resolution Stay Protocol (which does not cover securities financing transactions). Securities financing transactions (which generally include repurchase agreements and securities lending transactions) are documented under non-ISDA master agreements. The ISDA

Continued

between counterparties that adhere to the ISDA Protocol are automatically amended to stay certain default rights and other remedies provided under the agreement. The effective date of certain provisions of the ISDA Protocol was January 1, 2016.

A master netting agreement under which default rights may be stayed under the BRRD or that incorporates the ISDA Protocol would no longer qualify as a qualifying master netting agreement under the FDIC's current regulatory capital and liquidity rules. This would result in considerably higher capital and liquidity requirements.

The FDIC issued in the **Federal Register** of January 30, 2015, proposed amendments to the definition of qualifying master netting agreement in the regulatory capital and liquidity rules and certain related definitions in the regulatory capital rules (January 2015 NPR).[9] This final rule adopts those revised definitions in the proposed rule issued in the January 2015 NPR, as amended to better conform with the interim final rule jointly issued by the Federal Reserve and the OCC in December 2014.[10]

Under this final rule, the FDIC permits an otherwise qualifying master netting agreement to qualify for favored netting treatment under the FDIC's regulatory capital and liquidity rules if (i) default rights under the agreement may be stayed under a qualifying non-U.S. special resolution regime or (ii) the agreement incorporates a qualifying special resolution regime by contract. Through these revisions, the final rule maintains the existing treatment for these contracts for purposes of the regulatory capital and liquidity rules, while recognizing the recent changes instituted by the BRRD and the ISDA Protocol.

The final rule also revises certain other definitions of the regulatory capital rules to make various conforming changes designed to ensure that a banking organization may continue to recognize the risk mitigating effects of financial collateral[11] received in a secured lending transaction, repo-style transaction, or eligible margin loan for purposes of the regulatory capital and liquidity rules. Specifically, the final rule revises the definition of ''collateral agreement,'' ''eligible margin loan,''[12] and repo-style transaction''[13] to provide that a counterparty's default rights may be stayed under a non-U.S. special resolution regime or, if applicable, that are made subject to a special resolution regime by contract.[14]

II. Background

A. U.S. Resolution Regime

It is common market practice for bilateral derivatives and certain other types of financial contracts entered into by large banking organizations to permit a non-defaulting counterparty to exercise early termination rights and other contractual remedies upon a counterparty (or a related entity) experiencing an event of default. These contractual provisions are generally recognized as a credit risk mitigant because the provisions allow a non-defaulting party the uninterrupted right to close-out, net, and liquidate any collateral securing its claim under the contract upon a counterparty's default.

However, as the failure of Lehman Brothers demonstrated, the uninterrupted exercise of such rights by counterparties of a globally active financial company with a significant derivatives portfolio could impede the orderly resolution of the financial company and pose risks to financial stability. The United States has enacted laws that impose a limited stay on the exercise of early termination rights and other remedies with regard to qualified financial contracts (such as OTC derivatives, securities financing transactions, and margin loans) with insured depository institutions in resolution under the FDI Act and, in 2010, with financial companies in resolution under Title II of the Dodd-Frank Act.

B. Foreign Special Resolution Procedures and the ISDA Protocol

In recognition of the issues faced in the financial crisis concerning resolution of globally-active financial companies, the EU issued the BRRD on April 15, 2014, which requires EU member states to implement a resolution mechanism by December 31, 2014, in order to increase the likelihood for successful national or cross-border resolutions of a financial company organized in the EU.[15] The BRRD contains special resolution powers, including a limited stay on certain financial contracts that is similar to the stays provided under Title II of the Dodd-Frank Act and the FDI Act. Therefore, the operations of U.S. banking organizations located in jurisdictions that have implemented the BRRD could become subject to an orderly resolution under the BRRD, including the application of a limited statutory stay of a counterparty's right to exercise early termination rights and other remedies with respect to certain financial contracts. The BRRD is generally designed to be consistent with the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (Key Attributes),[16] which were published by the Financial

Protocol addresses financial contracts under these master agreements in the ''Securities Financing Transaction Annex.''

[9] 80 FR 5063 (January 30, 2015).

[10] 79 FR 78287 (December 30, 2014).

[11] Generally, under the agencies' regulatory capital rules, financial collateral means collateral in the form of: (i) Cash on deposit with the banking organization (including cash held for the banking organization by a third-party custodian or trustee); (ii) gold bullion; (iii) long-term debt securities that are not resecuritization exposures and that are investment grade; (iv) short-term debt instruments that are not resecuritization exposures and that are investment grade; (v) equity securities that are publicly traded; (vi) convertible bonds that are publicly traded; or (vii) money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily. In addition, the regulatory capital rules also require that the banking organization have a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent). See 12 CFR 3.2 (OCC); 12 CFR 217.2 (Federal Reserve); 12 CFR 324.2 (FDIC).

[12] Generally under the agencies' regulatory capital rules, eligible margin loan means an extension of credit where: (i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold; (ii) the collateral is marked-to-fair value daily, and the transaction is subject to daily margin maintenance requirements; and (iii) the extension of credit is conducted under an agreement that provides the banking organization with default rights, provided that any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs. In addition, in order to recognize an exposure as an eligible margin loan a banking organization must comply with the requirements of section 3(b) of the regulatory capital rules with respect to that exposure.

[13] Generally, under the agencies' regulatory capital rules, repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the banking organization acts as agent for a customer and indemnifies the customer against loss, provided that: (1) The transaction is based solely on liquid and readily marketable securities, cash, or gold; (2) the transaction is marked-to-fair value daily and subject to daily margin maintenance requirements; (3) the transaction provides certain default rights. In addition, in order to recognize an exposure as a repo-style transaction for purposes of this subpart, a banking organization must comply with the requirements of section 3(b) of the regulatory capital rules. See 12 CFR 3.2 (OCC); 12 CFR 217.2 (Federal Reserve); 12 CFR 324.2 (FDIC).

[14] *See* 12 CFR part 32.

[15] On January 1, 2015, most of the provisions of the BRRD were in effect in a number of the EU member states.

[16] The Key Attributes area available at *www.financialstabilityboard.org/publications/r_111104cc.pdf.* See specifically Key Attributes 4.1–4.4 regarding set-off, netting, collateralization and segregation of client assets and Appendix I Annex 5 regarding temporary stays on early termination rights.

Stability Board (FSB) [17] of the G–20 [18] member nations in October 2011, and is designed to increase the likelihood for successful national or cross-border resolutions of a financial company organized in the EU.

ISDA launched the ISDA Protocol on November 12, 2015, which provides a mechanism for parties to transactions under ISDA Master Agreements (and securities financing transactions documented under industry standard documentation for such transactions) to amend those agreements to stay certain early termination rights and other remedies provided under the agreement. As of July 14, 2016, 217 parties, including several of the largest U.S. banking organizations,[19] have adhered to the ISDA Protocol and have thereby modified their ISDA Master Agreements. Like other qualified financial contracts, OTC derivatives transactions executed under standard ISDA Master Agreements allow a party to terminate the agreement immediately upon an event of default of its counterparty, including if its counterparty (or a related entity) [20] enters insolvency or similar proceedings.

The contractual amendments effectuated pursuant to the ISDA Protocol would apply the provisions of Title II of the Dodd-Frank Act and the FDI Act concerning limited stays of termination rights and other remedies in qualified financial contracts to ISDA Master Agreements between adhering counterparties, including adhering counterparties that are not otherwise subject to U.S. law. The amendments also would apply substantially similar provisions of certain non-U.S. laws, to ISDA Master Agreements between adhering counterparties that are not otherwise subject to such laws.[21] Thus, the contractual amendments effectuated pursuant to the ISDA Protocol would permit a party that has agreed to adhere to the ISDA Protocol to exercise early termination rights and other remedies only to the extent that it would be entitled to do so under the special resolution regime applicable to its adhering counterparties (or related entities, as applicable).[22]

C. Description of Relevant Provisions of the Regulatory Capital and the Liquidity Coverage Ratio Rules

As noted above, the agencies' regulatory capital rules permit a banking organization to measure exposure from certain types of financial contracts on a net basis, provided that the contracts are subject to a qualifying master netting agreement or other agreement that contains specific provisions. Specifically, under the current regulatory capital rules, a banking organization with multiple OTC derivatives that are subject to a qualifying master netting agreement would be able to calculate a net exposure amount by netting the sum of all positive and negative fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement and calculating a risk-weighted asset amount based on the net exposure amount. For purposes of the current supplementary leverage ratio (as applied only to advanced approaches banking organizations), a banking organization that has one or more OTC derivatives with the same counterparty that are subject to a qualifying master netting agreement would be permitted to not include in total leverage exposure cash variation margin received from such counterparty that has offset the mark-to-fair value of the derivative asset, or cash collateral that is posted to such counterparty that has reduced the banking organization's on-balance sheet assets.[23]

In addition, for risk-based capital purposes, a banking organization with a securities financing transaction that meets the definition of a repo-style transaction with financial collateral, a margin loan that meets the definition of an eligible margin loan with financial collateral, or an OTC derivative contract collateralized with financial collateral may determine a net exposure amount to its counterparty according to section 37 or section 132 of the regulatory capital rules. A banking organization with multiple repo-style transactions or eligible margin loans with a counterparty that are subject to a qualifying master netting agreement may net the exposure amounts of the individual transactions under that agreement. In addition, for purposes of the supplementary leverage ratio, an advanced approaches banking organization with multiple repo-style transactions with the same counterparty that are subject to a qualifying master netting agreement would be permitted to net for purposes of calculating the counterparty credit risk component of its total leverage exposure. In general, recognition of netting results in a lower

[17] The FSB is an international body that monitors and makes recommendations about the global financial system. The FSB coordinates the regulatory, supervisory, and other financial sector policies of national financial authorities and international standard-setting bodies.

[18] The G–20 membership comprises a mix of the world's largest advanced and emerging economies. The G–20 members are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States, and the European Union. Following the most recent financial crisis, leaders of the G–20 member nations recognized that the orderly cross-border resolution of a globally active financial company requires all countries to have effective national resolution regimes to resolve failing financial companies in an orderly manner and that national resolution regimes should be consistent with one another. Subjecting the same financial company to conflicting legal rules, procedures, and mechanisms across jurisdictions can create uncertainty, instability, possible systemic contagion, and higher costs of resolution. The Key Attributes were adopted by the G–20 leaders and are now international-agreed-upon standards that set forth the responsibilities and powers that national resolution regimes should have to resolve a failing systemically important financial institution.

[19] The U.S. banking organizations that have adhered to the ISDA Protocol include Bank of America Corporation, The Bank of New York Mellon, Citigroup Inc., The Goldman Sachs Group, Inc., JPMorgan Chase & Co., Wells Fargo & Co., Morgan Stanley, and certain subsidiaries thereof. See current list of adhering parties to the ISDA Protocol at *http://www2.isda.org/functional-areas/protocol-management/protocol-data-csv/22*.

[20] Under the ISDA Protocol, a related entity is defined to include (i) each parent or (ii) an affiliate that is (a) a creditor support provider or (b) a specified entity.

[21] The provisions of the ISDA Protocol relating to the special resolution regimes in these jurisdictions became effective on January 1, 2016, for ISDA Master Agreements between the adherents. The ISDA Protocol also provides a mechanism for adhering parties to opt-in to special resolution regimes in other FSB member jurisdictions so long as the regimes meet conditions specified in the ISDA Protocol relating to creditor safeguards, which are consistent with the Key Attributes.

[22] Parties adhering to the ISDA Protocol initially were contractually subject to the statutory special resolution regimes of France, Germany, Japan, Switzerland, the United Kingdom and the United States.

[23] Under the agencies' regulatory capital rules, the general framework consists of two approaches: (1) The standardized approach, which, beginning on January 1, 2015, applies to all banking organizations regardless of total asset size, and (2) the advanced approaches, which currently apply to large internationally active banking organizations (defined as those banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, depository institution subsidiaries of those banking organizations that use the advanced approaches rule, and banking organizations that elect to use the advanced approaches). As a general matter, the standardized approach sets forth standardized risk weights for different asset types for regulatory capital calculations, whereas, for certain assets, the advanced approaches make use of risk assessments provided by banking organizations' internal systems as inputs for regulatory capital calculations. Consistent with section 171 of the Dodd-Frank Act (codified at 12 U.S.C. 5371), a banking organization that is required to calculate its risk-based capital requirements under the advanced approaches (*i.e.,* an advanced approaches banking organization) also must determine its risk-based capital requirements under the generally applicable risk-based capital rules, which is the standardized approach as of January 1, 2015). The lower—or more binding—ratio for each risk-based capital requirement is the ratio that the advanced approaches banking organization must use to determine its compliance with minimum regulatory capital requirements.

measure of risk-weighted assets and total leverage exposure than if a banking organization were to calculate its OTC derivatives, repo-style transactions, and eligible margin loans on a gross basis.

The agencies also use the concept of a qualifying master netting agreement in the LCR rule.[24] The LCR rule requires a banking organization to maintain an amount of high-quality liquid assets (the numerator) to match at least 100 percent of its total net cash outflows over a prospective 30 calendar-day period (the denominator). For derivative transactions subject to a qualifying master netting agreement, a banking organization would be able to calculate the net derivative outflow or inflow amount by netting the contractual payments and collateral that it would provide to, or receive from, the counterparty over a prospective 30 calendar-day period.[25] If the derivative transactions are not subject to a qualifying master netting agreement, then the derivative cash outflows for that counterparty would be included in the net derivative cash outflow amount and the derivative cash inflows for that counterparty would be included in the net derivative cash inflow amount, without any netting and subject to the LCR rule's cap on total inflows. Recognition of netting generally results in a more accurate measure of outflows than if a banking organization were to calculate its inflows and outflows on its derivatives transactions on a gross basis.

III. The Final Rule

The final rule amends the definitions of ''collateral agreement, ''eligible margin loan,'' ''qualifying master netting agreement,'' and ''repo-style transaction'' in the FDIC's regulatory capital rules and ''qualifying master netting agreement'' in the FDIC's LCR rules to ensure that the regulatory capital and liquidity treatment of OTC derivatives, repo-style transactions, eligible margin loans, and other collateralized transactions would be unaffected by the adoption of various foreign special resolution regimes and the ISDA Protocol. In particular, the final rule amends these definitions to provide that a relevant netting agreement or collateral agreement may provide for a limited stay or avoidance of rights where the agreement is subject by its terms to, or incorporates, certain resolution regimes applicable to financial companies, including Title II of the Dodd-Frank Act, the FDI Act, or any similar foreign resolution regime that are jointly determined by the agencies to be substantially similar to Title II of the Dodd-Frank Act or the FDI Act.

In determining whether the laws of foreign jurisdictions are ''similar'' to the FDI Act and Title II of the Dodd-Frank Act, the FDIC, jointly with the OCC and FRB, intends to consider all aspects of U.S. law, including all aspects of stays provided thereunder.[26] Relevant factors include, for instance, creditor safeguards or protections provided under a foreign resolution regime as well as the length of stay.[27]

This final rule allows for the continuation of the existing netting treatment for these contracts for purposes of the regulatory capital and liquidity rules. Implementation of consistent, national resolution regimes on a global basis furthers the orderly resolution of internationally active financial companies, and enhances financial stability. In addition, the development of the ISDA Protocol furthers the principles of Title II of the Dodd-Frank Act and the FDI Act (in instances where a counterparty is a U.S. entity or its subsidiary) to counterparties who are not otherwise subject to U.S. law.

In addition to giving contractual effect to limited stays of termination rights under special resolution regimes on a cross-border basis, the ISDA Protocol also provides for limited stay of termination rights for cross-defaults resulting from affiliate insolvency proceedings under a limited number of U.S. general insolvency regimes, including the U.S. bankruptcy code. This provision takes effect upon the effective date of implementing regulations in the United States. To the extent the agencies implement regulations to give effect to these provisions of the ISDA Protocol, the FDIC will consider further amending the definition of ''qualifying master netting agreement'' in the regulatory capital and liquidity rules and the definition of ''collateral agreement'', ''repo-style transaction'' and ''eligible margin loan'' in the regulatory capital rules.

The qualified master netting agreement definition in the FDIC's capital and liquidity rules also relates to the eligible master netting agreement definition in the swap margin rules issued by the adopting agencies in November 2015.[28] The swap margin rule establishes margin requirements for non-cleared swaps entered into by an entity supervised by one of the adopting agencies that is also registered with the Commodity Futures Trading Commission or the Securities and Exchange Commission as a dealer or major participants in non-cleared swaps (such entities are referred to in the swap margin rule as ''covered swap entities.'') The swap margin rule allows a covered swap entity to net variation margin and initial margin requirements for non-cleared swaps subject to the rule when such swaps are subject to an ''eligible master netting agreement'' between the covered swap entity and its counterparty.

The swap margin rule's definition of ''eligible master netting agreement'' is substantively the same as the definition of ''qualified master netting agreement'' as amended by this final rule.

IV. Summary of Comments on the January 2015 NPR

The FDIC received three comments on the January 2015 NPR. One comment was generally supportive of the proposed rule in the January 2015 NPR as a necessary technical amendment that would promote the objective of establishing effective resolution regimes for globally active financial companies. That commenter also recommended that the FDIC revisit in the near term the broader policy questions surrounding the impact of close-out netting on systemic risk mitigation, and evaluate how well the regulatory capital and liquidity coverage ratio rules reflect the risks associated with netted financial contracts.[29]

Two of the commenters [30] noted the absence of reference to any stays authorized by state insurance law in the

[24] The agencies' LCR rule may be found at 12 CFR part 50 (OCC); 12 CFR part 249 (Federal Reserve); and 12 CFR part 329 (FDIC).

[25] The LCR rule provides that foreign currency transactions that meet certain criteria can be netted regardless of whether those transactions are covered by a qualified master netting agreement. See 12 CFR 50.32(c)(2) (OCC); 12 CFR 249.32(c)(2) (Federal Reserve); 12 CFR 329.32(c)(2) (FDIC).

[26] See 12 U.S.C. 1821(e)(8)–(13) and 5390(c)(8)–(16). As noted above, the ISDA Protocol covers only resolution regimes that are considered to be consistent with the principles of the Key Attributes. Therefore, it is also expected that any limited statutory stay under foreign law determined for purposes of this final rule to be similar to the FDI Act and Title II of the Dodd-Frank Act would also be consistent with the relevant principles of the Key Attributes.

[27] Under Title II of the Dodd-Frank Act, counterparties are stayed until 5:00 p.m. on the business day following the date of appointment of a receiver from exercising termination, liquidation, or netting rights under the qualified financial contract. 12 U.S.C. 5390(c)(10)(B)(i)(I). If the qualified financial contracts are transferred to a solvent third party before the stay expires, the counterparty is permanently enjoined from exercising such rights based upon the appointment of the receiver, but is not stayed from exercising such rights based upon other events of default. See 12 U.S.C. 5390(c)(10)(B)(i)(II).

[28] *See* 80 FR 74840 (November 30, 2015).

[29] Systemic Risk Council.

[30] American Council of Life Insurers; Northwestern Mutual.

proposed definition of ''qualifying master netting agreement.'' Some States may be considering amending laws applicable to the conservation, rehabilitation, liquidation and insolvency of insurance companies to provide authority for close-outs of derivative and similar financial contracts to be stayed for twenty-four hours, similar to stays under the FDI Act and the Dodd-Frank Act. The commenters maintained that failure to include stays under state insurance resolution proceedings within the definition of ''qualifying master netting agreement'' might adversely affect derivative and similar financial transactions between state-regulated insurance companies and their counterparties, including FDIC-supervised institutions. As such stays may be analogous to similar stays under the other resolution authorities referenced in the rule's definition, the commenters recommend that state law should also be referenced.

The narrow purpose of amending the definition of ''qualifying master netting agreement'' in the proposed rule and this final rule is to maintain the regulatory capital and liquidity treatment of certain financial contracts as unaffected by the ISDA Master Agreement and stays by non-U.S. resolution authorities. The FDIC has considered the comments for purposes of the final rule, and has determined that the commenters raise an issue that is beyond that limited purpose.[31]

V. Effective Date

This final rule is effective upon publication in the **Federal Register**. The final rule imposes no new requirements, and will benefit FDIC-supervised institutions that adhere to the ISDA Protocol by allowing for the continuation of the existing netting treatment for certain financial contracts for purposes of the regulatory capital and liquidity rules.

Section 302 of the Riegle Community Development and Regulatory Improvement Act[32] (RCDRIA) generally requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations that impose additional reporting, disclosures, or other new requirements on an insured depository institution generally must take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. The FDIC has determined that this final rule does not impose any additional reporting, disclosure, or other new requirements on insured depository institutions and thus section 302 of RCDRIA does not apply.

The Administrative Procedure Act (''APA'') requires that a final rule be published in the **Federal Register** no less than 30 days before its effective date unless good cause is found and published with the final rule.[33] The FDIC finds good cause for the final rule to take effect on the date it is published in the **Federal Register**. Having the final rule take effect on the date of publication in the **Federal Register** will allow affected FDIC-supervised institutions to use the definition of qualified master netting agreement as amended by the final rule when they file their respective Call Report for the third quarter period ending on September 30, 2016.

VI. Expected Effects

The final rule is intended to prevent any change in the treatment of QFCs under capital and liquidity rules that may result from the establishment of non-U.S. special resolution regimes or by contract. As stated above, the final rule maintains the existing treatment for these contracts for purposes of the regulatory capital and liquidity rules, while recognizing the recent changes instituted by the BRRD and the ISDA Protocol. Implementation of consistent, national resolution regimes on a global basis furthers the orderly resolution of internationally active financial companies, and enhances financial stability. In addition, the development of the ISDA Protocol furthers the principles of Title II of the Dodd-Frank Act and the FDI Act (in instances where a counterparty is a U.S. entity or its subsidiary) to counterparties who are not otherwise subject to U.S. law.

This final rule will benefit FDIC-supervised institutions that adhere to the ISDA Protocol by allowing for the continuation of the existing netting treatment for these contracts for purposes of the regulatory capital and liquidity rules. Absent the final rule, such FDIC-supervised institutions would be unable to include a master netting agreement under which default rights may be stayed under the BRRD or that incorporates the ISDA Protocol as a qualifying master netting agreement under the FDIC's current regulatory capital and liquidity regulations, and would be required to hold more capital and liquid assets as a result.

The final rule may result in administrative costs associated with changing the legal language that govern QFCs for a small number of entities. These costs are likely to be very small relative to the increase in capital and liquidity requirements likely to result if capital and liquidity requirements for QFCs had to be calculated on a gross basis. Any administrative costs associated with the proposed rule are likely to be very low given that similar legal structures already exist in the ISDA Protocol. The FDIC estimates that six FDIC-supervised institutions will be directly affected by this rule. Therefore, any administrative costs for FDIC-supervised institutions is likely to be low and the volume of costs for all FDIC-supervised institutions is likely to have no significant impact on financial institutions or the economy.

VII. Regulatory Analysis

A. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104–121).

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a final rule, to prepare an Initial Regulatory Flexibility Act analysis describing the impact of the final rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the final rule would not have a significant economic impact on a substantial number of small entities. The FDIC believes that the final rule would not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank

[31] Although the issue is currently outside the scope of this rulemaking, staff may consider the treatment of derivatives and other similar financial contracts subject to stays in state insurance resolution proceedings in the context of further rulemaking, in consultation with the other agencies and with State insurance regulatory authorities.

[32] 12 U.S.C. 4802.

[33] *See* 5 U.S.C. 553(d).

holding company, or savings and loan holding company with total assets of $550 million or less (a small banking organization).[34] As of March 31, 2016, there were approximately 2,942 small state nonmember banks and 275 small state savings associations under the FDIC's supervisory jurisdiction.

The final rule is expected only to apply to banking organizations that adhere to the ISDA Protocol or engage in a substantial amount of cross-border derivatives transactions. Small entities generally would not fall into this category. Accordingly, the FDIC believes that this final rule would not have a significant economic impact on small banking organizations supervised by the FDIC and therefore believes that there are no significant alternatives to the issuance of this final rule that would reduce the economic impact on small banking organizations supervised by the FDIC. Pursuant to section 605(b) of the RFA, the FDIC certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the FDIC 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 FDIC has reviewed this final rule and determined that it does not create any new, or revise any existing, collection of information pursuant to the PRA. Consequently, no information has been submitted to the Office on Management and Budget for review.

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

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

[34] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

E. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invited comments on how to make this rule easier to understand. No comments addressing this issue were received.

List of Subjects

12 CFR Part 324

Administrative practice and procedure; Banks, banking; Capital adequacy; Reporting and recordkeeping requirements; Savings associations; State non-member banks.

12 CFR Part 329

Administrative practice and procedure; Banks, banking; Federal Deposit Insurance Corporation, FDIC; Liquidity; Reporting and recordkeeping requirements.

For the reasons set forth in the supplementary information, the Federal Deposit Insurance Corporation amends 12 CFR Chapter III, parts 324 and 329 to read as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 1. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

§ 324.210 [Amended]

■ 2. In § 324.210, redesignate footnote 29 as footnote 33.

§ 324.202 [Amended]

■ 3. In § 324.202, redesignate footnotes 27 and 28 as footnotes 31 and 32.

§ 324.134 [Amended]

■ 4. In § 324.134, redesignate footnote 26 as footnote 30.

§ 324.101 [Amended]

■ 5. In § 324.101, redesignate footnote 25 as footnote 29.

§ 324.22 [Amended]

■ 6. In § 324.22, redesignate footnotes 18 through 24 as footnotes 22 through 28.

§ 324.20 [Amended]

■ 7. In § 324.20, redesignate footnotes 8 through 17 as footnotes 12 through 21.

§ 324.11 [Amended]

■ 8. In § 324.11, redesignate footnote 7 as footnote 11.

§ 324.4 [Amended]

■ 9. In § 324.4, redesignate footnote 6 as footnote 10.

■ 10. Section 324.2 is amended by redesignating footnote 5 as footnote 9, and by revising the definitions of ''Collateral agreement, '' ''Eligible margin loan'', ''Qualifying master netting agreement'', and ''Repo-style transaction'' to read as follows:

§ 324.2 Definitions.

* * * * *

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to an FDIC-supervised institution for a single financial contract or for all financial contracts in a netting set and confers upon the FDIC-supervised institution a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the FDIC-supervised institution with a right to close out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the FDIC-supervised institution's exercise of rights under the agreement may be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(1) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[4] to the U.S. laws referenced in this paragraph (1) in order to facilitate the orderly resolution of the defaulting counterparty; or

[4] The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

(2) Where the agreement is subject by its terms to any of the laws referenced in paragraph (1) of this definition.

* * * * *

Eligible margin loan means:

(1) An extension of credit where:

(i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold;

(ii) The collateral is marked to fair value daily, and the transaction is subject to daily margin maintenance requirements; and

(iii) The extension of credit is conducted under an agreement that provides the FDIC-supervised institution the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[5] or laws of foreign jurisdictions that are substantially similar[6] to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty.

(2) In order to recognize an exposure as an eligible margin loan for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(b) with respect to that exposure.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, insolvency, conservatorship, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the FDIC-supervised institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[7] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(d) of this chapter with respect to that agreement.

* * * * *

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the FDIC-supervised institution acts as agent for a customer and indemnifies the customer against loss, provided that:

(1) The transaction is based solely on liquid and readily marketable securities, cash, or gold;

(2) The transaction is marked-to-fair value daily and subject to daily margin maintenance requirements;

(3)(i) The transaction is a ''securities contract'' or ''repurchase agreement'' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act, or a netting contract between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve's Regulation EE (12 CFR part 231); or

(ii) If the transaction does not meet the criteria set forth in paragraph (3)(i) of this definition, then either:

(A) The transaction is executed under an agreement that provides the FDIC-supervised institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[8] to the U.S. laws referenced in this paragraph (3)(ii)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) The transaction is:

(1) Either overnight or unconditionally cancelable at any time by the FDIC-supervised institution; and

(2) Executed under an agreement that provides the FDIC-supervised institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set off collateral promptly upon an event of counterparty default; and

(4) In order to recognize an exposure as a repo-style transaction for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(e) with respect to that exposure.

* * * * *

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 11. The authority citation for part 329 continues to read as follows:

[5] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute ''securities contracts'' under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231).

[6] The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

[7] The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

[8] The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 12. Amend § 329.3 as follows:
■ a. Redesignate footnote 1 as footnote 2.; and
■ b. Revise the definition of ''Qualifying master netting agreement'' to read as follows:

§ 329.3 Definitions.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, insolvency, conservatorship, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the FDIC-supervised institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [1] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 329.4(a) with respect to that agreement.

* * * * *

By order of the Board of directors of the Federal Deposit Insurance Corporation.

Dated: September 20, 2016.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–25021 Filed 10–14–16; 8:45 am]

BILLING CODE P

[1] The FDIC expects to evaluate jointly with the Federal Reserve and the OCC whether foreign special resolution regimes meet the requirements of this paragraph.

FARM CREDIT ADMINISTRATION

12 CFR Parts 650, 651, 653, and 655

RIN 3052–AC89

Federal Agricultural Mortgage Corporation Governance; Standards of Conduct; Risk Management; and Disclosure and Reporting

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA, we, Agency or our) amended our regulations to related to the Federal Agricultural Mortgage Corporation's (Farmer Mac or Corporation) risk governance and making enhancements to existing disclosure and reporting requirements. The risk governance regulations require the Corporation to establish and maintain a board-level risk management committee and a risk officer, as well as risk management policies and internal controls. The changes to disclosure and reporting requirements remove repetitive reporting and allow for electronic filing of reports. We also finalized rules on the examination and enforcement authorities held by the FCA Office of Secondary Market Oversight over the Corporation. In accordance with the law, the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

DATES: *Effective date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR parts 650, 651, 653, and 655 published on July 27, 2016 (81 FR 49139) is effective October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Joseph Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4364, TTY (703) 883–4056, or

Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration amended our regulations related to the Federal Agricultural Mortgage Corporation's (Farmer Mac or Corporation) risk governance and making enhancements to existing disclosure and reporting requirements. The risk governance regulations require the Corporation to establish and maintain a board-level risk management committee and a risk officer, as well as risk management policies and internal controls. The changes to disclosure and reporting requirements remove repetitive reporting and allow for electronic filing of reports. We also finalized rules on the examination and enforcement authorities held by the FCA Office of Secondary Market Oversight over the Corporation. In accordance with 12 U.S.C. 2252, the effective date of the final rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 17, 2016.

(12 U.S.C. 2252(a)(9) and (10))

Dated: October 12, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–25050 Filed 10–14–16; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0920; Special Conditions No. 25–501–SC]

Special Conditions: Learjet Model 45 Series Airplanes; Aircraft Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments; correction.

SUMMARY: The FAA is correcting a final special conditions; request for comments document published in the **Federal Register** on October 31, 2013 (78 FR 65153). In that document the special conditions number was incorrect

and this document now posts the correct special conditions number. Also, a typographical error occurred in the wording of one of the headings paragraphs of the document. This document now posts the correct headings wording.

DATES: This correction is effective on October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1298; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2013 (78 FR 65153), the FAA published a final special conditions, request for comments document entitled ''Special Conditions: Learjet Model 45 Series Airplanes; Aircraft Electronic System Security Protection from Unauthorized External Access.'' The document issued special conditions pertaining to aircraft electronic system security protection from unauthorized external access for the Learjet Model 45 series airplanes.

However, the final special conditions; request for comments, document was published with an incorrect special conditions number. The correct special conditions number for this document is ''25–501–SC.''

Also, there was a typographical error in one of the headings paragraphs of the document. The correct heading should read ''**ACTION:** Final special conditions, request for comments.'' This document corrects that error.

Since no part of the regulatory information in the special conditions has been changed, the special conditions are not being republished.

Correction

In Final special conditions; request for comments document [FR Doc. 2013–25846, Filed 10–30–13; 8:45 a.m.] and published in the **Federal Register** on October 31, 2013 (78 FR 65153), make the following corrections:

1. On page 65153, in the first column, correct the 4th headings paragraph, from ''[Docket No. FAA–2013–0920, Special Conditions No. 25–13–12–SC]'' to read as ''[Docket No. FAA–2013–0920, Special Conditions No. 25–501–SC].''

2. On page 63153, in the first column, correct the 7th headings paragraph, from ''**ACTION:** Final special condition; request for comments.'' to read as ''**ACTION:** Final special conditions; request for comments.''

Issued in Renton, Washington, on October 6, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25063 Filed 10–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0919, Special Conditions No. 25–502–SC]

Special Conditions: Learjet Model 45 Series Airplanes; Isolation or Security Protection of the Aircraft Control Domain and the Airline Information Services Domain From the Passenger Services Domain

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments; correction.

SUMMARY: The FAA is correcting a final special conditions; request for comments document published in the **Federal Register** on October 31, 2013 (78 FR 65155). In that document the special conditions number was incorrect and this document now posts the correct special conditions number. Also, a typographical error occurred in the wording of one of the headings paragraphs of the document. This document now posts the correct headings wording.

DATES: This correction is effective on October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1298; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2013 (78 FR 65155), the FAA published a final special conditions, request for comments document entitled ''Special Conditions: Learjet Model 45 Series Airplanes; Isolation or Security Protection of the Aircraft Control Domain and the Airline Information Services Domain from the Passenger Services Domain.'' The document issued special conditions pertaining to isolation or security protection of the aircraft control domain and the airline information services domain from the passenger services domain for the Learjet Model 45 series airplanes.

However, the special conditions; request for comments document was published with an incorrect special conditions number. The correct special conditions number for this document is ''25–502–SC.''

Also, there was a typographical error in one of the headings paragraphs in the document. The correct heading should read ''**ACTION:** Final special conditions, request for comments.'' This document corrects that error.

Since no part of the regulatory information in the special conditions has been changed, the special conditions are not being republished.

Correction

In Final special conditions; request for comments document [FR Doc. 2013–25851, Filed 10–30–13; 8:45 a.m.] and published on October 31, 2013 (78 FR 65155), make the following corrections:

1. On page 65155, in the first column, correct the 4th headings paragraph, from ''[Docket No. FAA–2013–0919, Special Conditions No. 25–13–11–SC]'' to read as ''[Docket No. FAA–2013–0919, Special Conditions No. 25–502–SC].''

2. On page 65155, in the first column, correct the 7th headings paragraph, from ''**ACTION:** Final special condition; request for comments.'' to read as ''**ACTION:** Final special conditions, request for comments.''

Issued in Renton, Washington, on October 6, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25062 Filed 10–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–9282; Special Conditions No. 25–640–SC]

Special Conditions: Embraer S.A., Model ERJ 190–300 Series Airplanes; Electrical/Electronic Equipment Bay Fire Detection and Smoke Penetration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A. Model ERJ 190–300 series airplanes. These airplanes will have novel or unusual design features when compared to the

state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are electrical/electronic equipment bays distributed throughout the airplane, with three of them in the pressurized area. The time it takes to determine the source of smoke in an airplane with three or more equipment bays could allow fire to spread, generating a significant quantity of smoke and damage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Embraer S.A. on October 17, 2016. We must receive your comments by December 1, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–9282 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/*and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Happenny, FAA, Propulsion and Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2147; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above. We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On September 13, 2013, Embraer S.A. applied for an amendment to Type Certificate (TC) No. A57NM to include the new Model ERJ 190–300 series airplanes. The ERJ 190–300, which is a derivative of the ERJ 190–100 STD currently approved under TC No. A57NM, is a 97 to 114-passenger transport category airplane with two Pratt & Whitney Model PW1900G engines, a new wing design with a high aspect ratio and raked wingtip, and a new electrical distribution system.

The ERJ 190–300 will have electrical/electronic equipment bays distributed throughout the airplane, with three of them in the pressurized area. The applicable airworthiness requirements of Title 14, Code of Federal Aviation (14 CFR) 25.831 and 25.869 do not contain adequate or appropriate safety standards regarding smoke or fire detection and protection against the penetration of hazardous quantities of smoke into occupied areas of the airplane for this type of airplane configuration.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Embraer S.A. must show that the ERJ 190–300 meets the applicable provisions of the regulations listed in TC No. A57NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. Embraer S.A. must show that the ERJ 190–300 meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–137.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the ERJ 190–300 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the ERJ 190–300 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The ERJ 190–300 will incorporate the following novel or unusual design features: Electrical/electronic equipment bays that are distributed throughout the airplane. There are three electrical bays in the pressurized area—forward, center, and aft. The forward bay is located below the flight deck; the center bay is in the center fuselage below the

cabin floor; and the aft bay is located near the aft pressure bulkhead.

Discussion

Traditionally, airplanes certified under part 25 have had one or two electrical equipment bays located in the lower lobe adjacent to pressure regulator and outflow valves or vents. If a fire occurs in an electrical/electronic equipment bay, any smoke is drawn toward the outflow valves or vents and discharged from the airplane without entering occupied areas. On these airplanes, the procedure for flight crew determination of whether the source of the smoke is in the electrical/electronic equipment bay has relied on trial and error. However, many factors, including the airflow pattern, potential leak paths, and location of outflow and regulator valves, can make it difficult to identify the smoke source, especially during system and flight transients, such as climbing, descending, or other changes that would affect the internal flow path. Also, if smoke penetrates occupied areas, the flight crew would have less information with which to determine whether the source of the smoke is in an electrical/electronic equipment bay.

The FAA has accepted this trial and error approach for airplanes with no more than two electrical/electronic equipment bays, both located in the lower lobe. However, for airplanes with three or more equipment bays, the additional time it could take the flightcrew to determine the source of smoke would also allow the fire additional time to spread and generate significant amounts of smoke and damage.

Section 25.857 requires that cargo compartments have means to prevent hazardous quantities of smoke or fire extinguishing agent from penetrating into occupied areas of the airplane. However, the regulatory requirements do not address the following:

- Preventing hazardous quantities of smoke or extinguishing agent originating from the electrical/electronic equipment bays from penetrating into occupied areas of the airplane; or
- Installing smoke or fire detectors in electrical/electronic equipment bays.

The FAA determined that airplanes with electrical/electronic equipment bay configurations like that of the ERJ 190–300 need a means to detect smoke or fire in each electrical/electronic equipment bay located in the pressurized cabin to ensure that the flightcrew can make an informed decision as to the source of smoke and shut down the specific electrical/electronic equipment where smoke or fire is present. If the electrical/electronic equipment cannot be completely shut down due to conflict with other safety requirements, Embraer must conduct an analysis to:

- Show the criteria for shutting down the specific electrical/electronic equipment in the electrical/electronic equipment bay that can be shut down; and
- For the remaining electrical/electronic equipment, demonstrate that there are safety precautions incorporated against fire propagation, such as thermal protection, fire containment, or other means, as addressed in advisory circular AC 25–16, ''Electrical Fault and Fire Prevention and Protection,'' dated April 5, 1991.

The purpose of the smoke/fire detection systems is to accomplish one or more of the following: Automatically shut off power to the affected equipment; reconfigure the environmental control systems, if necessary, to control any smoke resulting from a fire or overheat condition; or alert the crew to the existence of the fire.

These alternate criteria that the FAA has developed to certify airplane designs that incorporate distributed electrical/electronic equipment bays are based on existing smoke/fire detection and smoke penetration guidance and acceptable past practices. Sections 25.831(b), (c), and (d), and 25.869 provide the general requirements that apply to electrical/electronic equipment smoke penetration and evacuation. Flight tests are conducted to demonstrate compliance; however, the amount of smoke generated and flight test conditions have been highly variable.

The special conditions below require a smoke or fire detection system in each electrical/electronic equipment bay located in the pressurized compartment. They also include requirements to prevent propagation of hazardous quantities of smoke or fire extinguishing agent throughout the passenger cabin.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the ERJ 190–300 series airplanes. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer S.A. Model ERJ 190–300 series airplanes.

Design Requirements for Smoke Detection and Smoke Penetration in Distributed Electrical/Electronic Equipment Bays.

1. Requirements to prevent propagation of smoke from entering the passenger cabin and cockpit:

a. To prevent such propagation, means to prevent hazardous quantities of smoke originating from the electrical/electronic equipment bays from incapacitating passengers and crew must be demonstrated. Flight tests must be part of such demonstration and shall cover all dispatchable system configurations.

b. A small quantity of smoke may enter an occupied area only if the design meets all of the following conditions:

i. The smoke enters occupied areas during system transients [1] from below deck or main deck sources. No sustained smoke penetration beyond that from environmental control system transients is permitted.

ii. Penetration of the small quantity of smoke is a dynamic event, characterized by either dissipation or mobility. Dissipation is rapid dilution of the smoke by ventilation air, and mobility is rapid movement of the smoke into and out of the occupied area. In no case should there be formation of a light haze indicative of stagnant airflow, as this

[1] Transient airflow conditions may cause air pressure differences between compartments, before the ventilation and pressurization system is reconfigured. Additional transients occur during changes to system configurations such as pack shut-down, fan shut-down, or changes in cabin altitude; transition in bleed source change, such as from intermediate stage to high stage bleed air; and cabin pressurization fly-through during descent may reduce air conditioning inflow. Similarly, in the event of a fire, a small quantity of smoke that penetrates into an occupied area before the ventilation system is reconfigured would be acceptable under certain conditions described within this special condition.

would indicate that the ventilation system is failing to meet the requirements of 14 CFR 25.831(b).

iii. The smoke from a smoke source below the main deck must not rise above armrest height on the main deck.

iv. The smoke from a source in the main deck must dissipate rapidly via dilution with fresh air and be evacuated from the airplane. A procedure must be included in the Airplane Flight Manual (AFM) to evacuate smoke from the occupied areas of the airplane. In order to demonstrate that the quantity of smoke is small, a flight test must be conducted that simulates the emergency procedures used in the event of a fire/smoke during flight, including the use of V_{MO}/M_{MO} descent profiles and a simulated landing, if such conditions are specified in the emergency procedure.

2. Requirement for smoke or fire detection in electrical/electronic equipment bays:

A smoke or fire detection system compliant with 14 CFR 25.858 and 25.855 must be provided for each electrical/electronic equipment bay in the pressurized cabin. Each system must provide a visual indication to the flight deck within one minute after the start of a fire. Airplane flight tests must be conducted to show compliance with these requirements, and the performance of the detectors must be shown in accordance with AC 25–9A, ''Smoke Detection, Penetration, and Evacuation Tests and Related Flight Manual Emergency Procedures,'' or other means acceptable to the FAA.

3. Requirement for AFM procedures safety evaluation:

It shall be demonstrated by means of flight tests that, in the event of smoke/fire detection in the electrical/electronic equipment bays, the AFM procedures for shutting down any or all of the electrical/electronic equipment do not compromise the safe operation of the airplane.

In case a procedure requests only part of the equipment to be shut down, the remaining equipment shall be incorporated with safety features against fire propagation.

Issued in Renton, Washington, on October 4, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25060 Filed 10–14–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No.: FAA–2015–0783; Amdt. No. 97–1338]

RIN 2120–AA65

Cancellation of Standard Instrument Approach Procedures as Part of the National Procedures Assessment (NPA) Initiative

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is issuing a final rule that removes certain redundant or underutilized ground-based nondirectional radio beacon (NDB) and VHF omnidirectional range (VOR) Standard Instrument Approach Procedures (SIAPs). On April 13, 2015, the FAA published a notice of proposed rulemaking to remove 736 SIAPs. This final rule addresses 125 of the 198 procedures for which comments were received.

DATES: This rule is effective at 0901 UTC on November 10, 2016.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dana Mitchell, Aeronautical Information Services, AJV–5, Federal Aviation Administration, Air Traffic Organization, 1305 East-West Highway, Room 5257, Silver Spring, MD 20910; Telephone (301) 427–4897; Email *AMC-ATO-IFP-Cancellations@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart i, Section 40103, sovereignty and use of airspace, and Subpart iii, Section 44701, general requirements. Under these sections, the FAA is charged with prescribing regulations to regulate the safe and efficient use of the navigable airspace; to govern the flight, navigation, protection, and identification of aircraft for the protection of persons and property on the ground, and for the efficient use of the navigable airspace (49 U.S.C. 40103(b)), and to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security (49 U.S.C. 44701(a)(5)). This action is within the scope of that authority.

SIAPs are promulgated by rulemaking procedures and are incorporated by reference into 14 CFR 97.20.

Background

On June 27, 2014, the FAA published criteria for determining whether to retain existing SIAPs (79 FR 36576). Removing identified ground-based NDB and VOR SIAPs is an integral part of right-sizing the quantity and type of procedures in the National Airspace System (NAS). As new technology facilitates the introduction of area navigation (RNAV) instrument approach procedures, the number of procedures available in the NAS has nearly doubled over the past decade. The complexity and cost of maintaining the existing ground based navigational infrastructure while expanding RNAV capability is not sustainable.

On April 13, 2015, the FAA published a notice of proposed rulemaking (NPRM) proposing to remove certain SIAPs (80 FR 19577). The NPRM included a list of 736 procedures that were identified for cancellation and the comment period closed on May 28, 2015. The FAA received comments on 198 of those procedures. Of those 198 procedures, 125 are being addressed in this final rule. The remaining 73 require additional evaluation and will be addressed in a subsequent **Federal Register** document.

It should be noted that NPA Instrument Flight Procedure (IFP) cancellation activities, and associated criteria, do not supersede similar activities being performed under the FAA's Very-High Frequency Omni-Directional Range Minimum Operational Network (*VOR MON*) Program (*see* 81 FR 48694 (July 26, 2016)). However, NPA IFP cancellation activities have been coordinated with the FAA office responsible for the VOR MON implementation program, as their input has been thoroughly considered.

SIAPs Being Processed for Cancellation

The following 8 SIAPs were proposed for cancellation in the NPRM: VOR/DME RWY 25, Alaska (GAL); VOR RWY 18, AL (DCU); VOR RWY 18, Illinois

(CMI); VOR/DME–D, TX (BPT); VOR–A, TX (BPT); VOR–B, TX (BPT); VOR–C, TX (BPT); NDB RWY 27, WY (CYS). In reviewing the procedures and comments, the FAA realized that these 8 procedures were already being processed for cancellation and were at various stages in that process. As such, the inclusion of these procedures in the NPRM was in error as they were already subject to prior agency commitments. The FAA notes all of these procedures received comment concerning the use of airport as an alternate, IFR training need, or backup SIAP for ILS OR LOC SIAP. The FAA confirms that, with the exception of GAL VOR/DME RWY 25, for each of the above affected procedures, the airports continue to maintain at least one other ground based procedure. In addition, there remain procedures available within a 20 nm radius of these airports for instrument flight training/proficiency. The procedures are listed below with the associated **Federal Register** citation announcing the cancellation.

State	Airport name	ID	Approach procedure
AK	EDWARD G PITKA SR	GAL	VOR/DME RWY 25 (81 FR 51339; August 4, 2016).
IL	UNIVERSITY OF ILLINOIS-WILLARD	CMI	VOR RWY 18 (81 FR 10081; February 29, 2016).
TX	JACK BROOKS RGNL	BPT	VOR/DME–D (81 FR 32639; May 24, 2016).
TX	JACK BROOKS RGNL	BPT	VOR–A (81 FR 32639; May 24, 2016).
TX	JACK BROOKS RGNL	BPT	VOR–B (81 FR 32639; May 24, 2016).
TX	JACK BROOKS RGNL	BPT	VOR–C (81 FR 32639; May 24, 2016).
WY	CHEYENNE RGNL/JERRY OLSON FIELD	CYS	NDB RWY 27 (81 FR 32639; May 24, 2016).
TX	BROWNSVILLE/SOUTH PADRE ISLAND INTL	BRO	VOR/DME RNAV OR GPS RWY 35 (81 FR 58390; August 25, 2016).

Summary of Comments

SIAPs Remaining in Effect

Prior to the comment review process, because of the possibility of SIAP inventory changes, all procedures were again reviewed for compliance with the initial cancellation criteria as stated in the notice of policy published June 27, 2014. The following 2 procedures did not meet the stated criteria and, therefore, will remain in effect and are not included in this final rule; however the FAA may reevaluate these procedures at a later date.

State	Airport name	ID	Approach procedure
IA	FORT DODGE RGNL	FOD	VOR RWY 12.
PA	CARLISLE	N94	NDB–B.

The following 2 procedures have been requested by the FAA's Very-High Frequency Omni-Directional Range Minimum Operational Network (VOR MON) Program to remain in effect and are not included in this final rule; however the FAA may reevaluate these procedures at a later date.

State	Airport name	ID	Approach procedure
MI	GERALD R. FORD INTL	GRR	VOR RWY 17.
WI	BURLINGTON MUNI	BUU	VOR–A.

The following 18 procedures have been requested by the Department of Defense to remain in effect and are not included in this final rule; however the FAA may reevaluate these procedures at a later date.

State	Airport name	ID	Approach procedure
IL	ST LOUIS RGNL	ALN	VOR–A.
IL	UNIVERSITY OF ILLINOIS-WILLARD	CMI	VOR/DME RWY 14L.
IL	GREATER KANKAKEE	IKK	VOR RWY 04.
IL	ABRAHAM LINCOLN CAPITAL	SPI	VOR/DME RWY 04.
IL	ABRAHAM LINCOLN CAPITAL	SPI	VOR/DME RWY 22.
IL	ABRAHAM LINCOLN CAPITAL	SPI	VOR/DME RWY 31.
IN	FORT WAYNE INTL	FWA	VOR OR TACAN RWY 05.
IN	FORT WAYNE INTL	FWA	VOR OR TACAN RWY 14.
MO	ROSECRANS MEMORIAL	STJ	VOR OR TACAN RWY 17.
MO	ROSECRANS MEMORIAL	STJ	VOR/DME OR TACAN RWY 35.
TX	ALICE INTL	ALI	VOR–A.
TX	JACK BROOKS RGNL	BPT	VOR RWY 12.
TX	VALLEY INTL	HRL	VOR/DME RWY 17R.
TX	VALLEY INTL	HRL	VOR/DME RWY 35L.
TX	MC ALLEN MILLER INTL	MFE	VOR RWY 13.
TX	MC ALLEN MILLER INTL	MFE	VOR RWY 31.
TX	PORT ISABEL-CAMERON COUNTY	PIL	VOR–A.
MT	GREAT FALLS INTL	GTF	NDB RWY 34.

Numerous comments mentioned the need for a VOR or NDB procedure as a ''backup'' in case a localizer-based procedure became unusable for any reason. The FAA determined that, in the case of an airport having a single instrument approach procedure using a localizer NavAid, or multiple instrument approach procedures using a single localizer NavAid, that a VOR or NDB procedure would be retained at that airport in case the localizer NavAid became unusable. Due to this determination, the following 25 procedures will remain in effect and are not included in this final rule; however, the FAA may reevaluate these procedures at a later date.

State	Airport name	ID	Approach procedure
AR	MENA INTERMOUNTAIN MUNI	MEZ	VOR/DME–A.
CA	ARCATA	ACV	VOR/DME RWY 14.
CA	EASTERN SIERRA RGNL	BIH	VOR OR GPS–A.
CA	BOB HOPE	BUR	VOR RWY 08.
CA	BRACKETT FIELD	POC	VOR OR GPS–A.
CA	SANTA MARIA PUB/CAPT G ALLAN HANCOCK FLD	SMX	VOR RWY 12.
GA	HEART OF GEORGIA RGNL	EZM	VOR/DME–A.
GA	THOMSON-MCDUFFIE COUNTY	HQU	VOR/DME–A.
IA	MASON CITY MUNI	MCW	VOR RWY 36.
IA	SPENCER MUNI	SPW	VOR/DME RWY 30.
IN	TERRE HAUTE INTL-HULMAN FIELD	HUF	VOR RWY 23.
KS	PHILIP BILLARD MUNI	TOP	VOR RWY 22.
MI	BISHOP INTL	FNT	VOR RWY 18.
MO	CAPE GIRARDEAU RGNL	CGI	VOR RWY 02.
MT	BOZEMAN YELLOWSTONE INTL	BZN	VOR RWY 12.
MT	YELLOWSTONE	WYS	NDB RWY 1.
NC	LINCOLNTON-LINCOLN COUNTY RGNL	IPJ	NDB RWY 23.
NH	BOIRE FIELD	ASH	VOR–A.
NV	ELKO RGNL	EKO	VOR/DME–B.
OK	RICHARD LLOYD JONES JR	RVS	VOR/DME–A.
TX	MAJORS	GVT	VOR/DME RWY 17.
TX	NORTH TEXAS RGNL/PERRIN FIELD	GYI	VOR/DME–A.
VA	NEW RIVER VALLEY	PSK	VOR/DME RWY 06.
WA	SNOHOMISH COUNTY (PAINE FLD)	PAE	VOR/DME RWY 16R.
WI	CHIPPEWA VALLEY RGNL	EAU	VOR–A.

Numerous comments mentioned the need for a VOR and/or NDB procedures for IFR training and/or proficiency. To address that concern, each procedure that received a comment(s) pertaining to IFR training and/or proficiency was reviewed in the following manner: If there was not a similar type (*i.e.,* VOR, NDB) procedure at an airport within 20NM of the airport containing the procedure in question, the procedure in question would be retained. Based upon the method for reviewing comments pertaining to IFR training and/or proficiency, the following 11 procedures will remain in effect and are not included in this final rule; however, the FAA may reevaluate these procedures at a later date.

State	Airport name	ID	Approach procedure
AK	SOLDOTNA	SXQ	NDB RWY 25.
AK	SOLDOTNA	SXQ	VOR/DME–A.
AK	TALKEETNA	TKA	VOR–A.
AZ	CHANDLER MUNI	CHD	NDB RWY 4R.
CA	CATALINA	AVX	VOR OR GPS–A.
IA	DUBUQUE RGNL	DBQ	VOR RWY 36.
KS	NEWTON-CITY-COUNTY	EWK	VOR/DME–A.
LA	RUSTON RGNL	RSN	VOR/DME–A.
SD	WATERTOWN RGNL	ATY	VOR OR TACAN RWY 17.
TX	WHARTON RGNL	ARM	VOR/DME–A.
VA	CULPEPER RGNL	CJR	NDB RWY 4.

The following instrument flight procedures received comments that were not substantive enough to warrant retention in the National Airspace System IFP inventory. Some comments were general in nature, expressing opposition to the cost of equipping their aircraft with GPS equipment, while others expressed opposition to the decommissioning of NavAids, which is unrelated to this final rule. Numerous comments pertained to the cancellation of multiple procedures at each airport, but those comments became insubstantial once another procedure at the same airport was retained, as in the instances mentioned previously in this final rule. Cancellation of the following 59 procedures is in accordance with the criteria stated in the notice of policy published June 27, 2014, as well as the criteria established for the provision for IFR training/proficiency as stated earlier in this final rule.

State	Airport name	ID	Approach procedure
AK	BETHEL	BET	VOR/DME RWY 19R.
AR	SPRINGDALE MUNI	ASG	VOR RWY 18.

State	Airport name	ID	Approach procedure
AR	MEMORIAL FIELD	HOT	VOR Y RWY 05.
CA	ARCATA	ACV	VOR/DME RWY 01.
CA	EASTERN SIERRA RGNL	BIH	VOR/DME OR GPS–B.
CA	BRAWLEY MUNI	BWC	VOR/DME–A.
CA	LOS BANOS MUNI	LSN	VOR/DME RWY 14.
GA	FULTON COUNTY AIRPORT-BROWN FIELD	FTY	NDB RWY 8.
GA	GWINNETT COUNTY-BRISCOE FIELD	LZU	NDB RWY 25.
GA	BARROW COUNTY	WDR	VOR/DME–A.
IA	THE EASTERN IOWA	CID	VOR RWY 27.
IA	THE EASTERN IOWA	CID	VOR/DME RWY 09.
IA	MASON CITY MUNI	MCW	VOR/DME RWY 18.
IA	SPENCER MUNI	SPW	VOR/DME RWY 12.
ID	BOISE AIR TERMINAL/GOWEN FLD	BOI	VOR/DME RWY 10R.
ID	BURLEY MUNI	BYI	VOR/DME–B.
ID	POCATELLO RGNL	PIH	VOR/DME RWY 21.
IL	AURORA MUNI	ARR	VOR RWY 15.
IL	AURORA MUNI	ARR	VOR RWY 33.
IL	MOUNT VERNON	MVN	VOR RWY 23.
IN	EVANSVILLE RGNL	EVV	NDB RWY 22.
IN	MARION MUNI	MZZ	VOR RWY 22.
IN	MARION MUNI	MZZ	VOR RWY 4.
IN	KOKOMO MUNI	OKK	VOR RWY 23.
IN	INDIANAPOLIS EXECUTIVE	TYQ	VOR/DME RWY 36.
LA	BATON ROUGE METROPOLITAN-RYAN FIELD	BTR	NDB RWY 31.
LA	BATON ROUGE METROPOLITAN-RYAN FIELD	BTR	VOR/DME RWY 22R.
LA	RUSTON RGNL	RSN	NDB RWY 36.
ME	AUGUSTA STATE	AUG	VOR/DME RWY 08.
ME	AUGUSTA STATE	AUG	VOR/DME RWY 17.
MI	JACKSON COUNTY-REYNOLDS FIELD	JXN	VOR/DME RWY 24.
MO	CAPE GIRARDEAU RGNL	CGI	VOR RWY 10.
MO	MACON-FOWER MEMORIAL	K89	VOR/DME RWY 20.
MO	SPIRIT OF ST LOUIS	SUS	NDB RWY 26L.
MO	SPIRIT OF ST LOUIS	SUS	NDB RWY 8R.
MT	BERT MOONEY	BTM	VOR/DME OR GPS–A.
MT	BOZEMAN YELLOWSTONE INTL	BZN	VOR/DME RWY 12.
MT	MISSION FIELD	LVM	VOR–A.
MT	SIDNEY-RICHLAND MUNI	SDY	NDB RWY 1.
NC	ELIZABETH CITY CG AIR STATION/RGNL	ECG	VOR/DME RWY 10.
NE	WAYNE MUNI/STAN MORRIS FLD	LCG	NDB RWY 23.
NE	NORFOLK RGNL/KARL STEFAN MEMORIAL FLD	OFK	VOR RWY 01.
NH	BOIRE FIELD	ASH	NDB RWY 14.
NV	ELKO RGNL	EKO	VOR–A.
NY	CHAUTAUQUA COUNTY/DUNKIRK	DKK	VOR RWY 06.
OK	RICHARD LLOYD JONES JR	RVS	VOR RWY 1L.
TX	NORTH TEXAS RGNL/PERRIN FIELD	GYI	NDB RWY 17L.
TX	DRAUGHON-MILLER CENTRAL TEXAS RGNL	TPL	VOR RWY 15.
VA	DANVILLE RGNL	DAN	VOR RWY 02.
VA	NEW RIVER VALLEY	PSK	VOR–A.
VA	ROANOKE RGNL/WOODRUM FIELD	ROA	VOR RWY 34, formerly VOR/NDB RWY 34.
WA	SNOHOMISH COUNTY (PAINE FLD)	PAE	VOR RWY 16R.
WI	DANE COUNTY RGNL-TRUAX FIELD	MSN	VOR/DME OR TACAN RWY 14.
WI	DANE COUNTY RGNL-TRUAX FIELD	MSN	VOR/DME OR TACAN RWY 32.
WI	DANE COUNTY RGNL-TRUAX FIELD	MSN	VOR/DME OR TACAN RWY 18.
WV	GREENBRIER VALLEY	LWB	VOR RWY 04.
WY	CASPER/NATRONA COUNTY INTL	CPR	VOR/DME RWY 03.
WY	EVANSTON-UINTA COUNTY BURNS FIELD	EVW	VOR/DME RWY 23.
WY	GILLETTE-CAMPBELL COUNTY	GCC	VOR/DME RWY 34.

The Amendment

SIAPs and associated supporting data adopted or removed by the FAA are documented on FAA Forms 8260–3, 8260–4, and 8260–5, which are incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97. The FAA has determined that the 59 procedures listed above should be removed consistent with FAA policy on maintaining instrument approach procedures in the NAS.

Conclusion

The FAA has determined that this final rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Additional Information

A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Publishing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Persons requesting additional information must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rule, including technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on October 4, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, and 44721–44722.

■ 2. Part 97 is amended by removing the specified procedures as follows:

State	Airport name	ID	Approach procedure
AK	BETHEL	BET	VOR/DME RWY 19R.
AR	SPRINGDALE MUNI	ASG	VOR RWY 18.
AR	MEMORIAL FIELD	HOT	VOR Y RWY 05.
CA	ARCATA	ACV	VOR/DME RWY 01.
CA	EASTERN SIERRA RGNL	BIH	VOR/DME OR GPS–B.
CA	BRAWLEY MUNI	BWC	VOR/DME–A.
CA	LOS BANOS MUNI	LSN	VOR/DME RWY 14.
GA	FULTON COUNTY AIRPORT-BROWN FIELD	FTY	NDB RWY 8.
GA	GWINNETT COUNTY-BRISCOE FIELD	LZU	NDB RWY 25.
GA	BARROW COUNTY	WDR	VOR/DME–A.
IA	THE EASTERN IOWA	CID	VOR RWY 27.
IA	THE EASTERN IOWA	CID	VOR/DME RWY 09.
IA	MASON CITY MUNI	MCW	VOR/DME RWY 18.
IA	SPENCER MUNI	SPW	VOR/DME RWY 12.
ID	BOISE AIR TERMINAL/GOWEN FLD	BOI	VOR/DME RWY 10R.
ID	BURLEY MUNI	BYI	VOR/DME–B.
ID	POCATELLO RGNL	PIH	VOR/DME RWY 21.
IL	AURORA MUNI	ARR	VOR RWY 15.
IL	AURORA MUNI	ARR	VOR RWY 33.
IL	MOUNT VERNON	MVN	VOR RWY 23.
IN	EVANSVILLE RGNL	EVV	NDB RWY 22.
IN	MARION MUNI	MZZ	VOR RWY 22.
IN	MARION MUNI	MZZ	VOR RWY 4.
IN	KOKOMO MUNI	OKK	VOR RWY 23.
IN	INDIANAPOLIS EXECUTIVE	TYQ	VOR/DME RWY 36.
LA	BATON ROUGE METROPOLITAN-RYAN FIELD	BTR	NDB RWY 31.
LA	BATON ROUGE METROPOLITAN-RYAN FIELD	BTR	VOR/DME RWY 22R.
LA	RUSTON RGNL	RSN	NDB RWY 36.
ME	AUGUSTA STATE	AUG	VOR/DME RWY 08.
ME	AUGUSTA STATE	AUG	VOR/DME RWY 17.
MI	JACKSON COUNTY-REYNOLDS FIELD	JXN	VOR/DME RWY 24.
MO	CAPE GIRARDEAU RGNL	CGI	VOR RWY 10.
MO	MACON-FOWER MEMORIAL	K89	VOR/DME RWY 20.
MO	SPIRIT OF ST LOUIS	SUS	NDB RWY 26L.
MO	SPIRIT OF ST LOUIS	SUS	NDB RWY 8R.
MT	BERT MOONEY	BTM	VOR/DME OR GPS–A.
MT	BOZEMAN YELLOWSTONE INTL	BZN	VOR/DME RWY 12.
MT	MISSION FIELD	LVM	VOR–A.
MT	SIDNEY-RICHLAND MUNI	SDY	NDB RWY 1.

State	Airport name	ID	Approach procedure
NC	ELIZABETH CITY CG AIR STATION/RGNL	ECG	VOR/DME RWY 10.
NE	WAYNE MUNI/STAN MORRIS FLD	LCG	NDB RWY 23.
NE	NORFOLK RGNL/KARL STEFAN MEMORIAL FLD	OFK	VOR RWY 01.
NH	BOIRE FIELD	ASH	NDB RWY 14.
NV	ELKO RGNL	EKO	VOR–A.
NY	CHAUTAUQUA COUNTY/DUNKIRK	DKK	VOR RWY 06.
OK	RICHARD LLOYD JONES JR	RVS	VOR RWY 1L.
TX	NORTH TEXAS RGNL/PERRIN FIELD	GYI	NDB RWY 17L.
TX	DRAUGHON-MILLER CENTRAL TEXAS RGNL	TPL	VOR RWY 15.
VA	DANVILLE RGNL	DAN	VOR RWY 02.
VA	NEW RIVER VALLEY	PSK	VOR–A.
VA	ROANOKE RGNL/WOODRUM FIELD	ROA	VOR/NDB RWY 34, VOR RWY 34.
WA	SNOHOMISH COUNTY (PAINE FLD)	PAE	VOR RWY 16R.
WI	DANE COUNTY RGNL-TRUAX FIELD	MSN	VOR/DME OR TACAN RWY 14.
WI	DANE COUNTY RGNL-TRUAX FIELD	MSN	VOR/DME OR TACAN RWY 32.
WI	DANE COUNTY RGNL-TRUAX FIELD	MSN	VOR/DME OR TACAN RWY 18.
WV	GREENBRIER VALLEY	LWB	VOR RWY 04.
WY	CASPER/NATRONA COUNTY INTL	CPR	VOR/DME RWY 03.
WY	EVANSTON-UINTA COUNTY BURNS FIELD	EVW	VOR/DME RWY 23.
WY	GILLETTE-CAMPBELL COUNTY	GCC	VOR/DME RWY 34.

[FR Doc. 2016–24445 Filed 10–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 746

[Docket No. 160915848–6952–01]

RIN 0694–AH12

Cuba: Revisions to License Exceptions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends a license exception to allow cargo aboard aircraft to transit Cuba when that cargo is bound for destinations other than Cuba. This rule also authorizes export and reexport of certain items sold directly to individuals in Cuba under a license exception. Finally, this rule revises the lists of ineligible Cuban officials for purposes of certain license exceptions. BIS is publishing this rule to further implement the administration's policy of increasing engagement and commerce that benefits the Cuban people.

DATES: Effective: October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Foreign Policy Division, Bureau of Industry and Security, Phone: (202) 482–4252.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2014, the President announced a new approach in U.S. policy toward Cuba. This approach recognized that increased engagement and commerce benefits the American and Cuban people, and sought to make the lives of ordinary Cubans easier and more prosperous. In furtherance of that policy, and in coordination with the Department of the Treasury's Office of Foreign Assets Control (OFAC), the Bureau of Industry and Security published five rules amending the Export Administration Regulation (EAR) between January 16, 2015, and March 16, 2016 (*see* 80 FR 2286, 80 FR 43314, 80 FR 56898, 81 FR 4580, and 81 FR 13972). Collectively these rules established License Exception Support for the Cuban People (SCP) (§ 740.21 of the EAR) and revised existing license exceptions and licensing policy in the EAR for Cuba.

Today, BIS is taking this action in coordination with OFAC, which is amending the Cuban Assets Control Regulations (CACR) (31 CFR part 515).

This rule continues the President's policy of increasing engagement and commerce between the United States and Cuba by making cargo transiting Cuba via aircraft on temporary sojourn eligible for License Exception Aircraft, Vessels and Spacecraft (AVS) (§ 740.15 of the EAR), placing it on par with such cargo aboard vessels on temporary sojourn to Cuba. This rule also makes a non-substantive clarifying edit in describing the limits that apply to the transiting cargo. Previously, one of those limits read: ''The cargo . . . does not enter the Cuban economy. . . .'' This rule revises that limit to read: ''The cargo . . . is not removed from the aircraft or vessel for use in Cuba. . . .'' BIS believes that the latter more clearly expresses the underlying concept, *i.e.,* that the cargo must truly be in transit to be eligible for this license exception. This final rule continues to apply the other limits of License Exception AVS (that the cargo must not be transferred to another vessel and must leave with the same vessel when it departs) to aircraft as well as vessels without any substantive change.

In furtherance of the President's policy to support the Cuban people, this rule also makes exports or reexports of eligible items sold directly to eligible individuals in Cuba for their personal use or their immediate family's personal use eligible for License Exception SCP. To be eligible, the items must be designated as EAR99 or controlled on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) only for anti-terrorism reasons. Additionally, the purchasers and end users must not be members of the Council of Ministers, flag officers of the Revolutionary Armed Forces, or members of the Politburo. This amendment to License Exception SCP facilitates direct sales to individuals in Cuba by online retailers and others that sell eligible consumer products directly to end users. This new provision of License Exception SCP complements existing authorizations in the EAR. License Exception SCP already authorizes the export or reexport to Cuba of certain items for use by the Cuban private sector. There is an existing case-by-case licensing policy for the export or reexport to Cuba of items that would meet the needs of the Cuban people, including items for wholesale and retail distribution for domestic consumption by the Cuban people. Additionally, certain donations to the Cuban people have been authorized pursuant to License Exceptions Gift Parcels and Humanitarian Donations (GFT) (§ 740.12 of the EAR), Consumer Communications

Devices (CCD) (§ 740.19 of the EAR), and SCP.

Finally, this rule revises the lists of Cuban government and Cuban Communist Party officials that are ineligible for provisions of three license exceptions: individual gift parcels (GFT, § 740.12(a) of the EAR), consumer communications devices (CCD, § 740.19 of the EAR), and software and commodities that will be used by the private sector or by individuals to improve the free flow of communications or support certain private sector activities in Cuba (SCP, § 740.21(d)(4) of the EAR). Under this rule, ineligible recipients are limited to members of the Council of Ministers, flag officers of the Revolutionary Armed Forces, and members of the Politburo. BIS is revising these lists to correspond to amendments that OFAC is making to its definitions of prohibited officials of the Government of Cuba and prohibited members of the Cuban Communist Party in §§ 515.337 and 515.338 of the CACR, respectively.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule involves a collection of information approved under OMB control number 0694–0088—Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application, which carries an annual estimated burden of 31,833 hours. BIS believes that this rule will have no significant impact on that burden. To the extent that it has any impact, BIS believes that this rule will reduce the paperwork burden to the public because it will make some transactions that currently require a license from BIS eligible for a license exception. In those instances, exporters and reexporters will be relieved of the burden of applying for a license.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at *jseehra@omb.eop.gov* or by fax to (202) 395–7285 and to William Arvin at *william.arvin@bis.doc.gov.*

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). This rule is a part of a foreign policy initiative to change the nature of the relationship between Cuba and the United States announced by the President on December 17, 2014. Delay in implementing this rule to obtain public comment would undermine the foreign policy objectives that the rule is intended to implement. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 740

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

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 15 CFR Chapter VII, Subchapter C is amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 2. Section 740.12 is amended by revising paragraphs (a)(2)(v)(A) and (B) to read as follows:

§ 740.12 Gift parcels and humanitarian donations (GFT).

(a) * * *

(2) * * *

(v) * * *

(A) No gift parcel may be sent to any member of the Council of Ministers or flag officer of the Revolutionary Armed Forces.

(B) No gift parcel may be sent to any member of the Politburo.

* * * * *

■ 3. Section 740.15 is amended by revising the introductory text and paragraph (d)(6), removing the second (duplicate) ''note to paragraph (d),'' redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e) to read as follows:

§ 740.15 Aircraft, vessels and spacecraft (AVS).

This License Exception authorizes departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad; the export of equipment and spare parts for permanent use on a vessel or aircraft; exports to vessels or planes of U.S. or Canadian registry and U.S. or Canadian Airlines' installations or agents; the export or reexport of cargo that will transit Cuba on an aircraft or vessel on temporary sojourn; and the export of spacecraft and components for fundamental research. Generally, no License Exception symbol is necessary

for export clearance purposes; however, when necessary, the symbol ''AVS'' may be used.

* * * * *

(d) * * *

(6) *Cuba, eligible vessels and purposes.* Only the types of vessels listed in this paragraph (d)(6) departing for Cuba for the purposes listed in this paragraph (d)(6) may depart for Cuba pursuant to this paragraph (d). Vessels used to transport both passengers and items to Cuba may transport automobiles only if the export or reexport of the automobiles to Cuba has been authorized by a separate license issued by BIS (*i.e.,* not authorized by license exception).

(i) Cargo vessels for hire for use in the transportation of items;

(ii) Passenger vessels for hire for use in the transportation of passengers and/or items; and

(iii) Recreational vessels that are used in connection with travel authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC).

Note to paragraph (d)(6)(iii): Readers should also consult U.S. Coast Guard regulations at 33 CFR part 107 Subpart B—Unauthorized Entry into Cuban Territorial Waters.

* * * * *

(e) *Intransit cargo.* Cargo laden on board an aircraft or vessel may transit Cuba provided:

(1) The aircraft or vessel is exported or reexported on temporary sojourn to Cuba pursuant to paragraph (a) or (d) of this section or a license from BIS; and

(2) The cargo departs with the aircraft or vessel at the end of its temporary sojourn to Cuba, is not removed from the aircraft or vessel for use in Cuba and is not transferred to another aircraft or vessel while in Cuba.

* * * * *

■ 4. Section 740.19 is amended by revising paragraphs (c)(2)(i) and (ii) to read as follows:

§ 740.19 Consumer communications devices (CCD).

* * * * *

(c) * * *

(2) * * *

(i) *Ineligible Cuban Government Officials.* Members of the Council of Ministers and flag officers of the Revolutionary Armed Forces.

(ii) *Ineligible Cuban Communist Party Officials.* Members of the Politburo.

■ 5. Section 740.21 is amended by:

■ a. Removing the word ''or'' from the end of paragraph (b)(2);

■ b. Removing the period from the end of paragraph (b)(3) and adding in its place ''; or'';

■ c. Adding paragraph (b)(4) and;

■ d. Revising paragraphs (d)(4)(ii) and (iii).

The addition and revisions read as follows:

§ 740.21 Support for the Cuban People (SCP).

* * * * *

(b) * * *

(4) Items sold directly to individuals in Cuba for their personal use or their immediate family's personal use, other than officials identified in paragraphs (d)(4)(ii) or (iii) of this section.

* * * * *

(d) * * *

(4) * * *

(ii) Members of the Council of Ministers and flag officers of the Revolutionary Armed Forces; and

(iii) Members of the Politburo.

* * * * *

PART 746—[AMENDED]

■ 6. The authority citation for part 746 continues to read:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 3, 2016, 81 FR 27293 (May 5, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 7. Section 746.2 is amended by revising paragraph (a)(1)(x) to read as follows:

§ 746.2 Cuba.

(a) * * *

(1) * * *

(x) Aircraft, vessels and spacecraft (AVS) for certain aircraft on temporary sojourn; equipment and spare parts for permanent use on a vessel or aircraft, and ship and plane stores; vessels on temporary sojourn; or cargo transiting Cuba on aircraft or vessels on temporary sojourn (*see* § 740.15(a), (b), (d), and (e) of the EAR).

* * * * *

Dated: October 11, 2016.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2016–25034 Filed 10–14–16; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2014–0016]

RIN 0960–AH66

Unsuccessful Work Attempts and Expedited Reinstatement Eligibility

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These rules finalize the rules we proposed in our notice of proposed rulemaking (NPRM), published on May 11, 2016. In these rules, we remove some of the requirements for evaluation of an unsuccessful work attempt (UWA) that lasts between 3 and 6 months, allow previously entitled beneficiaries to apply for expedited reinstatement (EXR) in the same month they stop performing substantial gainful activity (SGA), and provide that provisional benefits will begin the month after the request for EXR if the beneficiary stops performing SGA in the month of the EXR request. These changes will simplify our policies and make them easier for the public to understand.

DATES: These final rules will be effective November 16, 2016, except for the amendments to §§ 404.1592c and 416.999a, which will be effective April 17, 2017.

FOR FURTHER INFORMATION CONTACT: Kristine Erwin-Tribbitt, Office of Retirement and Disability Policy, Office of Research, Demonstration, and Employment Support, Social Security Administration, 6401 Security Boulevard, Robert Ball Building 3–A–26, Baltimore, MD 21235–6401, (410) 965–3353. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On May 11, 2016, we published an NPRM in the **Federal Register** at 81 FR 29212 in which we proposed to revise our rules to simplify certain aspects of our UWA and EXR policies and make them easier for the public to understand. We are adopting the proposed rules as final rules.

The final rules at 20 CFR 404.1574(c), 404.1575(d), 416.974(c), and 416.975(d) remove the additional conditions that we used when we evaluated a work attempt in employment or self-employment that lasted between 3 and 6 months and use the current 3-month standard for all work attempts that are 6 months or less. Under these rules, ordinarily, work you have done will not

show that you are able to do substantial gainful activity if, after you worked for a period of 6 months or less, your impairment forced you to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level. The new rules at 20 CFR 404.1592c and 416.999a allow a previously entitled individual to request EXR in the same month they stop performing SGA. These new rules apply to Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) claimants and beneficiaries. We expect these changes will result in simplified case processing and faster and better determinations and decisions.

You can find additional information and discussion regarding these changes in the preamble to our proposed rule.

Public Comments and Discussion

We received eight timely submitted comments that addressed issues within the scope of our proposed rules. Below, we present the views we received and address all of the relevant and significant issues raised by the commenters. We carefully considered their concerns, but did not make any changes to our rules because of the comments.

Of these eight comments, six were from disability advocacy organizations, all of whom supported our proposed rules. The organizations expressed that the proposed changes will have a positive impact on beneficiaries by supporting their attempts to work and helping them understand and use the rules. They asserted that this, in turn, would provide greater assurance to beneficiaries who want to attempt a return to work and would result in increased program participation.

Comment: One commenter asked if it would be easier for an individual to temporarily and voluntarily suspend benefits when trying to rejoin the work force instead of terminating his or her benefits and then requesting EXR following an UWA.

Response: Under the Social Security Act, we are required to terminate an individual's disability benefits if he or she no longer meets the eligibility requirements and are therefore prohibited from simply suspending benefits.[1]

To be entitled to disability benefits, an individual must be unable to engage in any SGA by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months.[2] An individual may be determined not to be entitled to benefits if there is substantial evidence demonstrating that the individual is able to engage in SGA.[3] Generally, a period of disability ends and benefits cease following a finding that the physical or mental impairment on the basis of which the benefits are provided has not been disabling for 36 months, as demonstrated by SGA.[4]

Because we are required to terminate benefits, we established EXR in order to facilitate benefit reinstatement to individuals whose benefits terminated as a result of SGA. Previously entitled individuals may request EXR within 60 months of their prior termination of benefits if their medical condition no longer permits them to perform SGA. To qualify for EXR, a previously entitled individual must be unable to perform SGA due to an impairment that is the same as, or related to, an impairment that was the basis for the previous entitlement.[5]

Comment: One commenter indicated that the proposed rules were unclear, stating that ''the rules for UWA, as proposed are in direct conflict with the definition of disability, which requires, in part, the inability to engage in SGA for 12 consecutive months.'' He went on to ask if our proposed rule changed the definition of disability or if it ''merely appl[ies] after the initial 12 month period?''

Response: The new rules do not conflict with the definition of disability nor do they change our policy or definition of disability. By applying the current 3-month conditions to all work attempts that are 6 months or less, the new rules simply remove the additional documentation previously required of an individual with a work attempt lasting between 3 and 6 months.

To be eligible for disability benefits, an individual must be unable to engage in any SGA by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.[6] As we explained in our NPRM, disability evaluation is generally concerned with the ability to work over an extended period rather than in short, isolated periods.

Disability claimants and beneficiaries may attempt to return to work and engage in SGA following a break in the continuity of their work. For SGA determination purposes, we may disregard work in employment or self-employment if a claimant or beneficiary, after working for a period of 6 months or less, stops working or reduces the amount of work so that the earnings fall below the SGA level because of the original impairment or the removal of special conditions that were essential to the performance of his or her work, and if there was a significant break in the continuity of work before this work attempt.[7]

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB has not reviewed them.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

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. 9601, Social Security—Disability Insurance; 96.006, Supplemental Security Income; 96.008, Social Security—Work Incentives Planning and Assistance Program.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Reporting and recordkeeping requirements, Social security, Vocational rehabilitation.

20 CFR Part 416

Administrative practice and procedure, Medicaid, Reporting and recordkeeping requirements,

[1] 42 U.S.C. 416(i)(2)(D)(ii)(II).

[2] 42 U.S.C. 423(d)(1)(A), 42 U.S.C. 1382c(a)(3)(A).

[3] 42 U.S.C. 423(f)(2)(A)(ii), 42 U.S.C. 1382c(a)(4)(A)(i)(II).

[4] 42 U.S.C. 416(i)(2)(D)(ii)(II).

[5] 20 CFR 404.1592c and 416.999a.

[6] 42 U.S.C. 423(d)(1)(A); 42 U.S.C. 1382c(a)(3)(A).

[7] 20 CFR 404.1574(c) and 416.974(c).

Supplemental Security Income (SSI), Vocational rehabilitation.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we amend 20 CFR part 404 subpart P and 20 CFR part 416 subpart I as set forth below:

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

Subpart P—Determining Disability and Blindness

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

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.1574 by revising the first sentence of paragraph (c)(1), revising paragraph (c)(3), removing paragraph (c)(4), and redesignating paragraph (c)(5) as (c)(4) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(c) * * *

(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after you worked for a period of 6 months or less, your impairment forced you to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level in paragraph (b)(2) of this section, and you meet the conditions described in paragraphs (c)(2), (3), and (4) of this section. * * *

* * * * *

(3) *If you worked 6 months or less.* We will consider work of 6 months or less to be an unsuccessful work attempt if you stopped working or you reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that took into account your impairment and permitted you to work.

* * * * *

■ 3. Amend § 404.1575 by revising the first sentence of paragraph (d)(1), revising paragraph (d)(3), removing paragraph (d)(4), and redesignating paragraph (d)(5) as (d)(4) to read as follows:

§ 404.1575 Evaluation guides if you are self-employed.

* * * * *

(d) * * *

(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), and (4) of this section. * * *

* * * * *

(3) *If you worked 6 months or less.* We will consider work of 6 months or less to be an unsuccessful work attempt if you stopped working or you reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that took into account your impairment and permitted you to work.

* * * * *

■ 4. Amend § 404.1592c by revising paragraph (a)(4)(i) and (c)(2) to read as follows:

§ 404.1592c Who is entitled to expedited reinstatement?

(a) * * *

(4) * * *

(i) You are not able or become unable to do substantial gainful activity because of your medical condition as determined under paragraph (c) of this section;

* * * * *

(c) * * *

(2) You are not able or become unable to do substantial gainful activity in the month you file your request for reinstatement; and

* * * * *

■ 5. Amend § 404.1592e by revising paragraph (a)(1) to read as follows:

§ 404.1592e How do we determine provisional benefits?

(a) * * *

(1) We will pay you provisional benefits, and reinstate your Medicare if you are not already entitled to Medicare, beginning with the month you file your request for reinstatement under § 404.1592c(a) if you do not perform substantial gainful activity in that month. We will pay you provisional benefits, and reinstate your Medicare if you are not already entitled to Medicare, beginning with the month after you file your request for reinstatement under § 404.1592c(a) if you perform substantial gainful activity in the month in which you file your request for reinstatement.

* * * * *

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

Subpart I—Determining Disability and Blindness

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

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b; secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 7. Amend § 416.974 by revising paragraph (c)(3), removing paragraph (c)(4), and redesignating paragraph (c)(5) as (c)(4) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(c) * * *

(3) *If you worked 6 months or less.* We will consider work of 6 months or less to be an unsuccessful work attempt if you stopped working or you reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that took into account your impairment and permitted you to work.

* * * * *

■ 8. Amend § 416.975 by revising paragraph (d)(1) and (3), removing paragraph (d)(4), and redesignating paragraph (d)(5) as (d)(4) to read as follows:

§ 416.975 Evaluation guides if you are self-employed.

* * * * *

(d) * * *

(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), and (4) of this section.

* * * * *

(3) *If you worked 6 months or less.* We will consider work of 6 months or less to be an unsuccessful work attempt if you stopped working or you reduced your work and earnings below the substantial gainful activity earnings

level because of your impairment or because of the removal of special conditions that took into account your impairment and permitted you to work.

* * * * *

■ 9. Amend § 416.999a by revising paragraph (a)(4)(i) and (c)(2) to read as follows:

§ 416.999a Who is eligible for expedited reinstatement?

(a) * * *

(4) * * *

(i) You are not able or become unable to do substantial gainful activity because of your medical condition as determined under paragraph (c) of this section.

* * * * *

(c) * * *

(2) You are not able or become unable to do substantial gainful activity in the month you file your request for reinstatement; and

* * * * *

[FR Doc. 2016–24873 Filed 10–14–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2016–N–2766]

Medical Devices; Cardiovascular Devices; Classification of the Apical Closure Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the apical closure device into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the apical closure device's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective October 17, 2016. The classification was applicable on July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Jennifer Piselli, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 1561, Silver Spring, MD, 20993–0002, 240–402–6646, *jennifer.piselli@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i), to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of ''low-moderate risk'' or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA shall classify the device by written order within 120 days. This classification will be the initial classification of the device.

On June 25, 2015, Micro Interventional Devices, Inc. submitted a request for classification of the Permaseal Device under section 513(f)(2) of the FD&C Act.

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on July 27, 2016, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 870.4510.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for an apical closure device will need to comply with the special controls named in this final administrative order.

The device is assigned the generic name apical closure device, and it is identified as a prescription device consisting of a delivery system and implant component that is used for soft tissue approximation of cardiac apical tissue during transcatheter valve replacement procedures.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1:

TABLE 1—APICAL CLOSURE DEVICE RISKS AND MITIGATION MEASURES

Identified risk	Mitigation measure
Infection	Sterilization Validation. Shelf Life Testing. Labeling.
Adverse Tissue Reaction	Biocompatibility Evaluation. In vivo Performance Testing.
Bleeding	Non-clinical Performance Testing.
▪ At ventricular puncture or anchor deployment sites	In vivo Performance Testing. Labeling.
Tissue Damage	Non-clinical Performance Testing.
▪ Apical tearing	In vivo Performance Testing.
▪ Myocardial tearing (local or diffuse)	Labeling. Training.
New Hypokinesia or Akinesis of Apex	In vivo Performance Testing. Labeling.
Thromboemboli and Full Thickness Injury	In vivo Performance Testing. Labeling. Training.
Pericardial Tamponade	In vivo Performance Testing. Labeling.

FDA believes that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness.

Apical closure devices are not safe for use except under the supervision of a practitioner licensed by law to direct the use of the device. As such, the device is a prescription device and must satisfy prescription labeling requirements (see 21 CFR 801.109 *Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k), if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the apical closure device they intend to market.

II. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final administrative order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for part 870 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 2. Add § 870.4510 to subpart E to read as follows:

§ 870.4510 Apical closure device.

(a) *Identification.* An apical closure device is a prescription device consisting of a delivery system and implant component that is used for soft tissue approximation of cardiac apical tissue during transcatheter valve replacement procedures.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The patient contacting materials must be evaluated to be biocompatible.

(2) Performance data must validate the sterility of the patient-contacting components of the device.

(3) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the labeled shelf life.

(4) Non-clinical performance testing data must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Consistent and reliable implant deployment;

(ii) Assessment of implant pull-out force; and

(iii) Sheath size compatibility with implant.

(5) In vivo evaluation of the device must demonstrate device performance, including device operation resulting in closure of the myocardial wound.

(6) Labeling must include the following:

(i) Detailed information explaining how the device operates;

(ii) Sheath size that device can accommodate;

(iii) Identification of the minimum myocardial wall thickness to ensure optimal device function; and

(iv) A shelf life.

Dated: October 11, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25002 Filed 10–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to further implement elements of the policy announced by the President on December 17, 2014, to engage and empower the Cuban people. Among other things, these amendments authorize certain transactions related to Cuban-origin pharmaceuticals and joint medical research; add, expand, and clarify authorizations relating to trade and commerce; authorize certain civil aviation safety-related services; further facilitate authorized travel to Cuba; and expand the authorizations for grants and humanitarian-related services designed to directly benefit the Cuban people. These amendments also implement certain technical and conforming changes. OFAC is making these amendments in support of the process of normalizing bilateral relations with Cuba.

DATES: *Effective:* October 17, 2016.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*).

Background

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. 4301–4341). OFAC has amended the Regulations on numerous occasions.

Most recently, on January 16, June 15, and September 21, 2015, and January 27 and March 16, 2016, OFAC amended the Regulations, in coordinated actions with the Department of Commerce, to implement certain policy measures announced by the President on December 17, 2014, to further engage and empower the Cuban people. Today, OFAC and the Department of Commerce are taking additional coordinated actions in support of the President's Cuba policy.

OFAC is making additional amendments to the Regulations with respect to health, trade and commerce, civil aviation safety, travel and related transactions, humanitarian-related activities, and certain other activities, as set forth below.

Health

Joint medical research. OFAC is amending section 515.547 to authorize persons subject to U.S. jurisdiction to engage in joint medical research projects with Cuban nationals. This general license expands the scope of joint research projects that are authorized to include both non-commercial and commercial medical research.

Cuban-origin pharmaceuticals. OFAC is also amending section 515.547 to add new authorizations related to Cuban-origin pharmaceuticals. Specifically, section 515.547 now authorizes transactions incident to obtaining approval from the U.S. Food and Drug Administration (FDA) of Cuban-origin pharmaceuticals. The general license includes discovery and development, pre-clinical research, clinical research, regulatory review, regulatory approval and licensing, regulatory post-market activities, and the importation into the United States of Cuban-origin pharmaceuticals. Section 515.547 also now authorizes the importation into the United States, and the marketing, sale, or other distribution in the United States, of FDA-approved Cuban-origin pharmaceuticals.

In addition, revised section 515.547 authorizes persons subject to U.S. jurisdiction who are engaging in such authorized activities to open, maintain, and close bank accounts at Cuban financial institutions as long as such accounts are used solely for the authorized activities. The statement of licensing policy previously contained in section 515.547 for the importation of Cuban-origin commodities for bona-fide research purposes in sample quantities remains in effect for items that would not be authorized by the new general license in section 515.547(b).

Trade and Commerce

Transactions incident to exports and reexports to Cuba. Section 515.533(a) of the Regulations authorizes transactions ordinarily incident to certain exportations of items from the United States, as well as certain reexportations of items from a third country, to Cuba, provided that the exportations or reexportations are authorized by the Department of Commerce. OFAC is removing references to ''100% U.S.-origin items'' in this section for clarity and to minimize the circumstances under which persons authorized by Commerce to export or reexport items to Cuba are required to obtain a specific license from OFAC. Consistent with Section 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6005) (CDA), this general license does not authorize any transaction between a U.S.-owned or -controlled firm in a third country and Cuba for the exportation to Cuba of commodities produced in a country other than the United States or Cuba. Such transactions must be specifically licensed pursuant to section 515.559 in addition to any required authorization from the Department of Commerce. There are also restrictions imposed by the CDA on the types of transactions that may be licensed pursuant to that section.

OFAC is also making a technical correction to section 515.533(a) to remove references to ''agricultural items'' so that only ''agricultural commodities,'' as defined in 15 CFR part 772, are subject to the limitations on payment and financing terms required by the Trade Sanctions Reform and Export Enhancement Act of 2000, 22 U.S.C. 7207(b)(1). OFAC is making a conforming edit with respect to section 515.584(f) and also expanding that authorization to apply to any banking institution.

Finally, OFAC is adding a note to section 515.533(a) to clarify that this paragraph authorizes the importation into the United States of items from a third country for exportation to Cuba pursuant to a license or other authorization by the Department of Commerce. OFAC is making additional technical and conforming changes to remove certain obsolete language and consolidate all of the conditions applicable to this general license in a single paragraph.

Importation of certain items previously exported or reexported to Cuba and servicing and repair of such items. OFAC is further amending section 515.533 to add a new general license authorizing the importation into the United States or a third country of items previously exported or reexported to Cuba pursuant to section 515.533 or 515.559. This authorization will allow recipients of authorized exports or reexports to Cuba to return the items to

the United States or a third country, including for service and repair. Irrespective of involvement in the importation of these items, persons subject to U.S. jurisdiction are authorized to service and repair such items. The exportation or reexportation of serviced, repaired, or replacement items to Cuba, however, must be separately authorized pursuant to section 515.533(a) or 515.559, in addition to any Department of Commerce authorization that may be required.

Certain vessel transactions. Section 515.207(a) prohibits foreign vessels that call on Cuban ports for trade purposes from entering U.S. ports for the purpose of loading or unloading freight for 180 days from the date they depart Cuba, absent OFAC authorization. OFAC is amending section 515.550 to add an additional exception to the prohibition in section 515.207(a) for foreign vessels that have carried from a third country to Cuba only items that, were they subject to the Export Administration Regulations (15 CFR parts 730 through 774) (EAR), would be designated as EAR99 or would be controlled on the Commerce Control List only for anti-terrorism reasons.

Contingent contracts. OFAC is adding a new general license in section 515.534 authorizing persons subject to U.S. jurisdiction to enter into certain contingent contracts for transactions prohibited by the Regulations and to engage in transactions ordinarily incident to negotiating and entering into such contracts. The performance of such contracts—making deposits, receiving payments, providing certain services or goods, etc.—must be made contingent on OFAC authorizing the underlying transactions or authorization no longer being required. Furthermore, if the transaction implicates another Federal agency's licensing requirements, then the contract must make obtaining the necessary license(s) from such agency or the removal of that licensing requirement an additional precondition of performance. OFAC is making a conforming change to section 515.533 to remove a provision in that section authorizing certain contingent contracts that are now authorized by this new general license.

Civil Aviation Safety

Civil aviation safety-related services. OFAC is amending section 515.572 to add a new general license authorizing persons subject to U.S. jurisdiction to provide Cuba and Cuban nationals, wherever located, with services aimed at ensuring safety in civil aviation and the safe operation of commercial aircraft.

Travel and Related Transactions

OFAC is making several changes to rules related to the importation of Cuban-origin merchandise as accompanied baggage and certain travel-related authorizations.

Importation of Cuban merchandise. Section 515.560 previously authorized persons subject to U.S. jurisdiction engaging in authorized travel to Cuba to acquire merchandise in Cuba and import it into the United States as accompanied baggage, provided that the merchandise was for personal use only and had a value of $400 or less (with no more than $100 of such merchandise consisting of alcohol or tobacco products). OFAC is now removing these monetary value limits, which means that the normal limits on duty and tax exemptions for merchandise imported as accompanied baggage and for personal use will apply. OFAC will continue to require that such merchandise be imported as accompanied baggage and for personal use.

Certain transactions in third countries. Previously, section 515.585 authorized persons who are subject to U.S. jurisdiction but located in countries other than the United States or Cuba to, among other things, purchase or acquire merchandise subject to the prohibitions in section 515.204 provided that the merchandise was for personal consumption while in a third country. OFAC is amending section 515.585 to remove the limitation that the merchandise be consumed while abroad, to authorize the importation of such merchandise into the United States as accompanied baggage provided that the merchandise is for personal use only, and to clarify that this authorization is applicable to persons subject to U.S. jurisdiction who are present in a third country, such as when traveling in or through the third country.

Foreign passengers' baggage. Previously, section 515.569 authorized foreign passengers to import Cuban-origin goods, excluding Cuban-origin alcohol and tobacco products, as accompanied baggage, provided that the goods were not in commercial quantities and not imported for resale. OFAC is now removing the exclusion for alcohol and tobacco products while retaining the conditions that the goods not be in commercial quantities and not be imported for resale.

Professional research and professional meetings in Cuba. Section 515.564 includes a general license authorizing persons subject to U.S. jurisdiction to travel to Cuba for purposes of attending or organizing professional meetings or conferences in Cuba. Today, OFAC is removing the restriction in section 515.564(a)(2)(i) that the purpose of such meeting or conference not be for the promotion of tourism in Cuba, and making additional conforming edits. OFAC is also taking this opportunity to clarify section 515.564 by removing paragraphs (a)(1)(ii) and (a)(2)(iii), which included language inconsistent with adjacent paragraphs.

Remittances for third-country national travel. OFAC is amending section 515.570 to authorize persons subject to the jurisdiction of the United States to make remittances to third-country nationals for travel by third-country nationals to, from, and within Cuba, provided that such travel would be authorized by a general license if the traveler were a person subject to U.S. jurisdiction. OFAC is also making a clarifying change in section 515.420 to make clear that the interpretation in that section relates only to persons subject to U.S. jurisdiction.

Recordkeeping requirements for providers of travel and carrier services. In the case of customers traveling pursuant to a specific license, in order to ease the burden on persons subject to U.S. jurisdiction that provide authorized travel or carrier services pursuant to section 515.572, OFAC is amending section 515.572(b)(1) to make clear that such service providers may collect and retain either a copy of the traveler's specific license or the traveler's specific license number.

Humanitarian-Related Transactions

Additional grants, scholarships, and awards. Sections 515.565 and 515.575 previously authorized the provision of grants, scholarships, and awards in which Cuba or Cuban nationals have an interest (including as recipients) with respect to educational and humanitarian activities, respectively. OFAC is now expanding that authorization to authorize the provision of grants, scholarships, and awards in two additional categories of activities: scientific research and religious activities. OFAC is consolidating these authorizations in new section 515.590 and making conforming edits to sections 515.565 and 515.575.

Services related to developing Cuban infrastructure. OFAC is adding section 515.591 to authorize persons subject to the jurisdiction of the United States to provide Cuba or Cuban nationals with services related to developing, repairing, maintaining, and enhancing Cuban

infrastructure, consistent with the export or reexport licensing policy of the Department of Commerce. ''Infrastructure'' in this case means systems and assets used to provide the Cuban people with goods and services produced by the public transportation, water management, waste management, non-nuclear electricity generation, and electricity distribution sectors, as well as hospitals, public housing, and primary and secondary schools.

Other Amendments

Definition of prohibited officials of the Government of Cuba and prohibited members of the Cuban Communist Party. OFAC is amending sections 515.337 and 515.338 to narrow the definitions in these sections.

Additional technical and conforming edits. OFAC is also making several technical and conforming edits, including adjusting a cross-reference in the note to section 515.421(a)(4) to reflect that the payment and financing terms for agricultural commodities are now located in section 515.533(a)(4); removing sections 515.531 and 515.803 as obsolete; adding the word ''repair'' to the general licenses for certain travel-related transactions in sections 515.533 and 515.559 to clarify that travel for such purposes has been within the scope of the existing authorizations; removing paragraphs (a) and (b) of section 515.536, as all activities described in such paragraphs are authorized by the general license in section 515.562 relating to official business of the U.S. government; correcting the cross-reference in section 515.560(c)(6)(ii) to the definition of depository institution to be section 515.333; adding the words ''paragraphs (a)(1) through (a)(4)'' in the first sentence of section 515.572(b)(1) to clarify that records pertaining to passengers do not need to be maintained for transactions authorized pursuant to paragraph (a)(5) of section 515.572; removing a duplicative ''subject'' from Note 1 to section 515.578(a); and adding the word ''authorized'' to complete the sentence in section 515.584(c).

Public Participation

Because the amendment of the Regulations involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations'') and section 515.572 of this part. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control numbers 1505–0164, 1505–0167, and 1505–0168. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Banking, Banks, Blocking of assets, Credit, Cuba, Financial transactions, Foreign trade, Reporting and recordkeeping requirements, Sanctions, Services, Travel restrictions.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 515 as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

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

Authority: 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 4301–4341; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–114, 110 Stat. 785 (22 U.S.C. 6021–6091); Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart C—General Definitions

■ 2. Revise § 515.337 to read as follows:

§ 515.337 Prohibited officials of the Government of Cuba.

For purposes of this part, the term *prohibited officials of the Government of Cuba* means members of the Council of Ministers and flag officers of the Revolutionary Armed Forces.

■ 3. Revise § 515.338 to read as follows:

§ 515.338 Prohibited members of the Cuban Communist Party.

For purposes of this part, the term *prohibited members of the Cuban Communist Party* means members of the Politburo.

Subpart D—Interpretations

■ 4. Revise the second sentence of § 515.420 to read as follows:

§ 515.420 Travel to Cuba.

* * * The prohibition set forth in § 515.201(b)(1) also prohibits payment for air travel by a person subject to U.S. jurisdiction to Cuba on a third-country carrier unless the travel is pursuant to an OFAC general or specific license.

■ 5. Revise the note to § 515.421(a)(4) to read as follows:

§ 515.421 Transactions ordinarily incident to a licensed transaction.

(a) * * *

(4) * * *

Note to paragraph (a)(4): See § 515.533(a)(4) for payment and financing terms for exportations or reexportations authorized pursuant to § 515.533.

* * * * *

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 515.531 [Removed]

■ 6. Remove § 515.531 from subpart E.

■ 7. Revise § 515.533 to read as follows:

§ 515.533 Exportations from the United States to Cuba; reexportations to Cuba; importation and servicing or repair of certain items previously exported or reexported to Cuba.

(a) All transactions ordinarily incident to the exportation of items from the United States, or the reexportation of items from a third country, to any person within Cuba are authorized, provided that:

(1) The exportation or reexportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. 4601–4623) (see the Export Administration Regulations, 15 CFR parts 730 through 774);

(2) The transaction is not a transaction between a U.S.-owned or -controlled firm in a third country and Cuba for the exportation to Cuba of commodities produced in a country other than the United States or Cuba;

(3) The transaction is not financed from any blocked account; and

(4) In the case of agricultural commodities, as that term is defined in 15 CFR part 772, only the following payment and financing terms are used:

(i) Payment of cash in advance. For the purposes of this section, the term ''payment of cash in advance'' shall mean payment before the transfer of title to, and control of, the exported items to the Cuban purchaser; or

(ii) Financing by a banking institution located in a third country provided the banking institution is not a designated national, a U.S. citizen, a U.S. permanent resident alien, or an entity organized under the laws of the United States or any jurisdiction within the United States (including any foreign branch of such an entity). Such financing may be confirmed or advised by a U.S. banking institution.

Note 1 to paragraph (a): The transactions authorized by this paragraph include all transactions that are directly incident to the shipping of specific exports or reexports (*e.g.,* insurance and transportation of the exports to Cuba). Transactions that are not tied to specific exports or reexports, such as transactions involving future (non-specific) shipments, must be separately licensed by OFAC. For the waiver of the prohibitions on entry into U.S. ports contained in § 515.207 for vessels transporting shipments of items between the United States and Cuba pursuant to this section, see § 515.550.

Note 2 to paragraph (a): The limitation in paragraph (a)(4) applies only to payment and financing terms for exports or reexports of agricultural commodities and is required by the Trade Sanctions Reform and Export Enhancement Act of 2000, 22 U.S.C. 7207(b)(1). For other authorized exports and reexports, paragraph (a) does not restrict payment and financing terms. See § 515.584 for an authorization for banking institutions to provide financing for authorized exports and reexports of items other than agricultural commodities.

Note 3 to paragraph (a): Transactions ordinarily incident to exportation from the United States authorized by this paragraph include the importation into the United States of items from a third country for exportation to Cuba pursuant to a license or other authorization by the Department of Commerce.

Note 4 to paragraph (a): See § 515.534 for a general license authorizing certain contingent contracts, including contingent contracts for the sale of items that may be exported from the United States to Cuba or reexported from a third country to Cuba consistent with the export licensing policy of the Department of Commerce, where performance of such contingent contracts is expressly made contingent on prior authorization by the Department of Commerce.

(b) *Importation of certain items previously exported to Cuba; servicing and repair of such items.* (1) All transactions ordinarily incident to the importation into the United States or a third country of items previously exported from the United States to Cuba or exported or reexported from a third country to Cuba, and the servicing and repair of such items, are authorized, provided that:

(i) The items previously were exported or reexported to Cuba pursuant to paragraph (a) of this section or § 515.559; and

(ii) The items are being imported into the United States or a third country either:

(A) In order to service or repair the items before they are exported or reexported back to Cuba, or

(B) To return them to the United States or a third country.

Note to paragraph (b): This paragraph does not authorize the exportation or reexportation of any item to Cuba. The exportation or reexportation of serviced, repaired, or replacement items to Cuba must be separately authorized pursuant to paragraph (a) of this section or § 515.559, in addition to any Department of Commerce authorization that may be required.

(c) *General license for travel-related transactions incident to exportation or reexportation of certain items.* (1) The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to the conduct of market research, commercial marketing, sales or contract negotiation, accompanied delivery, installation, leasing, servicing, or repair in Cuba of items consistent with the export or reexport licensing policy of the Department of Commerce are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

(2) The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to the facilitation of the temporary sojourn of aircraft and vessels as authorized by 15 CFR 740.15 (License Exception Aircraft, Vessels and Spacecraft) or pursuant to other authorization by the Department of Commerce for authorized travel between the United States and Cuba, including travel-related transactions by persons subject to U.S. jurisdiction who are required for normal operation and service aboard a vessel or aircraft, as well as persons subject to U.S. jurisdiction who are required to provide services to a vessel in port or aircraft on the ground, are authorized, provided that:

(i) Such travel-related transactions are limited to the duration and scope of their duties in relation to the particular authorized temporary sojourn; and

(ii) The aircraft or vessel must be transporting individuals whose travel between the United States and Cuba is authorized pursuant to any section of this part other than paragraph (c)(2) of this section.

(d) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to the exportation and reexportation of items to Cuba when such transactions do not qualify for the general license under paragraph (c) of this section.

■ 8. Add § 515.534 to subpart E to read as follows:

§ 515.534 Negotiation of, and entry into, contingent contracts relating to transactions prohibited by this part.

(a) Persons subject to the jurisdiction of the United States are authorized to enter into, and to engage in all transactions ordinarily incident to the negotiation of and entry into, contingent contracts for transactions that are prohibited by this part, provided that:

(1) The performance of any such contingent contract is made expressly contingent on the prior authorization of the Office of Foreign Assets Control pursuant to this part or authorization no longer being required; and

(2) The performance of any such contingent contract that is subject to licensing requirements of another Federal agency is expressly made contingent upon the prior authorization of that agency or the removal of those licensing requirements.

(b) For purposes of this section, the term ''contingent contracts'' includes executory contracts, executory pro forma invoices, agreements in principle, executory offers capable of acceptance such as bids or proposals in response to public tenders, binding memoranda of understanding, or any other similar agreement.

Note to § 515.534: This section does not authorize transactions related to travel to, from, or within Cuba. See § 515.533(c) for a general license authorizing travel-related and other transactions incident to the negotiation of contracts for the exportation or reexportation of certain items to Cuba, and § 515.564(a)(2) for a general license authorizing travel-related and other transactions incident to attending or organizing professional meetings in Cuba, which include professional meetings relating to the negotiation of contingent contracts authorized by this section.

■ 9. Amend § 515.536 by removing paragraphs (a) and (b), redesignating paragraphs (c) and (d) as (a) and (b), respectively, and revising redesignated paragraph (a) to read as follows:

§ 515.536 Certain transactions with respect to merchandise affected by § 515.204.

(a) The purchase outside the United States for importation into the United States of nickel-bearing materials presumptively subject to § 515.204 and the importation of such merchandise into the United States are authorized if there is presented to the collector of

customs in connection with such importation the original of an appropriate certificate of origin as defined in paragraph (b) of this section and provided that the merchandise was shipped to the United States directly, or on a through bill of lading, from the country issuing the appropriate certificate of origin.

* * * * *

■ 10. Amend § 515.542 by revising Note 1 to § 515.542 to read as follows:

§ 515.542 Mail and telecommunications-related transactions.

* * * * *

Note 1 to § 515.542: For an authorization of travel-related transactions that are directly incident to the conduct of market research, commercial marketing, sales or contract negotiation, accompanied delivery, installation, leasing, servicing, or repair in Cuba of items consistent with the export or reexport policy of the Department of Commerce, see § 515.533(c). For an authorization of travel-related transactions that are directly incident to participation in professional meetings, including where such meetings relate to telecommunications services or other activities authorized by paragraphs (b) through (e) of this section, see § 515.564(a).

* * * * *

■ 11. Revise § 515.547 to read as follows:

§ 515.547 Certain transactions related to medical research and Cuban-origin pharmaceuticals; research samples.

(a) Persons subject to U.S. jurisdiction are authorized to engage in all transactions incident to joint medical research projects with Cuban nationals.

Note 1 to paragraph (a): The export or reexport to Cuba of goods (including software) or technology subject to the Export Administration Regulations (15 CFR parts 730 through 774) may require separate authorization from the Department of Commerce.

Note 2 to paragraph (a): This paragraph does not authorize transactions related to travel to, from, or within Cuba, nor does it authorize transactions related to travel to, from, or within the United States by Cuban nationals. See § 515.564(a) for a general license authorizing travel-related and other transactions incident to professional research and professional meetings in Cuba. See § 515.571 for a general license authorizing transactions incident to travel to, from, and within the United States by certain Cuban nationals.

Note 3 to paragraph (a): This paragraph also does not authorize persons subject to U.S. jurisdiction to establish a business or physical presence in Cuba, to hire Cuban nationals, or to engage in any transactions prohibited by § 515.208.

(b) Persons subject to U.S. jurisdiction are authorized to engage in all transactions incident to obtaining approval from the U.S. Food and Drug Administration (FDA) of Cuban-origin pharmaceuticals, including discovery and development, pre-clinical research, clinical research, regulatory review, regulatory approval and licensing, regulatory post-market activities, and the importation into the United States of Cuban-origin pharmaceuticals.

(c) Persons subject to U.S. jurisdiction are authorized to engage in all transactions incident to the marketing, sale, or other distribution in the United States of FDA-approved Cuban-origin pharmaceuticals, including the importation into the United States of Cuban-origin pharmaceuticals.

(d)(1) *Opening and maintaining bank accounts at Cuban financial institutions to engage in authorized transactions.* The opening and maintenance of accounts, including the deposit of funds in such accounts by wire transfer, at a financial institution in Cuba, is authorized provided that such accounts are used only for transactions authorized pursuant to this section.

(2) *Closing bank accounts.* The closing of an account opened pursuant to the authorization in paragraph (d)(1) of this section is authorized, provided that any transfer of funds may only be effected by wire transfer to an account maintained at a depository institution, as defined in § 515.333, that is a person subject to U.S. jurisdiction.

(e) *Specific licenses.* (1) To the extent not authorized by paragraph (b) of this section, specific licenses may be issued for the importation of Cuban-origin commodities for bona-fide research purposes in sample quantities only.

(2) Specific licenses may be issued for transactions related to medical research or pharmaceutical products not authorized by paragraphs (a) through (c) of this section.

Note to § 515.547: Transactions authorized by this section may require separate authorizations or approvals by the FDA or other Federal agencies.

■ 12. Revise § 515.550 to read as follows:

§ 515.550 Certain vessel transactions authorized.

(a) Unless a vessel is otherwise engaging or has otherwise engaged in transactions that would prohibit entry pursuant to § 515.207, § 515.207 shall not apply to a vessel that is:

(1) Engaging or has engaged in trade with Cuba authorized pursuant to this part;

Note to paragraph (a)(1): The authorization in this paragraph includes, for example, trade with Cuba authorized pursuant to § 515.533, § 515.559, or § 515.582, or by specific license.

(2) Engaging or has engaged in trade with Cuba that is exempt from the prohibitions of this part (see § 515.206);

(3) Engaging or has engaged in the exportation or reexportation to Cuba from a third country of agricultural commodities, medicine, or medical devices that, were they subject to the Export Administration Regulations (15 CFR parts 730 through 774) (EAR), would be designated as EAR99;

(4) A foreign vessel that has entered a port or place in Cuba while carrying students, faculty, and staff that are authorized to travel to Cuba pursuant to § 515.565(a); or

(5) Carrying or has carried persons between the United States and Cuba or within Cuba pursuant to the authorization in § 515.572(a)(2) or, in the case of a vessel used solely for personal travel (and not transporting passengers), pursuant to a license or other authorization issued by the Department of Commerce for the exportation or reexportation of the vessel to Cuba.

(b) Unless a vessel is otherwise engaging or has otherwise engaged in transactions that would prohibit entry pursuant to § 515.207, § 515.207(a) shall not apply to a foreign vessel that has engaged in the exportation to Cuba from a third country only of items that, were they subject to the EAR, would be designated as EAR99 or would be controlled on the Commerce Control List only for anti-terrorism reasons.

■ 13. Amend § 515.559 by revising paragraph (d) to read as follows:

§ 515.559 Certain export and import transactions by U.S.-owned or -controlled foreign firms.

* * * * *

(d) *General license.* Travel-related transactions set forth in § 515.560(c) and such other transactions as are directly incident to market research, commercial marketing, sales or contract negotiation, accompanied delivery, installation, leasing, servicing, or repair in Cuba of exports that are consistent with the licensing policy under paragraph (a) of this section are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

* * * * *

■ 14. Amend § 515.560 by revising paragraphs (c)(3) and (c)(6)(ii) and Note 3 to § 515.560 to read as follows:

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.

* * * * *

(c) * * *

(3) *Importation of Cuban merchandise.* The purchase or other acquisition in Cuba and importation as accompanied baggage into the United States of merchandise is authorized, provided that the merchandise is imported for personal use only. The importation of Cuban-origin information and informational materials is exempt from the prohibitions of this part, as described in § 515.206. The importation of certain other specified goods and services is authorized in §§ 515.544, 515.547, 515.569, 515.578, 515.582, and 515.585.

* * * * *

(6) * * *

(ii) *Closing bank accounts.* All transactions incident to the closing of accounts opened pursuant to the authorization in paragraph (c)(6)(i) of this section are authorized, provided that any transfer of funds may only be effected by wire transfer to an account maintained at a depository institution, as defined in § 515.333, that is a person subject to U.S. jurisdiction.

* * * * *

Note 3 to § 515.560: The export or reexport to Cuba of goods (including software) or technology subject to the Export Administration Regulations (15 CFR parts 730 through 774) may require separate authorization from the Department of Commerce.

■ 15. Amend § 515.564 by removing paragraph (a)(1)(ii), redesignating (a)(1)(iii) as (a)(1)(ii), and revising paragraph (a)(2) to read as follows:

§ 515.564 Professional research and professional meetings in Cuba.

(a) * * *

(2) *Professional meetings.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to attendance at, or organization of, professional meetings or conferences in Cuba are authorized, provided that:

(i) For a traveler attending a professional meeting or conference, the purpose of the meeting or conference directly relates to the traveler's profession, professional background, or area of expertise, including area of graduate-level full-time study;

(ii) For a traveler organizing a professional meeting or conference on behalf of an entity, either the traveler's profession must be related to the organization of professional meetings or conferences or the traveler must be an employee or contractor of an entity that is organizing the professional meeting or conference; and

(iii) The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule of attendance at, or organization of, professional meetings or conferences.

Note to § 515.564(a)(2): Transactions incident to the organization of professional meetings or conferences include marketing related to such meetings or conferences in Cuba.

* * * * *

■ 16. Amend § 515.565 as follows:

■ (a) Remove paragraph (a)(11);

■ (b) Redesignate paragraphs (a)(12) and (a)(13) as paragraphs (a)(11) and (a)(12), respectively;

■ (c) Revise redesignated paragraph (a)(11); and

■ (d) Add new note 4 to paragraph (a) to read as follows:

§ 515.565 Educational activities.

(a) * * *

(11) The organization of, and preparation for, activities described in paragraphs (a)(1) through (a)(10) of this section by employees or contractors of the sponsoring organization that is a person subject to U.S. jurisdiction;

* * * * *

Note 4 to paragraph (a): See § 515.590(a) for an authorization for the provision of educational grants, scholarships, or awards to a Cuban national or in which Cuba or a Cuban national otherwise has an interest.

* * * * *

■ 17. Revise § 515.569 to read as follows:

§ 515.569 Foreign passengers' baggage.

The importation of merchandise subject to the prohibitions in § 515.204, including Cuban-origin goods, brought into the United States as accompanied baggage by any person arriving in the United States other than a citizen or resident of the United States is hereby authorized, provided that such goods are not in commercial quantities and are not imported for resale.

■ 18. Amend § 515.570 to redesignate paragraph (i) as paragraph (j) and to add new paragraph (i) to read as follows:

§ 515.570 Remittances.

* * * * *

(i) *Remittances to third-country nationals for certain travel.* Persons subject to the jurisdiction of the United States are authorized to make remittances to third-country nationals for travel by third-country nationals to, from, or within Cuba, provided that such travel would be authorized by a general license issued pursuant to this part if the traveler were a person subject to U.S. jurisdiction.

* * * * *

■ 19. Amend § 515.572 by revising the section heading, adding paragraph (a)(5), and revising paragraph (b)(1) to read as follows:

§ 515.572 Provision of travel, carrier, other transportation-related, and remittance forwarding services.

(a) * * *

(5) *Authorization to provide civil aviation safety-related services.* Persons subject to U.S. jurisdiction are authorized to provide civil aviation safety-related services to Cuba and Cuban nationals, wherever located, to ensure the safety of civil aviation and the safe operation of commercial aircraft.

Note to paragraph (a)(5): For provisions related to transactions ordinarily incident to the exportation or reexportation of items to Cuba, see §§ 515.533 and 515.559.

* * * * *

(b) * * *

(1) Persons subject to U.S. jurisdiction providing services authorized pursuant to paragraphs (a)(1) through (a)(4) of this section must retain for at least five years from the date of the transaction a certification from each customer indicating the section of this part that authorizes the person to travel or send remittances to Cuba. In the case of a customer traveling under a specific license, the specific license number or a copy of the license must be maintained on file with the person subject to U.S. jurisdiction providing services authorized pursuant to this section.

* * * * *

■ 20. Amend § 515.575 by revising note 2 to paragraph (a) to read as follows:

§ 515.575 Humanitarian projects.

(a) * * *

Note 2 to paragraph (a): See § 515.590(b) for an authorization for the provision of grants, scholarships, or awards related to humanitarian projects in or related to Cuba that are designed to directly benefit the Cuban people as set forth in paragraph (b).

* * * * *

■ 21. Amend § 515.578 by revising note 1 to § 515.578(a) to read as follows:

§ 515.578 Exportation, reexportation, and importation of certain internet-based services; importation of software.

(a) * * *

Note 1 to § 515.578(a): The export or reexport to Cuba of items subject to the

Export Administration Regulations (15 CFR parts 730 through 774) may require separate authorization from the Department of Commerce.

* * * * *

■ 22. Revise § 515.581 to read as follows:

§ 515.581 Transactions related to conferences in third countries.

Persons subject to U.S. jurisdiction are authorized to sponsor, organize, or provide services in connection with, as well as participate in, conferences or other similar events in a third country that are attended by Cuban nationals.

Note to § 515.581: The export or reexport to Cuba of technology subject to the Export Administration Regulations (15 CFR parts 730 through 774) may require separate authorization from the Department of Commerce.

■ 23. Amend § 515.584 by revising paragraphs (c) and (f) to read as follows:

§ 515.584 Certain financial transactions involving Cuba.

* * * * *

(c) *Credit and debit cards.* All transactions incident to the processing and payment of credit and debit cards involving travel-related and other transactions consistent with § 515.560 are authorized.

* * * * *

(f) Any banking institution, as defined in § 515.314, that is a person subject to U.S. jurisdiction is authorized to provide financing for exports or reexports of items, other than agricultural commodities, authorized pursuant to § 515.533, including issuing, advising, negotiating, paying, or confirming letters of credit (including letters of credit issued by a financial institution that is a national of Cuba), accepting collateral for issuing or confirming letters of credit, and processing documentary collections.

* * * * *

■ 24. Amend § 515.585 by revising paragraph (c), removing the note to paragraph (c), adding paragraph (d), and amending Note 3 and Note 4 to § 515.585 to read as follows:

§ 515.585 Certain transactions in third countries.

* * * * *

(c) Individuals who are persons subject to U.S. jurisdiction who are present in a third country are authorized to purchase or acquire merchandise subject to the prohibitions in § 515.204, including Cuban-origin goods, and to receive or obtain services in which Cuba or a Cuban national has an interest that are ordinarily incident to travel and maintenance within that country.

(d) Individuals who are persons subject to U.S. jurisdiction are authorized to import into the United States as accompanied baggage merchandise subject to the prohibitions in § 515.204, including Cuban-origin goods, that is purchased or acquired in a third country, provided that the merchandise is imported for personal use only.

* * * * *

Note 3 to § 515.585: Except as provided in paragraphs (c) and (d) of this section, this section does not authorize any transactions prohibited by § 515.204.

Note 4 to § 515.585: The export or reexport to Cuba of goods (including software) or technology subject to the Export Administration Regulations (15 CFR parts 730 through 774) may require separate authorization from the Department of Commerce.

■ 25. Add § 515.590 to subpart E to read as follows:

§ 515.590 Certain grants, scholarships, and awards.

The provision of grants, scholarships, or awards relating to the following activities to a Cuban national or in which Cuba or a Cuban national otherwise has an interest is authorized:

(a) Educational activities;

(b) Humanitarian projects, as set forth in § 515.575(b);

(c) Scientific research; and

(d) Religious activities.

■ 26. Add § 515.591 to subpart E to read as follows:

§ 515.591 Services related to infrastructure.

Persons subject to the jurisdiction of the United States are authorized to provide to Cuba or Cuban nationals services related to developing, repairing, maintaining, and enhancing Cuban infrastructure that directly benefit the Cuban people, provided that those services are consistent with the export or reexport licensing policy of the Department of Commerce. For the purposes of this section, infrastructure means systems and assets used to provide the Cuban people with goods and services produced or provided by the public transportation, water management, waste management, non-nuclear electricity generation, and electricity distribution sectors, as well as hospitals, public housing, and primary and secondary schools. This authorization includes projects related to the environmental protection of U.S., Cuban, and international air quality, waters, and coastlines.

Note 1 to § 515.591: For provisions related to transactions ordinarily incident to the exportation or reexportation of items to Cuba, see §§ 515.533 and 515.559. See § 746.2(b) of the Export Administration Regulations (15 CFR parts 730 through 774) for the Department of Commerce's Cuba licensing policy.

Note 2 to § 515.591: See § 515.564 for a general license authorizing travel-related and other transactions incident to professional research and professional meetings in Cuba, § 515.533(c) for a general license authorizing travel-related and other transactions relating to certain exports and reexports to Cuba, and § 515.575(a) for a general license authorizing transactions, including travel-related transactions, related to certain humanitarian projects.

Subpart H—Procedures

§ 515.803 [Removed]

■ 27. Remove § 515.803 from subpart H.

Dated: October 11, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–25032 Filed 10–14–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DOD–2016–OS–0059]

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is exempting records maintained in DUSDI 01-DoD, ''Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System,'' from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); and (g) of the Privacy Act.

In addition, in the course of carrying out collections and analysis of information in connection with the operations of the DITMAC and DoD Component insider threat programs, exempt records received from other systems of records may become part of this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the Department also claims the same exemptions for the records from those other systems that are maintained in this system, as claimed

for the original primary system of which they are a part.

DATES: *Effective Date:* This rule is effective October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Cindy Allard, Chief, of the Defense Privacy, Civil Liberties, and Transparency Division, 703–571–0070.

SUPPLEMENTARY INFORMATION:

Background

The DITMAC was established by the Under Secretary of Defense for Intelligence in order to consolidate and analyze insider threat information reported by the DoD Component insider threat programs mandated by Presidential Executive Order 13587, issued October 7, 2011, which required Federal agencies to establish an insider threat detection and prevention program to ensure the security of classified networks and the responsible sharing and safeguarding of classified information consistent with appropriate protections for privacy and civil liberties. For purposes of this system of records, the term ''insider threat'' is defined in the Minimum Standards for Executive Branch Insider Threat Task Force based on direction provided in Section 6.3(b) of Executive Order 13587. The DITMAC helps prevent, deter, detect, and/or mitigate the potential threat that personnel, including DoD military personnel, civilian employees, and contractor personnel, who have or had been granted eligibility for access to classified information or eligibility to hold a sensitive position may harm the security of the United States. This threat can include damage to the United States through espionage, terrorism, unauthorized disclosure of national security information, or through the loss or degradation of departmental resources or capabilities.

The system of records will be used to analyze, monitor, and audit insider threat information for insider threat detection and mitigation within DoD on threats that persons who have or had been granted eligibility for access to classified information or eligibility to hold sensitive positions may pose to DoD and U.S. Government installations, facilities, personnel, missions, or resources. The system of records will support the DITMAC and DoD Component insider threat programs, enable the identification of systemic insider threat issues and challenges, and provide a basis for the development and recommendation of solutions to deter, detect, and/or mitigate potential insider threats. It will assist in identifying best practices among other Federal Government insider threat programs, through the use of existing DoD resources and functions and by leveraging existing authorities, policies, programs, systems, and architectures.

Public Comments

The Department of Defense published a proposed Privacy Act exemption rule for its Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records Systems (hereafter Insider Threat) on May 19, 2016 (81 FR 31561). The Department of Defense received comments from seven submitters related to a proposed Federal Rulemaking (docket: DOD–2016–OS–0059, published May 19, 2016) relating to a Privacy Act exemption rule for the Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System (hereafter Insider Threat). In addressing comments submitted to this proposed Privacy Act exemption rule, the Department notes that such rules do not mandate exemptions in every instance, and are not intended to apply to all records, but must be reviewed in each specific case.

Two commenters were opposed to the proposed exemption rule but did not provide specific concerns; an additional commenter provided a number of proposals for the Insider Threat program at large, as well as one addressing an access concern which is addressed in the access discussion.

The largest number of comments related to the proposed exemption from the access provisions of the Privacy Act (5 U.S.C. 552a(d)(1), (2), (3), and (4)). The Department notes that the specific exemptions upon which the access limitation is based are generally predicated on ''the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence'' found in 5 U.S.C. 552a(k)(2), (5), and (7). One of these commenters raised concerns that the ''largest and most common sources providing information to the DITMAC provide such information under a general promise of confidentiality.'' It is not clear to the Department which sources the commenter believes are providing information under a general promise of confidentiality, but the language used in exemptions (k)(2), (5), and (7) requires an ''express promise'' (if promised after the Act took effect). This is normally done on a case-by-case basis. One commenter noted that ''it is important to allow people as much access as possible to the data being collected about them, so that they can make informed decisions about what to do in the event of a data loss.'' In response, the Department anticipates providing access rights, except in those specific cases where an exemption rule would appropriately apply. In view of the earlier discussion in this paragraph, DoD anticipates exercising access exemption rules as the exception rather than the norm.

Another commenter was also particularly concerned that ''it would become entirely possible that qualified Soldiers might unknowingly become flagged as non-promotable for being a possible insider threat.'' We note first that when exercising the (k)(7) exemption, the Department uses reasonable segregability to provide the maximum amount of the record to the subject while honoring the express promise of confidentiality to the source. Moreover, the Department notes that the Insider Threat system of records is not a source of information for the promotion selection process.

Several comments also addressed the proposed exemption from the amendment provisions of the Privacy Act. The Insider Threat Hubs will aggregate information from a number of sources, the first of which is the subject of the record. Since the subjects of Insider Threat records are cleared personnel, the most appropriate place for them to address a factual error is with the appropriate DoD source (*e.g.,* human resources offices for human resources records or the security officer for personnel security concerns). Insider Threat records are updated at scheduled intervals or upon a specified query for current information and validated prior to any investigative or administrative action taken by a DoD Component.

One commenter noted that the collections and proposed exemptions asserted by the Department of Defense were overly extensive and would diminish accountability:

> DoD claims the authority to collect any information it wants without disclosing where it came from or even acknowledging its existence. The net result of these exemptions, coupled with DoD's proposal to collect and retain virtually unlimited information unrelated to any purpose Congress delegated to the agency, would be to diminish the legal accountability of the agency's information collection activities.

In response, disclosure could interfere with or reveal information relating to actual or potential criminal, civil, or administrative investigations or actions. DoD further notes that it identified the varied sources of Insider Threat information in the System of Records Notice and has asserted exemptions to protect from disclosure sources

expressly promised confidentiality (pursuant to 5 U.S.C. 552a(k)(2), (5), and (7) as discussed above). Such promises apply to a relatively narrow scope of DoD records. If DoD were not able to provide such promises on a case-by-case basis, they would find it difficult, if not impossible, to gather candid information that is not generally known, precisely the type of information needed to make well-informed assessments of behavior (and potential behavior) to identify and address insider threats. As previously mentioned, exemption rules do not mandate the application of exemptions in every instance, are not intended to apply to all records, and will be applied on a case-by-case basis.

The commenter claims that DoD ''contemplates collecting information that will not be relevant or necessary to a specific investigation'' and that ''the inability to determine, in advance, whether information is accurate, relevant, timely, and complete precludes its agents from complying with the obligation to ensure that the information meets these criteria after it is stored.'' In response, the Department notes that it is implementing an insider threat program required by Executive Order as well as by Public Law (*e.g.,* Public Law 112–81, Title IX, Section 922, (10 U.S.C. 2224 note), Insider Threat Detection). The statutory note requires the use of anomaly detection techniques, which logically require ingestion of non-anomalous information in order to identify anomalous information. Further, the purpose of the Insider Threat program is to identify potential insider threat behavior; cases of concern are referred to the appropriate DoD or Federal investigative entity. DoD takes seriously its requirement under the Privacy Act to ''balance the Government's need to maintain information about individuals with the rights of those individuals to be protected from unwarranted invasions of their privacy.''

There were no comments related to the exemption of the access provisions through (k)(1), pertaining to classified information; (k)(4), applicable to records required by statute to be maintained and used solely as statistical records; or (k)(6), testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process. The Department also asserted an access exemption under (j)(2), which addresses law enforcement activities, which did not receive comment.

DoD made no changes to the regulatory text of the rule based on public comments received.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been determined that this rule is not a significant rule. This rule does not (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 these Executive orders.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been certified that this rule does not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within DoD. A Regulatory Flexibility Analysis is not required.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that it will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310 [AMENDED]

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

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

§§ 310.30 through 310.53 [Redesignated as §§ 310.31 through 310.54]

■ 2. Redesignate § 310.30 through § 310.53 as § 310.31 through § 310.54.

■ 3. In Subpart F, add a new § 310.30 to read as follows:

§ 310.30 DoD-wide exemptions.

(a) Use of *DoD-wide exemptions.* DoD-wide exemptions for DOD-wide systems of records are established pursuant to 5 U.S.C. 552a(j) and (k) of the Privacy Act.

(b) *Promises of confidentiality.* (1) Only the identity of sources that have been given an express promise of confidentiality may be protected from disclosure under paragraphs (d)(3)(i), (ii), and (iii) and (d)(4) of this section. However, the identity of sources who were given implied promises of confidentiality in inquiries conducted before September 27, 1975, also may be protected from disclosure.

(2) Ensure promises of confidentiality are not automatically given but are used sparingly. Establish appropriate procedures and identify fully categories of individuals who may make such promises. Promises of confidentiality shall be made only when they are essential to obtain the information sought (see 5 CFR part 736).

(c) *Access to records for which DOD-wide exemptions are claimed.* Deny the individual access only to those portions of the records for which the claimed exemption applies.

(d) *DoD-wide exemptions.* The following exemptions are applicable to all components of the Department of Defense for the following system(s) of records:

(1) *System identifier and name:* DUSDI 01-DoD ''Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System.''

Exemption: This system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (4)(G)(H) and (I), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(1), (2), (4), (5), (6), and (7).

(2) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to

the extent that such provisions have been identified and an exemption claimed for the record and the purposes underlying the exemption for the record pertain to the record.

(3) Exemption from the particular subsections is justified for the following reasons:

(i) *Subsection (c)(3).* To provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures. Access to the accounting of disclosures could also interfere with a civil or administrative action or investigation which may impede those actions or investigations. Access also could reveal the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations.

(ii) *Subsection (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(iii) *Subsection (d)(1).* Disclosure of records in the system could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Disclosure may also reveal information relating to actual or potential criminal investigations. Disclosure of classified national security information would cause damage to the national security of the United States. Disclosure could also interfere with a civil or administrative action or investigation; reveal the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; and reveal the confidentiality and integrity of Federal testing materials and evaluation materials used for military promotions when furnished by a confidential source.

(iv) *Subsection (d)(2).* Amendment of the records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(v) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(vi) *Subsection (e)(1).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(vii) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(viii) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(ix) *Subsection (e)(4)(G), (H), and (I).* These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(x) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(xi) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts.

(xii) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(4) In addition, in the course of carrying out analysis for insider threats, exempt records from other systems of records may in turn become part of the case records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained into this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

Dated: October 5, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–24536 Filed 10–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0908]

Safety Zones; Fireworks Events in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones within the Captain of the Port New York Zone on the specified date and time. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port (COTP).

DATES: The regulation for the safety zones described in 33 CFR 165.160 will be enforced on the date and time listed in the table below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer First Class Ronald Sampert U.S. Coast Guard; telephone 718–354–4154, email *ronald.j.sampert@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified dates and times as indicated in Table 1 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

3. Tzell Travel Group Liberty Island Safety Zone 33 CFR 165.160(2.1).	• Launch site: A barge located in approximate position 40°41′16.5″ N., 074°02′23″ W. (NAD 1983), approximately 360 yards east of Liberty Island. This Safety Zone is a 240-yard radius from the barge. • Date: October 27, 2016. • Time: 8:50 p.m.–10:30 p.m.

Under the provisions of 33 CFR 165.160, vessels may not enter the safety zones unless given permission from the COTP or a designated representative. Spectator vessels may transit outside the safety zones but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts.

If the COTP determines that a safety zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: September 29, 2016.

M.H. Day,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2016–25048 Filed 10–14–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AP84

Extension of the Presumptive Period for Compensation for Gulf War Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to amend its adjudication regulations regarding compensation for disabilities resulting from undiagnosed illnesses suffered by veterans who served in the Persian Gulf War. This amendment is necessary to extend the presumptive period for qualifying chronic disabilities resulting from undiagnosed illnesses that must become manifest to a compensable degree in order that entitlement for compensation be established. The intended effect of this amendment is to provide consistency in VA adjudication policy and preserve certain rights afforded to Persian Gulf War veterans and ensure fairness for current and future Persian Gulf War veterans.

DATES: *Effective date:* This interim final rule is effective October 17, 2016.

Comment date: Comments must be received on or before December 16, 2016.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue 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–AP84—Extension of the Presumptive Period for Compensation for Gulf War Veterans.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8 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 *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

In response to the needs and concerns of veterans who served in the Southwest Asia theater of operations during the Persian Gulf War, Congress enacted the Persian Gulf War Veterans' Benefits Act, Title I of the Veterans' Benefits Improvement Act of 1994, Public Law 103–446, which was codified in relevant part at 38 U.S.C. 1117. This law provided authority for the Secretary of Veterans Affairs (Secretary) to compensate eligible Gulf War veterans with a chronic disability resulting from undiagnosed illness. That illness must have become manifest either during active duty service in the Southwest Asia theater of operations during the Persian Gulf War, or disabling to a degree of ten percent or more during a period determined by the Secretary and prescribed by regulation. The Secretary would determine this period after reviewing any credible medical or scientific evidence, the historical treatment afforded disabilities for which VA had established such periods, and other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War.

To implement 38 U.S.C. 1117, VA published a final rule to add 38 CFR 3.317, which established the framework for VA to pay compensation under the Persian Gulf War Veterans' Benefits Act. See 60 FR 6660–6666, Feb. 3, 1995. As part of that rulemaking, VA established a period of two years after Gulf War service in which VA would presume a medical relationship of an undiagnosed illness to that service. VA determined that there was little or no scientific or medical evidence at that time useful in determining an appropriate presumptive period for undiagnosed illnesses. Therefore, VA primarily based this two-year period on its history of establishing presumptive periods as well as the available facts regarding service in the Southwest Asia theater of operations during the Gulf War.

The lack of medical and scientific evidence about the nature and cause of the illnesses suffered by Gulf War veterans continued, as did the uncertainty of an appropriate presumptive period for undiagnosed illnesses. Accordingly, VA established December 31, 2001, as the date by which an undiagnosed illness must become manifest. See 62 FR 23138, Apr. 29, 1997. In 2001, VA again extended the period to December 31, 2006. See 66 FR 56614, Nov. 9, 2001.

In December 2001, section 202(a) of Public Law 107–103 amended 38 U.S.C. 1117 by revising the term ''chronic disability'' to include the following (or any combination thereof): (a) An undiagnosed illness; (b) a medically unexplained chronic multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs and symptoms; or (c) any diagnosed illness that the Secretary determines warrants a presumption of service connection. The term ''qualifying chronic disability'' broadened the scope of those illnesses the Secretary may presume related to service. Under 38 U.S.C. 1117, a chronic disability must still occur during service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of ten percent or more disabling during the prescribed presumptive period following such service. VA amended § 3.317 to reflect these changes. See 68 FR 34539, June 10, 2003.

As required by Public Law 105–368, the National Academy of Sciences (NAS) reviews, evaluates, and summarizes the scientific and medical literature for possible association between service in the Southwest Asia theater of operations and long-term adverse health effects. Following review of such NAS reports, VA determined that the evidence remained inconclusive

regarding the time of onset of undiagnosed and other illnesses related to Gulf War service and, in December 2006, VA published an interim final rule to further extend the manifestation period from December 31, 2006, to December 31, 2011. See 71 FR 75669, Dec. 18, 2006. Additionally, on October 13, 2010, Congress enacted section 806 of Public Law 111–275, which directed VA to extend its agreement with NAS created under Section 101 of Public Law 105–368 to review, evaluate, and summarize scientific and medical literature associated with Persian Gulf War service. Congress has not established an end date for the Gulf War as military operations in the Southwest Asia theater of operations continued, including Operation Iraqi Freedom. See 38 U.S.C. 101(33).

In a report published in 2010 titled *Gulf War and Health, Volume 8: Update of Health Effects of Serving in the Gulf War,* available at *http://nationalacademies.org/hmd/reports/2010/gulf-war-and-health-volume-8-health-effects-of-serving-in-the-gulf-war.aspx* (last viewed Aug. 17, 2016), NAS evaluated the available scientific and medical literature regarding the prevalence of chronic multisymptom illnesses in Gulf War veterans. Consistent with its prior findings, NAS concluded, based on multiple studies, that there is sufficient evidence of an association between deployment to the Gulf War and chronic multisymptom illness. NAS analyzed two follow-up studies that surveyed veterans who served in the Gulf War in 1991 to determine whether the increased prevalence of chronic multisymptom illness persisted several years after such service. One study involved detailed examinations and medical histories of veterans deployed to the Gulf War and non-deployed veterans of the same era. The study found that, 10 years after the 1991 Gulf War, chronic multisymptom illness was nearly twice as prevalent in veterans deployed to the Gulf War than in the non-deployed veterans (28.9 percent compared to 15.8 percent). The study found that the prevalence of chronic multisymptom illness decreased gradually over time, but remained significantly elevated 10 years after service. The other follow-up study involved a 2005 survey of veterans deployed to the 1991 Gulf War and their non-deployed counterparts of that era. That study found that 36.5 percent of the deployed veterans reported experiencing symptoms of chronic multisymptom illness in 2005, compared to 11.7 percent of the non-deployed veterans. While this report is based on self-reports, the results are statistically significant and are consistent with the other follow-up report.

The scientific and medical literature surveyed by NAS in 2010 thus suggested that, while the prevalence of chronic multisymptom illness may decrease over time following deployment to the Gulf War, the prevalence remained significantly elevated among deployed veterans more than a decade after deployment. As military operations in the Southwest Asia theater of operations had not ended and scientific and medical evidence failed to identify the manifestation period for associated illnesses, VA again published a rule amending 38 CFR 3.317(b) to extend the presumptive period from December 31, 2011, to December 31, 2016. See 76 FR 81834, Dec. 29, 2011.

II. Current Research

In a report published earlier this year, NAS continued to conclude that there is sufficient evidence of association between Gulf War deployment and the constellation of chronic symptoms known as Gulf War illness. *Gulf War and Health, Volume 10: Update of Health Effects of Serving in the Gulf War,* available at *http://nationalacademies.org/hmd/Reports/2016/Gulf-War-and-Health-Volume-10.aspx* (last viewed Aug. 17, 2016). At present, there is insufficient basis to identify the point, if any, at which the increased risk of chronic multisymptom illness may abate. NAS has concluded that as of its Volume 10 publication date, there are no reliable or validated biomarkers of exposure or symptoms to substantiate the etiology or mechanisms of the illness. NAS further noted that studies looking for biomarkers of Gulf War illness face many methodological problems irrespective of the approach or technology used. Although follow-up studies in the future may provide additional information, there is no medical or scientific basis to support the current deadline for manifestation.

III. Extension of Current Deadline

Currently, military operations in the Southwest Asia theater of operations continue. No end date for the Gulf War has been established by Congress or the President. See 38 U.S.C. 101(33). Because scientific uncertainty remains as to the cause and time of onset of illnesses suffered by Persian Gulf War veterans and current IOM research studies are incomplete, limiting entitlement to benefits payable under 38 U.S.C. 1117 due to the expiration of the presumptive period in 38 CFR 3.317(a)(1)(i) is premature. If extension of the current presumptive period is not implemented, servicemembers whose conditions manifest after December 31, 2016, would be substantially disadvantaged compared to servicemembers whose conditions manifested at an earlier date.

Therefore, VA is extending the presumptive period in 38 CFR 3.317(a)(1)(i) for qualifying chronic disabilities that become manifest to a degree of 10 percent or more through December 31, 2021 (a period of 5 years), to ensure those benefits established by Congress are fairly administered.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) and (d)(3) to publish this rule without prior opportunity for public comment and good cause to publish this rule with an immediate effective date. Absent extension of the sunset date in the current regulation, VA's authority to provide benefits in new claims for qualifying chronic disability in Gulf War veterans will lapse on December 31, 2016. A lapse of such authority would be contrary to the public interest because it would have a significant adverse impact on veterans with such disabilities. To avoid such impact, VA is issuing this rule as an interim final rule, effective upon date of publication. However, VA invites public comments on this interim final rule and will fully consider and address any comments received.

Executive Orders 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, 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 regulatory action 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 this 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.''

Regulatory Flexibility Act

The Secretary hereby certifies that this interim 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 interim final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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 interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are: 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability.

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: October 7, 2016.

Jeffrey Martin,

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

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Disability benefits, Pensions, Veterans.

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. In § 3.317, paragraph (a)(1)(i) is revised to read as follows:

3.317 Compensation for certain disabilities occurring in Persian Gulf veterans.

(a) * * *

(1) * * *

(i) Became manifest either during active military, naval, or air service in the Southwest Asia theater of operations, or to a degree of 10 percent or more not later than December 31, 2021; and

* * * * *

(Authority: 38 U.S.C. 1117, 1118).

[FR Doc. 2016–25017 Filed 10–14–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 9, 12, 19, 52, and 53

[FAC 2005–91; FAR Case 2015–022; Item V; Docket No. 2015–0022, Sequence No. 1]

RIN 9000–AN00

Federal Acquisition Regulation; Unique Identification of Entities Receiving Federal Awards

Correction

In rule document 2016–23198 beginning on page 67736 in the issue of September 30, 2016, make the following correction:

52.204–7 [Corrected]

■ On page 67739, in the second column, the provision heading which reads ''**System for Award Management** '' should read ''**System for Award Management (Oct 2016)**''.

[FR Doc. C1–2016–23198 Filed 10–14–16; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

48 CFR Chapter 63

Office of the Secretary

49 CFR Part 6

[Docket No. OST–2013–0142]

RIN 2105–AE27

Update of Department of Transportation Regulations; Termination of the Department of Transportation Board of Contract Appeals

AGENCY: Board of Contract Appeals, Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation is revising its regulations by removing chapter 63 of Title 48 of the Code of Federal Regulations (CFR) and amending 49 CFR part 6. These revisions result from our ongoing efforts to review and improve our regulations, and will harmonize the CFR with Departmental restructuring required by statutory changes.

DATES: This final rule is effective on October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Jill Laptosky, Attorney, Office of

Regulation, Office of General Counsel, 202–493–0308, *jill.laptosky@dot.gov.*

SUPPLEMENTARY INFORMATION: On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 113 Stat. 1748, removing regulatory authority over motor carriers from the Federal Highway Administration and vesting that authority in the newly created Federal Motor Carrier Safety Administration (FMCSA). Then, on November 25, 2002, the President signed the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. In addition to creating the Department of Homeland Security (DHS), the Homeland Security Act reorganized certain agencies of the Federal executive branch; in particular, the Homeland Security Act transferred the United States Coast Guard (USCG) from DOT to the newly created DHS. *See id.* at Sec. 1704. This final rule revises the Department's regulations to reflect the creation of FMCSA and the transfer of USCG to DHS.

On January 6, 2006, the President signed the National Defense Authorization Act for FY 2006, Public Law 109–163 (the Act), establishing the Civilian Board of Contract Appeals (CBCA). Section 847 of the Act vests the CBCA with jurisdiction over claims that previously would have been filed before the boards of contract appeals of individual agencies. In light of this change, references to the now-defunct Department of Transportation Board of Contract Appeals are being removed from our regulations.

Prior to the modifications announced in this final rule, 49 CFR 6.5, concerning the applicability of the Equal Access to Justice Act in DOT proceedings, referred to the ''agency board of contract appeals.'' This regulatory language is being revised to reflect the statutory changes discussed above, as well as the updated DOT organizational structure.

DOT is publishing this final rule without notice and comment under the ''good cause'' exemption of the Administrative Procedure Act (5 U.S.C. 553). The good cause exemption allows agencies to dispense with notice and comment if those procedures are impracticable, unnecessary, or contrary to the public interest. We have determined that, given the obsolete nature of the regulations affected by this final rule, notice and comment are unnecessary. For these same reasons, we have determined that good cause exists for the final rule to become effective immediately.

Regulatory Analyses and Notices

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This final rule is not a significant regulatory action as defined by Executive Order 12866 and, therefore, is not subject to review by the Office of Information and Regulatory Affairs. As this rule removes and updates obsolete regulatory provisions, we expect there to be no costs related to the changes made in this rule.

Executive Order 13132: Federalism

This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, within the meaning of Executive Order 13132.

Unfunded Mandates Reform Act

This final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $156 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Reform Act of 1995.

Regulatory Flexibility Act

Since notice and comment is not necessary for this rulemaking, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply.

Paperwork Reduction Act

This final rule does not contain information collection requirements subject to the Paperwork Reduction Act.

National Environmental Policy Act

The agency has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, ''[p]romulgation of rules, regulations, and directives.'' 23 CFR 771.117(c)(20). The purpose of this rulemaking is to remove obsolete language from the Department's regulations. The agency does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

List of Subjects

48 CFR Parts 6301 and 6302

Administrative practice and procedure, Government procurement.

49 CFR Part 6

Claims, Equal access to justice, Lawyers.

For the reasons set forth in the preamble, in accordance with sec. 847 of Public Law 109–163, (119 Stat. 3391), OST amends 48 CFR by removing chapter 63 and, under the same authority, as well as the authority in sec. 1704 of Public Law 107–296 (116 Stat. 2314), OST amends 49 CFR part 6 as follows:

Title 48—Federal Acquisition Regulations System

CHAPTER 63 — DEPARTMENT OF TRANSPORTATION BOARD OF CONTRACT APPEALS

■ 1. Remove Chapter 63.

Title 49—Transportation

PART 6—IMPLEMENTATION OF EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

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

Authority: 5 U.S.C. 504; 28 U.S.C. 2412.

■ 3. Amend § 6.5 by revising paragraph (a) to read as follows:

§ 6.5 Proceedings covered.

(a) The Act applies to adversarial adjudications conducted by the

Department of Transportation. These are adjudications under 5 U.S.C. 554 in which the position of the Department is represented by an attorney or other representative who enters an appearance and participates in the proceeding. Coverage of the Act begins at designation of a proceeding or issuance of a charge sheet. Any proceeding in which the Department may prescribe or establish a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise ''adversary adjudications.'' For the Department of Transportation, the types of proceedings covered include, but may not be limited to: National Highway Traffic Safety Administration (NHTSA) automotive fuel economy enforcement under 49 CFR part 511; Federal Motor Carrier Safety Administration (FMCSA) enforcement of motor carrier safety regulations under 49 CFR 386; and the Department's aviation economic enforcement proceedings conducted by its Office of Aviation Enforcement and Proceedings pursuant to 14 CFR Chapter II. Also covered is any hearing conducted under Chapter 38 of title 31 of the U.S. Code or the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb *et seq.*).

* * * * *

Issued under authority delegated in 49 CFR 1.27(c).

Molly J. Moran,

Acting General Counsel.

[FR Doc. 2016–24052 Filed 10–14–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2014–0045; FXES11130900000C6–167–FF09E42000]

RIN 1018–BA30

Endangered and Threatened Wildlife and Plants; Reclassifying the Columbia River Distinct Population Segment of the Columbian White-Tailed Deer as Threatened With a Rule Under Section 4(d) of the Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the Columbia River distinct population segment (DPS) of Columbian white-tailed deer (*Odocoileus virginianus leucurus*). This subspecies of white-tailed deer is found in limited areas of Clatsop, Multnomah, and Columbia Counties in Oregon, and Cowlitz, Wahkiakum, Pacific, Skamania, and Clark Counties in Washington. The effect of this rule is to change the listing status of the Columbia River DPS of Columbian white-tailed deer from an endangered species to a threatened species on the List of Endangered and Threatened Wildlife. We call this ''reclassifying'' or ''downlisting'' the DPS. We are also adopting a rule under the authority of section 4(d) of the Act (a ''4(d) rule'') that is necessary and advisable to provide for the conservation of the Columbia River DPS of the Columbian white-tailed deer.

DATES: This rule is effective November 16, 2016.

ADDRESSES: This final rule is available online at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2014–0045. Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection at *http://www.regulations.gov,* or by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Portland, OR 97266; telephone 503–231–6179.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, telephone: 503–231–6179. Direct all questions or requests for additional information to: Columbian White-tailed Deer Information Request, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Portland, OR 97266. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY (telephone typewriter or teletypewriter) assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species may warrant reclassification from endangered to threatened if it no longer meets the definition of endangered (in danger of extinction). The reclassification of a listed species can only be completed by issuing a rule. The endangered designation no longer correctly reflects the current status of the Columbia River DPS of Columbian white-tailed deer (CWTD) due to a substantial improvement in the species' status. This action is based on a thorough review of the best available scientific and commercial data, which indicate an increasing population trend within the DPS and the presence of multiple secure subpopulations.

This rule finalizes the reclassification of the Columbia River DPS of CWTD as a threatened species. It includes provisions under the authority of section 4(d) of the Act that are necessary and advisable for the conservation needs of the CWTD.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The population of the Columbia River DPS of CWTD consists of over 900 individuals. In addition to the new Ridgefield National Wildlife Refuge (NWR) subpopulation of 100 individuals, there are three other secure subpopulations. We have determined that the CWTD is no longer at risk of extinction and, therefore, does not meet the definition of endangered, but is still impacted by habitat loss and degradation of habitat to the extent that the DPS meets the definition of a threatened species under the Act (a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range).

Under section 4(d) of the Act, the Secretary of the Interior has discretion to issue such regulations she deems necessary and advisable to provide for the conservation of the species. A 4(d) rule may include some or all of the prohibitions and authorizations set out in title 50 of the Code of Federal Regulations (CFR) at sections 17.31 and 17.32 (50 CFR 17.31 and 17.32), but also may be more or less restrictive than those general provisions. For the Columbia River DPS of CWTD, the Service has determined that a 4(d) rule is appropriate as a means to facilitate conservation of CWTD in the Columbia River DPS and expansion of the species' range by increasing flexibility in management activities for our State and Tribal partners and private landowners.

Peer review and public comment. We sought comments from independent specialists to ensure that our

determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on the downlisting proposal. We considered all comments and information we received during the comment period.

Background

Previous Federal Actions

On March 11, 1967, the Secretary of the Interior identified the CWTD as an endangered species (32 FR 4001), under the authority of the Endangered Species Preservation Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa(c)). On March 8, 1969, the Secretary of the Interior again identified the CWTD as an endangered species (34 FR 5034) under section 1(c) of the Endangered Species Preservation Act of 1966. On August 25, 1970, the Acting Secretary of the Interior proposed to list the CWTD as an endangered subspecies (35 FR 13519) under the authority of new regulations implementing the Endangered Species Conservation Act (ESCA) of 1969. On October 13, 1970, the Director of the Bureau of Sport Fisheries and Wildlife listed the CWTD as an endangered subspecies (35 FR 16047) under the authority of new regulations implementing the ESCA of 1969. Species listed as endangered under the ESCA of 1969 were automatically included in the List of Endangered and Threatened Wildlife when the Endangered Species Act (16 U.S.C. 1531 *et seq.*) was enacted in 1973. In December 1971, the Service established the Julia Butler Hansen National Wildlife Refuge (JBHR) for CWTD in Cathlamet, Washington. JBHR consists of the Mainland Unit and Tenasillahe Island (see Figure 1).

On October 21, 1976, the Service released the CWTD Recovery Plan. On June 14, 1983, the Service released the Revised Recovery Plan for CWTD. The revised plan addressed the two main populations of CWTD, Columbia River and Douglas County, separately. On July 24, 2003, the Service published a rule (68 FR 43647) that: (1) Recognized the Douglas County and Columbia River populations as DPSs under the Service's 1996 Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act (see 61 FR 4722; February 7, 1996), and (2) removed the Douglas County population of CWTD from the List of Endangered and Threatened Wildlife. It was determined that recovery criteria for the Douglas County population had been met, as it achieved benchmarks in both population size and amount of secure habitat.

A 5-year status review of the Columbia River DPS was completed on November 5, 2013 (U.S. Fish and Wildlife Service 2013a). This review concluded that the CWTD's status had substantially improved since listing, that the DPS no longer met the definition of an endangered species under the Act, and recommended that the DPS be downlisted from endangered to threatened.

On October 8, 2015, we published a proposed rule (80 FR 60850) to downlist the Columbia River DPS of CWTD from endangered to threatened, with a 4(d) rule that is necessary and advisable to provide for the conservation of that DPS. We accepted public comments on the proposal for 60 days, ending December 7, 2015.

Species Information

The CWTD is the westernmost representative of 38 subspecies of white-tailed deer in North and Central America (Gavin 1984, p. 6). It resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lb)) for females and 52 to 68 kg (115 to 150 lb) for males (Oregon Department of Fish and Wildlife 1995, p. 2). Although CWTD can live up to 20 years, their median lifespan ranges from 3 to 5 years for bucks and 5 to 9 years for does (Gavin 1984, p. 490; U.S. Fish and Wildlife Service, unpublished data). Breeding occurs from mid-September through late February, with a peak in November. Does reach sexual maturity by 6 months of age or when their weight reaches approximately 36 kg (80 lb); however, their maturation and fertility depends on the nutritional quality of available forage (Verme and Ullrey 1984, p. 96). Fawns are born in early summer after an approximately 200-day gestation period. In their first pregnancy, does usually give birth to a single fawn, although twins are common in later years if forage is abundant (Verme and Ullrey 1984, p. 96). On the JBHR Mainland Unit, Service biologists often observe fawns in pastures of tall, dense reed canary grass (*Phalaris arundinacea* L.) and tall fescue (*Festuca arundinacea*), as well as mixed deciduous and Sitka spruce (*Picea sitchensis*) forest (U.S. Fish and Wildlife Service 1983, p. 10; Brookshier 2004, p. 2).

CWTD were formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936, p. 92; Verts and Carraway 1998, p. 479). The subspecies occupied a range of approximately 60,000 square kilometers (km^2) (23,170 square miles (mi^2)) west of the Cascades Mountains: From the Dalles, Oregon, in the east, to the Pacific Ocean in the west; and Lake Cushman in Mason County, Washington, in the north, to Grants Pass, Oregon, in the south (Crews 1939, p. 3; Smithsonian 2014, p. 1). Early accounts indicate that CWTD were locally common, particularly in riparian areas along major rivers (Crews 1939, p. 5), until the arrival and settlement of pioneers in the fertile river valleys (Crews 1939, p. 2). Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors caused the extirpation of CWTD over most of its range by the early 1900s (Crews 1939, pp. 2, 5). By 1940, a population of 500 to 700 animals along the lower Columbia River in Oregon and Washington, and a disjunct population of 200 to 300 in Douglas County, Oregon, survived (Crews 1939, p. 3; Gavin 1984, p. 487; Verts and Carraway 1998, p. 480). These two remnant populations remain geographically separated by about 320 km (200 mi), much of which is unsuitable or discontinuous habitat. Currently, the Columbia River DPS has a discontinuous range of approximately 240 km^2 (93 mi^2) or about 24,281 hectares (ha) (60,000 acres (ac)) (Smith 1985, p. 247) (Figure 1) in limited areas of Clatsop, Multnomah, and Columbia Counties in Oregon, and Cowlitz, Wahkiakum, Pacific, Skamania, and Clark Counties in Washington. Within that range, CWTD currently occupy an area of approximately 6,475 ha (16,000 ac) (U.S. Fish and Wildlife Service 2013a, p. 7), with a 2015 population estimate of about 966 deer (U.S. Fish and Wildlife Service, unpublished data).

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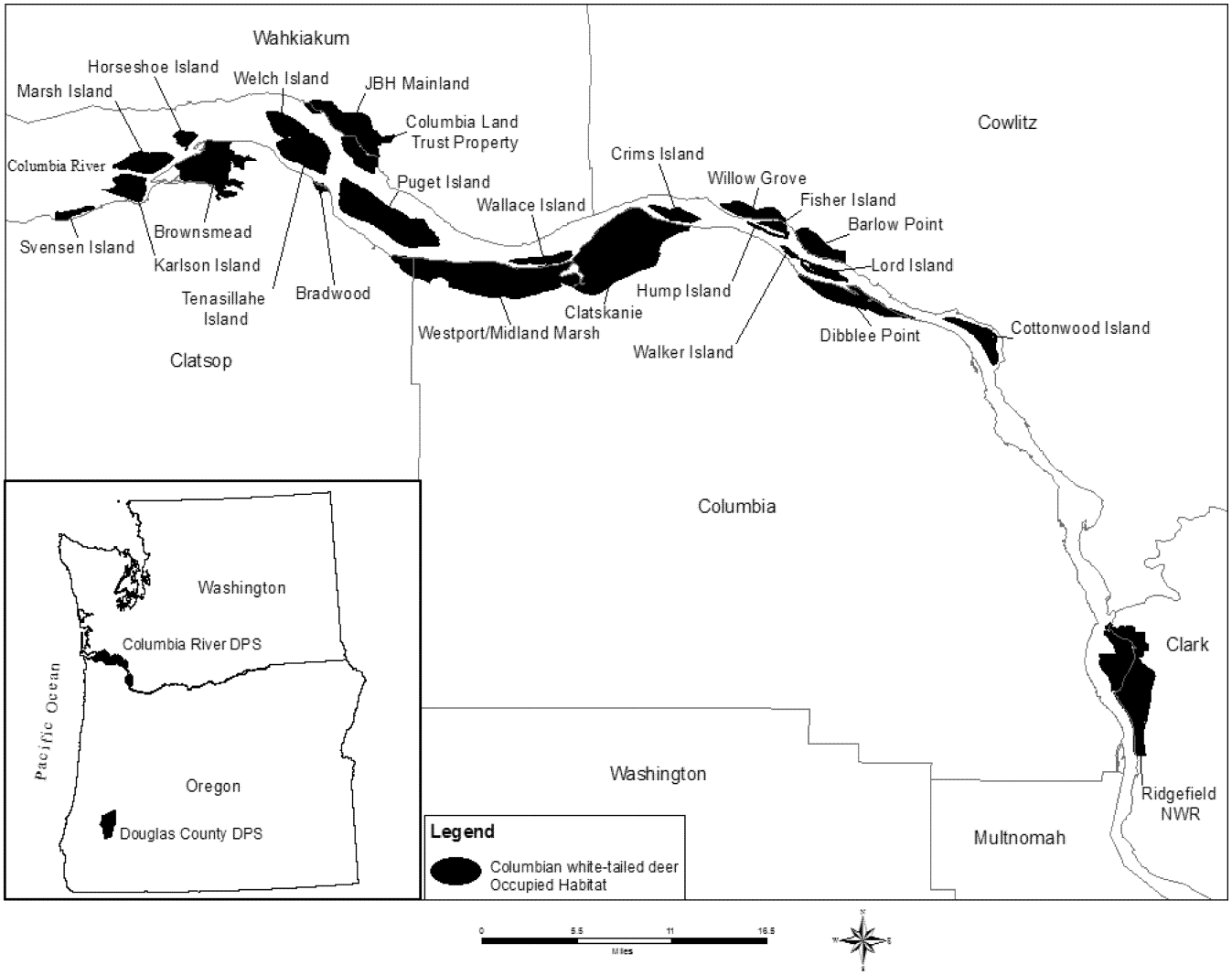

Figure 1. Current range of the Columbia River DPS of CWTD including subpopulations, as well as known CWTD occurrence. Inset map shows the geographic isolation between the Columbia River DPS (top) and the delisted Douglas County DPS (bottom).

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Summary of Comments and Recommendations

In the proposed rule that published on October 8, 2015 (80 FR 60850), we requested that all interested parties submit written comments on the proposal by December 7, 2015. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comments were published in the Oregonian, Columbian, Olympian, and Seattle Times newspapers. We did not receive any requests for a public hearing.

During the public comment period on the proposed rule, we received a total of 9 comment letters, including 3 from peer reviewers, addressing the proposed downlisting and proposed 4(d) rule. We received two duplicate comments in opposition to the proposed downlisting; however, no reasons specific to CWTD were given. The other seven comment letters either supported the proposed downlisting and proposed 4(d) rule or provided anecdotal evidence of increases in CWTD numbers. Within those 7 comment letters, we identified 15 substantive comments grouped into 6 categories: status of CWTD, population dynamics, threat assessment, surveys, calculated take, and habitat security. All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below. All public and peer review comments are available at *http://www.regulations.gov* (Docket No. FWS–R1–ES–2014–0045) and from our Oregon Fish and Wildlife Office by request (see **FOR FURTHER INFORMATION CONTACT**).

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' published on July 1, 1994 (59 FR 34270), we solicited expert opinion of three knowledgeable individuals with scientific expertise that included familiarity with CWTD and its habitat, biological needs, and threats. We received responses from all three peer reviewers.

Peer Reviewer Comments

(1) *Comment:* Two peer reviewers commented on the status of CWTD. They agreed that the DPS was not in immediate danger of extinction. One peer reviewer also requested clarification on the Upper Estuary Island subpopulation and commented that translocations to the Upper Estuary Island area were successful because CWTD were not found there previously. Another peer reviewer asked if there was any biological evidence to support calling Westport and Wallace Island the same subpopulation.

Our Response: Greater detail has been added to the description of the Upper Estuary Island subpopulation to clarify which islands are included and why. We concur that translocations to the Upper Estuary Islands did create a new subpopulation of CWTD; however, recovery criteria for minimum population sizes of deer have not yet been met, and extensive management would likely be required in order to expand the population. We did not group Westport and Wallace Island based on biological evidence; rather, we defined subpopulations by the likelihood of mixing. At the narrowest point, Wallace Island is approximately 0.13 miles (0.21 km) from the bank of the Oregon mainland near Westport. At the widest point, Wallace Island is 0.30 miles (0.49 km) from the shore. Although we do not have telemetry data or genetic data, Wallace Island appears to be close enough that deer would cross between it and Westport, and we do have evidence that deer are capable of crossing the amount of water between these two areas (Meyers 2016, pers comm.). Wallace Island is also not large enough to support a self-sustaining herd, such that CWTD on the island likely rely on Westport for their life-history requirements.

(2) *Comment:* We received two comments regarding population dynamics in regard to subpopulation classification. One peer reviewer asked if the new population at Ridgefield NWR was a subpopulation or a new DPS. Another commenter stated that the lower Columbia River population (LCRP) is a metapopulation with unique attributes that underpin and influence all three elements of population dynamics. The commenter went on to say that metapopulations rely on both demographic and genetic rescue through periodic dispersal from other subpopulations (none of which was acknowledged, described, or discussed), suggesting a lack of understanding of the unique nature of the LCRP or the population processes necessary for its persistence. The commenter further stated that the risk of extirpation of each subpopulation is far greater than the metapopulation, which increases substantially as each subpopulation becomes extirpated, and that there was little data or discussion about dispersal among subpopulations, which is fundamental to metapopulation viability.

Our Response: The new population at Ridgefield NWR is a subpopulation, not a DPS, because it occurs within the identified range of the current DPS and there are no geographical barriers preventing the deer from intermingling with other nearby subpopulations within the existing DPS. The Service agrees that since the various subpopulations in the lower Columbia River DPS have infrequent, but regular, interactions among them, the entire lower Columbia River DPS can be considered a metapopulation. For instance, CWTD have been seen swimming between the JBHR Mainland Unit and Tenasillahe Island (Meyers 2015, pers. comm.). While we have anecdotal evidence, along with data from several telemetry receivers, to document movement patterns of CWTD, we do not have information available regarding dispersal patterns or gene flow across the entire DPS. Based on yearly survey efforts, however, we do know that no new subpopulations have formed without translocations, suggesting dispersal may be limited.

(3) *Comment:* We received one comment regarding population dynamics as it relates to the origin of our minimum viable population size estimates. Specifically, the commenter asked how we can say that 50 deer is a minimum viable population without any consideration of age and sex structure.

Our Response: We incorporated additional clarification on the origin of minimum viable population estimates from the 1983 Revised Recovery Plan, including details on how age and sex structure were incorporated into the estimates. To determine minimum population sizes, the Revised Recovery Plan used the formula $F = 1/(2N_e)$, where F is the inbreeding coefficient and N_e is the effective population size (*i.e.,* the number of individuals the contribute offspring to the next generation) (U.S. Fish and Wildlife Service 1983, p. 72). Given potential barriers to genetic exchange within the Columbia River DPS, the Revised Recovery Plan considered 2 percent to be the maximum reasonable inbreeding coefficient for a subpopulation and 0.25 percent to be a reasonable inbreeding coefficient for the total DPS population (U.S. Fish and Wildlife Service 1983, pp. 72–74). Using both the aforementioned formula and inbreeding coefficients, the effective population size would be a minimum of 50 deer per subpopulation and a minimum of 400 total deer in the DPS, after correcting for an unequal sex ratio (3 females to 1 male) and the percentage of the herd that is of breeding age (65 percent) (U.S. Fish and Wildlife Service 1983, p. 73). To determine the sex ratio and the percentage of breeding individuals, we used data from surveys of fawn to doe ratios that also included number of bucks seen during those surveys. We continue to conduct fawn to doe surveys on the current population to gather sex ratio and age structure information, but we do not use that information to create new minimum viable population (MVP) estimates. We also do not break down age classes further than fawn and adult. In white-tailed deer, age can be estimated based on tooth wear and replacement, the amount of cementum built up on the roots of the teeth, or physical characteristics. The first two techniques require the jaws of the deer, which require capturing or killing the deer; however the latter technique, also known as aging on the hoof (AOTH), can be done in the field. In a recent study assessing the efficacy of AOTH by deer biologists, the overall accuracy of assigning white-tailed deer of known ages into the correct age category was 36 percent (Gee *et al.* 2014, p. 99). Since the accuracy of AOTH is poor and it is only used to age adult males, we used the more conservative categorization of fawn, adult female, or adult male for our age and sex structure. This information still allowed us to estimate both the sex ratio of adults and the proportion of a population that is breeding, both of which were important details in calculating the aforementioned MVP size of 50 individuals per subpopulation. All of the subpopulations deemed viable have far exceeded the MVP of 50 individuals per subpopulation. In 2015, Puget Island had almost five times the number of individuals necessary to achieve the MVP, while Westport/Wallace had almost four times the number of individuals, and Tenasillahe Island had three times the number of individuals. These data provide support that the viable subpopulations can handle fluctuations in age and sex structure and continue to grow.

(4) *Comment:* We received one comment regarding our threats assessment. One peer reviewer stated that assisting deer to expand their range out of the Columbian River's riparian

zone is the only long-term solution to flooding and climate-induced habitat changes. The commenter also stated that while the current rate of vehicle-caused mortality does not appear to be limiting, estimates of the number of deer killed on roads are probably low, and increasing human development and deer population sizes could result in increased mortality rates in the future.

Our Response: We concur with the comments. First, flooding has been an issue at the JBHR Mainland Unit multiple times resulting in temporary reductions in the number of CWTD located there. To minimize these impacts, new tide gates, a new culvert, and a new set-back levee were installed. Finding upland areas with suitable habitat would be beneficial for CWTD and will be pursued prior to making a decision regarding delisting the deer (that is, removing the Act's protections for the subspecies), as would a monitoring program with funding available to determine if current habitat management on the JBHR Mainland Unit has been successful for CWTD or if management changes are warranted. Second, because deer are highly mobile, collisions between CWTD and vehicles do occur, but the number of collisions in the Columbia River DPS has not prevented the DPS population from increasing over time and meeting recovery criteria for downlisting. The frequency of collisions is dependent on the proximity of a subpopulation to roads with high traffic levels, and collisions with CWTD have been most frequent among deer that have been translocated to areas that are relatively close to highly trafficked roads. Even if translocated areas are relatively far from highly trafficked roads, deer typically roam following translocation events and may enter traffic corridors. We anticipate that vehicle collisions could increase as both the CWTD population and human infrastructure increase. In order to address the issue of collisions, a habitat connectivity model is being developed by the Washington Department of Transportation. The goal of this model is to identify areas that contain suitable habitat for CWTD movement within their range and to identify areas with potential land-use conflicts. This model would be a tool for managers to make decisions regarding translocation sites where vehicle collisions are less likely and to prioritize habitat restoration sites.

(5) *Comment:* One peer reviewer questioned the ability of surveys to accurately quantify the number of CWTD when within black-tailed deer (*Odocoileus hemionus columbianus)* habitat. The peer reviewer stated that for the period in which there was data collected with a similar protocol in the same locations over time there was a correlation coefficient of $r = -0.93$, indicating a negative population trend.

Our Response: Greater detail regarding forward-looking infrared (FLIR) survey methodology in habitat containing black-tailed deer and potential error in survey population estimates is incorporated into this final rule. Aerial surveys using FLIR are a common methodology for estimating ungulate abundance. The Service began using FLIR thermography camera systems affixed to a helicopter (or, in 2008, a fixed-wing Cessna 206) to conduct aerial CWTD surveys in conjunction with annual ground counts within the Columbia River DPS beginning in 1996. FLIR uses thermal contrast between animals and their environment, and operates by using sensors to detect infrared radiation undetectable to human observers. The limitations of FLIR are two-fold: The inability to determine the demographic structure of a population and the inability to differentiate between CWTD and black-tailed deer. To address these limitations, we used data from annual ground counts and photos from trail cameras to determine a rough estimate of sex ratio and to determine the ratio of CWTD to black-tailed deer in a given area. For the latter, the number of deer observed in the FLIR count is adjusted by the estimated ratio of CWTD to black-tailed deer. Thus, we do not count every individual deer detected in a FLIR survey as a CWTD. We have ground count data available from 1984 through 2015, to estimate subpopulation size because FLIR was always used in conjunction with ground counts. We do not know the detection rate or error rate of FLIR within the geographic range of the DPS, and we do not apply reported detection rates from other studies due to the variability of FLIR detection rates from studies reporting them along with use of different equipment and survey protocols. To determine detection rates and compare survey methods for this DPS, we ideally would have replicated surveys of closed populations with known numbers of individuals to ensure that detection rates accounted for differences in counts. Since we do not have detection rates, we attempted to increase the likelihood of detection by conducting FLIR surveys in late fall when deer are less likely to be obscured by overhead vegetation and using the same equipment year to year. Thus, we have no evidence to suggest that changes in annual population estimates were the result of differences in survey methods or detectability, and we have taken measures to reduce the likelihood of bias in our population estimates. We have no evidence to suggest that bias in survey methods is accountable for the increase in population size estimates.

In this instance, a correlation coefficient is not an appropriate statistical analysis to accurately reflect population trends across the DPS for multiple reasons. First, the data used for the correlation were from 1984 to 2005, which eliminates 10 years of population data and eliminates the upward trend in the population in those 10 years. Second, the reviewer stated that the choice of the aforementioned dates was for the period in which there was data collected with a similar protocol in the same locations over time; however, from 1984 to 1996, only ground counts were conducted to obtain population data, but from 1996 to 2005, both FLIR and ground counts were used. Thus, the protocol was not similar throughout the time frame suggested for the correlation. Third, correlation is only applicable to linear relationships. A scatter plot of the population data portrays a quadratic relationship due to the negative trend through 2004, followed by the upward population trend observed from 2005 onward. Fourth, the overall population trend for the Columbia River DPS does appear to decline over time until 2004; however, closer examination revealed that the overall trend was strongly influenced by the decline at the JBHR Mainland Unit in the late 1980s. Although population estimates fluctuated, the population has been steadily increasing over time since 2004. We know that population numbers have been influenced by severe flooding in the late 1990s and early 2000s, and by the new subpopulation at Ridgefield NWR, which has been observed breeding and producing twins following translocations. Thus, we have biological evidence to support the positive population trend occurring since 2004.

(6) *Comment:* Two peer reviewers and one commenter questioned take of CWTD. One peer reviewer suggested changing the limit on take to 5 percent of each subpopulation while another asked why we chose 5 percent as the limit.

Our Response: In regard to changing the limit on take to 5 percent of each subpopulation instead of 5 percent of the DPS, we point out that this would not change the number of deer allowed to be taken. Five percent of each subpopulation results in the same number as 5 percent of the DPS. We determined the take percentage and developed the 4(d) rule using best available data on annual mortality of

CWTD, annual subpopulation growth, translocation data, and best professional judgment. The subpopulations of CWTD have been able to maintain a positive annual growth rate even with the removal of individuals from subpopulations for translocations. For example, the Service removed 34 CWTD, which constituted 20 percent of the subpopulation, from Puget Island for translocations in 2012. The estimated size of the subpopulation on Puget Island was 227 CWTD in 2015, representing an annual population growth rate of 16 percent. If the subpopulation continues to grow 16 percent each year, then removing a maximum of 5 percent would still allow the subpopulation to grow. While it is possible that some areas may experience higher levels of take than others, we do not anticipate that all 5 percent of annual allotted take would affect one subpopulation. As currently written, the 4(d) rule allows a maximum of 5 percent of the DPS to be lethally taken annually for the following activities combined: (1) Damage management of problem CWTD; (2) misidentification during black-tailed deer damage management; and (3) misidentification during black-tailed deer hunting.

(7) *Comment:* Two peer reviewers questioned habitat security. One reviewer found the updated definition of habitat security surprising, yet supported calling Puget Island a secure population because there has been a large population of CWTD there since surveys began, there is little danger of flooding, and the levees are higher than on JBHR. The other commenter stated that the new interpretation of secure habitat violated both the Recovery Plan guidelines defining secure critical habitat and the mandate on the Department of the Interior's (Department's) Web site stating that the Department will use the best science to guide policy and management. This commenter further stated that the proposal will set a precedent that will almost certainly lead to future unsupported, arbitrary and capricious considerations. The commenter emphasized the need for conservation easements to establish secure habitat.

Our Response: We understand that considering Puget Island to be secure may appear to contradict earlier definitions of secure habitat in the 1983 Revised Recovery Plan. In that plan, secure habitat was defined as free from adverse human activities in the foreseeable future and relatively safe from natural phenomena that would destroy the habitat's value to CWTD (U.S. Fish and Wildlife Service 1983, p. 33). The Service initially interpreted that definition of secure habitat to mean that legal instruments, such as local land use planning, zoning, easements, leases, agreements, memoranda of understanding, or a combination of these, were the only ways to secure habitat protection and enhancement that was free from adverse human activities in the foreseeable future because we lacked empirical evidence of potential long-term security for this DPS. However, for the reasons explained in this rule, we found that this restrictive interpretation of what constitutes security has limited our ability to make progress toward recovery of CWTD. Therefore, we reevaluated the current status of CWTD under a broadened framework for what constitutes ''secure'' habitat based on 30 years of population data. The 30-year population trend from Puget Island makes it clear that CWTD can maintain stable populations on suitable habitat that is not formally set aside by acquisition, conservation easement, or agreement for the protection of the species. Thus, the definition of secure habitat now includes locations that, regardless of ownership status, have supported viable subpopulations of CWTD for 20 or more years, and have no anticipated change to land management in the foreseeable future that would make the habitat less suitable to CWTD.

Comments From States and Counties

Section 4(b)(5)(A)(ii) of the Act states that the Secretary shall give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency and each such jurisdiction on the proposed regulation. We submitted the proposed rule (containing our proposed regulation language) to the States of Oregon and Washington and received formal comments from Oregon. We also notified Clatsop, Multnomah, and Columbia Counties in Oregon, and Cowlitz, Wahkiakum, Pacific, Skamania, and Clark Counties in Washington, when we published the proposed rulemaking. We did not receive any comments from the counties.

(8) *Comment:* The Oregon Department of Fish and Wildlife indicated they support Federal reclassification of the Columbia River DPS of CWTD, as proposed, along with the proposed 4(d) rule, and they welcome the opportunity to work with the Service, the State of Washington, Tribes, and other partners in recovering this DPS in Oregon.

Our Response: We thank the Oregon Department of Fish and Wildlife for its comments. Without our partners, we would not have been able to accomplish the downlisting goals for the DPS. We continue to work with our partners toward full recovery of CWTD.

Public Comments

(9) *Comment:* One commenter asked what the next steps are and what we hope to see from this reclassification of the DPS from endangered to threatened.

Our Response: By reclassifying CWTD to threatened, the Service is recognizing that CWTD are no longer in immediate danger of extinction, based upon overall population size, addition of a new subpopulation, and secured habitat. Many landowners do not welcome endangered or threatened species on their lands due to increased regulatory restrictions. In addition, under section 4(d) of the Act, we may issue rules to provide for the conservation of the species. Issuing a 4(d) rule in this case will support conservation of the species by providing opportunities for CWTD translocations to new areas previously unavailable to create new subpopulations, encouraging habitat restoration of areas on private lands that may act as dispersal corridors for CWTD, and promoting coexistence between people and CWTD as the deer population increases. These activities will facilitate conservation partnerships with the agricultural community and private landowners to voluntarily create or restore habitat for new and existing subpopulations of CWTD, and encourage natural expansion of CWTD. Thus, we have determined that this 4(d) rule is necessary and advisable for the conservation and recovery of CWTD.

Summary of Changes From the Proposed Rule

In response to comments, in the preamble of this final rule, we added an explanation of how viable population size using sex and age structure data was determined in the Revised Recovery Plan, greater detail regarding the Upper Estuary subpopulation, and clarification of surveys conducted to estimate population size. We also reorganized the information associated with downlisting criterion 2 (maintain three viable subpopulations, two of which are located on secure habitat) to clarify the interaction between population viability and secure habitat. In addition, we revised the section discussing climate change. Finally, we added survey data from 2015 that were unavailable when the proposed downlisting and proposed 4(d) rule published in the **Federal Register** (80 FR 60850; October 8, 2015).

With these new data, we were able to provide more information regarding the new subpopulation at Ridgefield NWR.

In the Regulation Promulgation section of this final rule, we made minor changes to what we proposed for the 4(d) rule for clarity. Specifically, in the definition of CWTD, we include ''individual specimens'' to clarify the use of that term in the rule. Also, where we set forth the provisions concerning the take of problem CWTD, we specify that this is take ''resulting in mortality.'' Last, where we set forth reporting and disposal requirements, we now include a reference to requirements for Tribal employees, State and local law enforcement officers, and State-licensed wildlife rehabilitation facilities acting under 50 CFR 17.40(i)(6) of the rule.

Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the List of Endangered and Threatened Wildlife or the List of Endangered and Threatened Plants. However, revisions to the Lists of Endangered and Threatened Wildlife and Plants (adding, removing, or reclassifying a species) must be based on determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' While recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species on, or to remove a species from, the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species continues to meet the definition of an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria suggested in the recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be achieved or may never be achieved. In that instance, we may determine that the threats are minimized sufficiently and the species is robust enough to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent to which criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

For downlisting the Columbia River DPS from endangered to threatened, the Revised Recovery Plan for CWTD (U.S. Fish and Wildlife Service 1983) established the following criteria: (1) Maintain a minimum of at least 400 CWTD across the Columbia River DPS; and (2) maintain three viable subpopulations, two of which are located on secure habitat (U.S. Fish and Wildlife Service 1983, pp. 31–33). Viable is defined as a minimum November population of 50 individuals or more in a subpopulation. A minimum viable population size of 50 deer in each subpopulation and of 400 total deer in the DPS would theoretically cancel out any deleterious effects of inbreeding. To determine minimum population sizes, the Revised Recovery Plan used the formula $F = 1/(2N_e)$, where F is the inbreeding coefficient and N_e is the effective population size (*i.e.,* the number of breeding individuals necessary for optimal genetic exchange) (U.S. Fish and Wildlife Service 1983, p. 72). Given potential barriers to genetic exchange within the Columbia River DPS, the Revised Recovery Plan considered 2 percent to be the maximum reasonable inbreeding coefficient for a subpopulation and 0.25 percent to be a reasonable inbreeding coefficient for the total DPS population (U.S. Fish and Wildlife Service 1983, pp. 72–74). Using both the aforementioned formula and inbreeding coefficients, the effective population size would be a minimum of 50 deer per subpopulation and a minimum of 400 total deer in the DPS, after correcting for an unequal sex ratio (3 females to 1 male) and the percentage of the herd that is of breeding age (65 percent) (U.S. Fish and Wildlife Service 1983, p. 73).

To determine the sex ratio and the percentage of breeding individuals, we used data from surveys of fawn to doe ratios that also included number of bucks seen during those surveys. We did not, however, have estimates of the age structure of the population. In white-tailed deer, age can be estimated based on tooth wear and replacement, the amount of cementum built up on the roots of the teeth, or physical characteristics. The first two techniques require the jaws of the deer, which require capturing or killing the deer; however, the latter technique, also known as aging on the hoof (AOTH), can be done in the field. In a recent study assessing the efficacy of AOTH by deer biologists, the overall accuracy of assigning white-tailed deer of known ages into the correct age category was 36 percent (Gee *et al.* 2014, p. 99). Since AOTH accuracy is poor and is only used to age male deer, we categorized individuals as fawns, adult females, or adult males. We incorporated this information into our analyses of the aforementioned minimum effective population size.

In order to ensure viable subpopulations of at least 50 individuals, the Revised Recovery Plan determined that protection through securing habitat would be necessary. Secure habitat was defined as free from adverse human activities in the foreseeable future and relatively safe from natural phenomena that would destroy the habitat's value to CWTD (U.S. Fish and Wildlife Service 1983, p. 33). An example of a human activity that may cause adverse impacts to deer is large-scale commercial development. An example of natural phenomena that may destroy CWTD habitat is persistent flooding.

For delisting (*i.e.,* removing the species from the Federal List of Endangered and Threatened Wildlife), the recovery plan established the following criteria: (1) Maintain a minimum of at least 400 CWTD across the Columbia River DPS; and (2) maintain three viable subpopulations, all located on secure habitat. Recovery actions specified in the recovery plan to achieve the downlisting and delisting goals include management of existing subpopulations and protection of their habitat, establishment of new subpopulations, and public education

and outreach to foster greater understanding of the CWTD and its place in the natural environment of its historical range (U.S. Fish and Wildlife Service 1983, pp. 31–33).

Recovery Plan Implementation for the Columbia River DPS. At the time of the Revised Recovery Plan's publication, the JBHR Mainland Unit subpopulation was the only subpopulation considered viable and secure. The Revised Recovery Plan recommended increasing the Tenasillahe Island subpopulation to a minimum viable herd of 50 deer, maintaining a total population minimum of 400 deer, and securing habitat for one additional subpopulation (U.S. Fish and Wildlife Service 1983, p. 31).

Forty-nine years have passed since the CWTD was federally listed as endangered, and the species is now more abundant and better distributed throughout the lower Columbia River Valley. The improvement is due in part to the maintenance and augmentation of existing subpopulations, and to the establishment of new subpopulations via successful translocations within the species' historical range. Many threats to the species have been substantially ameliorated, and CWTD have met all of the criteria for downlisting to threatened in the Revised Recovery Plan. A review of the species' current status relative to the downlisting criteria follows.

Downlisting criterion 1: Maintain a minimum of at least 400 CWTD across the Columbia River DPS. This criterion has been met. The total population of the Columbia River DPS has been maintained at over 400 deer annually since regular surveys began in 1984. At the time of the CWTD Revised Recovery Plan publication in 1983, the number of deer in the Columbia River DPS was thought to be 300 to 400. The first comprehensive survey effort in 1984 resulted in an estimate of 720 deer, suggesting that prior estimates were probably low. Since 1985, fall ground counts have been conducted to establish long-term trends by indicating gross population changes. In addition to annual fall ground counts, the Service began using forward-looking infrared (FLIR) thermography camera systems affixed to a helicopter (or, in 2008, a fixed-wing Cessna 206) to conduct aerial CWTD surveys within the Columbia River DPS beginning in 1996. The limitations of FLIR are two-fold: the inability to determine the demographic structure of a population and the inability to differentiate between CWTD and black-tailed deer. To address these limitations, ground counts and photos from trail cameras are used to determine a rough estimate of sex ratio and to determine the ratio of white-tailed deer to black-tailed deer in a given area. For the latter, the number of CWTD observed in the FLIR count is adjusted by the estimated percentage of CWTD to black-tailed deer. In years when FLIR surveys were not completed, ground counts were used to estimate whether there had been any unusual decrease or increase in a subpopulation. As of 2015, there are approximately 966 CWTD spread across 6 main subpopulations: JBHR Mainland Unit, Tenasillahe Island, Upper Estuary Islands, Puget Island, Westport/Wallace Island, and Ridgefield NWR (see Table 1, below).

While the overall population trend for the Columbia River DPS appeared to decline over time along a similar trajectory as the JBHR Mainland Unit subpopulation until 2006, closer examination revealed that the overall trend was strongly influenced by the decline at the JBHR Mainland Unit in the late 1980s. Although population numbers fluctuated, the other subpopulations did not undergo a similar decline, and when the JBHR Mainland Unit is left out of the analysis, the overall Columbia River DPS population demonstrates a more positive trend exceeding the minimum population size of 400 individuals. Thus, downlisting criterion 1 has been met.

TABLE 1—ESTIMATED POPULATION SIZE OF THE COLUMBIA RIVER DPS OF CWTD BY SUBPOPULATION

[U.S. Fish and Wildlife Service 2013a, p. 7; U.S. Fish and Wildlife Service, Unpublished Data]

Year	Puget Island	Tenasillahe Island	Westport/ Wallace Island	JBHR Mainland Unit	Upper Estuary Islands [c]	Ridgefield NWR	Total
1984	170	40	150	360	0	0	720
1985	215	40	125	480	0	0	860
1986	195	55	125	500	0	0	875
1987	185	70	150	500	0	0	905
1988	205	80	150	410	0	0	845
1989	205	90	150	375	0	0	820
1990	200	105	150	345	0	0	800
1991	200	130	150	280	0	0	760
1992	200	165	175	280	0	0	820
1993	200	195	200	175	0	0	770
1994	200	205	225	140	0	0	770
1995	200	205	225	120	0	0	750
1996	200	[a] 125	[a] 225	[a] 51	0	0	610
1997	200	[a] 150	[a] 200	[a] 100	0	0	650
1998	200	[a] 200	[a] 200	[a] 110	0	0	710
1999	150	[a] 160	[a] 140	[a] 110	[a] 25	0	585
2000	150	[a] 135	[a] 150	[a] 120	[a] 55	0	610
2001	125	[a] 135	[a] 150	[a] 120	[a] 55	0	585
2002	125	[a] 100	[a] 140	[a] 125	[a] 55	0	545
2003	125	[a] 100	[a] 140	[a] 115	[a] 80	0	560
2004	110	[a] 100	[a] 140	[a] 110	[a] 95	0	555
2005	125	[a] 100	[a] 140	[a] 100	[a] 100	0	565
2006[a]	n/a	86	104	81	67	0	.....
2007[a]	n/a	82	n/a	59	[e] 41	0	.....
2009[a]	138	[b] 97	146	[b] 74	28	0	[d] 593
2010 [a]	n/a	143	164	68	39	0	[d] 630
2011 [a]	171	90	n/a	83	[f] 18	0	[d] 603
2014 [a]	227	154	[g] 154	88	39	48	[d] 830

TABLE 1—ESTIMATED POPULATION SIZE OF THE COLUMBIA RIVER DPS OF CWTD BY SUBPOPULATION—Continued

[U.S. Fish and Wildlife Service 2013a, p. 7; U.S. Fish and Wildlife Service, Unpublished Data]

Year	Puget Island	Tenasillahe Island	Westport/ Wallace Island	JBHR Mainland Unit	Upper Estuary Islands [c]	Ridgefield NWR	Total
2015 [a]	228	155	190	100	36	100	[d]966

[a] Estimates from 1996–2015 are derived from forward-looking infrared (FLIR) survey results, but survey results from 2008 produced anomalous data because an alternative technique was used. These data are not considered representative of actual numbers, and are thus not included in this table.
[b] Numbers reflect a post-survey translocation of 16 CWTD from Tenasillahe Island to the Refuge mainland.
[c] Includes Lord, Walker, Fisher, Hump, and Crims Islands.
[d] Includes estimates from residual populations in Cottonwood Island, Clatskanie Flats, Brownsmead, Willow Grove, Barlow Point, and Rainier.
[e] Does not include Fisher and Hump Islands.
[f] Assuming a white-tailed:black-tailed deer ratio of 20:1; this includes only Crims Island.
[g] Approximate population estimate after 2014 translocation. Note: Totals are not given in 2006 and 2007 due to incomplete data, and no surveys were conducted in 2012 or 2013.

Downlisting criterion 2: Maintain three viable subpopulations, two of which are located on secure habitat. There are currently six recognized subpopulations of CWTD: JBHR Mainland Unit with 100 deer, Westport/Wallace Island with 190 deer, Upper Estuary Islands with 36 deer, Ridgefield NWR with 100 deer, Tenasillahe Island with 155 deer, and Puget Island with 228 deer (see Table 1). One of these subpopulations is a viable yet unsecure subpopulation of CWTD; three are non-viable yet secure; and two are viable and secure. The Service attempted to establish an additional subpopulation on Cottonwood Island; however, the deer were unable to establish a population there.

Viable yet unsecure subpopulations. The Westport/Wallace Island subpopulation has been stable and relatively abundant since regular surveys began. After reaching a peak of approximately 225 deer in 1995, the subpopulation's last estimate from 2015 was 190 deer (see Table 1, above) despite the removal of 10 deer from the area to contribute to the 2014 translocation to Ridgefield NWR. Habitat in the Westport area consists mainly of cottonwood/willow swamp and scrub-shrub tidal wetlands. In 1995, Wallace Island, Oregon, was purchased by the Service for CWTD habitat. Although the habitat is now protected for the recovery of CWTD, the 227-ha (562-ac) island alone is considered too small to support a viable population (U.S. Fish and Wildlife Service 2010, p. 4:39). Because it is located adjacent to Westport, Oregon, and anecdotal reports suggest that CWTD traverse both areas, Wallace Island is considered part of the Westport/Wallace Island CWTD subpopulation. Acquisitions by JBHR also included a 70-ha (173-ac) area of Westport called the Westport Unit. The remaining portion of Westport Island is in private ownership.

Apart from Wallace Island and the Westport Unit, most of the area where the Westport/Wallace Island subpopulation resides is owned and managed by one individual family. The family has managed the land for duck hunting for many years, implementing intensive predator control and maintaining levees as part of their land management activities. The Service suspects that CWTD reproduction in the Westport/Wallace Island subpopulation has benefited from this intensive predator control (Meyers 2013, pers. comm.). If the property owners alter the management regime or the property should change hands, the Westport/Wallace Island subpopulation could be negatively affected, particularly if the owners decide to remove the current levees, thereby inundating some of the CWTD habitat (Meyers 2013, pers. comm.). Because the stability of CWTD in this area appears to be so closely tied to one private landowner and their land management choices, there is less certainty as to the long-term security of this subpopulation and its associated habitat. As a result, although a small portion of the habitat for this subpopulation is protected for CWTD, the Service does not currently recognize Westport/Wallace Island as secure habitat. However, given that the area has supported a healthy subpopulation of CWTD for several decades, if the landowner were willing, then securing this property through purchase or conservation agreement would potentially increase recovery prospects for the Columbia River DPS.

Non-viable yet secure subpopulations. The Upper Estuary Islands are a five-island complex with a total area of 400 ha (989 ac), under a mix of private and State ownership. The Revised Recovery Plan originally identified four of the five islands near Longview, Washington, as suitable habitat to create a third subpopulation of CWTD. Of these islands, Fisher Island is a naturally occurring tidal wetland dominated by black cottonwood (*Populus trichocarpa*), willow (*Salix* spp.), and dogwood (*Cornus nuttallii*) (U.S. Fish and Wildlife Service 2005, p. 1). The remaining three islands are dredge material sites with dense cottonwood and shrub habitat. The fifth island, Crims Island, lies 1.6 km (1 mi) downstream from the four original Upper Estuary Islands, and contributes to the interchange among CWTD of neighboring islands and mainland subpopulations (U.S. Fish and Wildlife Service 2005, p. 4). Given Crims Island's role in connectivity for subpopulations, population counts of CWTD on the island were included with the Upper Estuary Islands, and it was secured for CWTD recovery in a 1999 agreement among the Bonneville Power Administration, the Columbia Land Trust, and the Service (U.S. Fish and Wildlife Service 2010, p. 1:19). The protected portion of the island (approximately 191 ha (473 ac)) contains about 121 ha (300 ac) of deciduous forest (black cottonwood, Oregon ash (*Fraxinus latifolia*), and willow), pasture, and marsh. Crims Island was designated as a suitable translocation site in the Revised Recovery Plan and was originally considered able to support 50 to 100 deer (U.S. Fish and Wildlife Service 2000, p. 2).

To establish a new subpopulation in the Upper Estuary Islands, translocations of CWTD to Fisher/Hump and Lord/Walker Islands began in 2003, and a total of 66 deer (33 to each set of islands) have been relocated there to date (U.S. Fish and Wildlife Service 2013a, p. 23). In addition, 66 deer have been translocated to Crims Island through several translocation efforts (U.S. Fish and Wildlife Service 2013a, p. 21). At the time of the translocations, CWTD were not known to inhabit these islands, but habitat was available. The population goal for the five-island

complex is at least 50 CWTD (U.S. Fish and Wildlife Service 2005, p. 1), but as a unit, this complex has yet to maintain the target population of 50 deer. The original four islands currently contain 10 CWTD and reach a total of only 39 deer with the Crims Island population. It is suspected that the low numbers of CWTD in the complex are a result of deer finding higher quality habitat in areas adjacent to the island complex. Telemetry data indicated that CWTD moved to the adjacent mainland areas of Willow Grove, the Barlow Point industrial area, and Dibblee Point (U.S. Fish and Wildlife Service 2005, p. 3), after translocations. These adjacent areas averaged 44 CWTD between 2009 and 2011 (U.S. Fish and Wildlife Service 2013a, p. 23); however, these areas are considered residual populations, rather than part of the Upper Estuary Islands, because the mainland portion consisting of privately owned land cannot be secured. Further range expansion in this region is limited by its direct proximity to urban development. The potential for problems associated with translocations, particularly damage to private gardens and commercial crops, remains an issue with local landowners and, therefore, limits CWTD range expansion at this time. Thus, even with translocation efforts, this undeveloped island complex has only supported between 8 and 33 deer since 2000, with the latest population estimate at 25 deer in 2015. Therefore, the Upper Estuary islands do not constitute a viable subpopulation now, and we do not expect it will in the foreseeable future.

The JBHR Mainland Unit subpopulation has fluctuated in numbers since regular surveys began, with a high of 500 CWTD in 1987 to a low of 51 deer in 1996 (after a catastrophic flood event). When the refuge was established, refuge biologists established a goal of approximately 125 deer for the JBHR Mainland Unit to balance the density of deer given the amount of available habitat (U.S. Fish and Wildlife Service 2010, p. 2:62).

Flooding on the JBHR Mainland Unit has occurred three times over the history of the refuge, in 1996, 2006 and 2009, resulting in short-term population declines after each flood. In March of 2011, a geotechnical assessment determined that the dike that protects the JBHR Mainland Unit from flooding by the Columbia River was at ''imminent risk'' of failure (U.S. Fish and Wildlife Service 2013b, p. 2) and a breach at that location would result in the flooding of the JBHR Mainland Unit at high tides. In response to this threat, the Service conducted an emergency translocation of 37 CWTD from the JBHR Mainland Unit to unoccupied but suitable habitat at Ridgefield NWR in early 2013 (U.S. Fish and Wildlife Service 2013c, p. 8). The U.S. Army Corps of Engineers subsequently constructed a set-back levee on the JBHR Mainland Unit to prevent flooding of the refuge and to restore salmonid habitat (U.S. Army Corps of Engineers 2013, p. 11). Though the set-back dike, completed in fall 2014, reduces available CWTD habitat on the JBHR Mainland Unit by approximately 28 ha (70 ac), or approximately 3.5 percent of the total 797 ha (1,970 ac), it will reduce the likelihood of future flooding. After the removal of 37 CWTD in 2013, the population of the JBHR Mainland Unit rebounded to an estimated 100 deer (2015). Although the current subpopulation count exceeds the criterion of 50 individuals described in the Revised Recovery Plan, we currently characterize the JBHR Mainland subpopulation as non-viable because in defining viability, the Revised Recovery Plan did not account for either the significant changes in the numbers of individuals within a donor subpopulation resulting from translocations or the impacts of significant land disturbances necessary to protect habitat. Therefore, we recognize that additional demographic monitoring is needed to more reliably demonstrate viability of the JBHR Mainland Unit subpopulation, given the removal of nearly half its numbers in 2013 (from 83 prior to translocations to 46 afterward) and the reduction in habitat from the construction of the setback dike.

Ridgefield NWR is the most recently established subpopulation of CWTD and it was created by translocating individual deer from the JBH Mainland, Puget Island, and Westport subpopulations to the refuge beginning in 2013. It is located in Clark County, Washington, approximately 108 km (67 mi) southeast of JBHR, and is comprised of 2,111 ha (5,218 ac) of marshes, grasslands, and woodlands with about 1,537 ha (3,800 ac) of upland terrestrial habitat. As part of the 2013 emergency translocation, the Service moved 37 deer from the JBHR Mainland Unit to the Ridgefield NWR (U.S. Fish and Wildlife Service 2013c, p. 8). Eleven of the deer suffered either capture-related mortality or post-release mortality within 2 months, potentially due to predation (U.S. Fish and Wildlife Service, unpublished data). In 2014, another 21 deer were translocated to Ridgefield NWR from Puget Island and Westport, and the current estimated population based on FLIR surveys is 100 deer (see Table 1, above). Although this subpopulation has exceeded the criterion of 50 individuals described in the Revised Recovery Plan, we currently characterize the Ridgefield NWR subpopulation as non-viable because in defining viability, the Revised Recovery Plan did not account for the complex suite of factors that determine the success or failure of translocations and the resulting establishment of a new subpopulation. While translocations may appear immediately successful, variation in both an animal's ability to adapt to a new environment and the habitat affect the ultimate success of translocations. This variation can include donor deer population genetics, animal condition, age and sex of translocated individuals, and quality of food sources (Foley *et. al.* 2008, p. 26). Therefore, we recognize that additional demographic monitoring is needed to more reliably demonstrate viability of the newly established Ridgefield NWR subpopulation.

Non-viable and unsecured subpopulations. Although attempts have been made to translocate deer to Cottonwood Island, it does not contain a viable subpopulation of CWTD. The island is a recreational site for camping and fishing; the surrounding waters are used for waterfowl hunting. Cottonwood Island has multiple landowners, which consist primarily of a coalition of ports administered by the Port of Portland, but there are no people living on the island and there are no commercial interests (U.S. Fish and Wildlife Service 2013b, p. 15). It lies approximately 1.6 km (1 mi) upriver from Dibblee Point on the Washington side of the Columbia River. The 384-ha (948-ac) island was considered in the Revised Recovery Plan as a potential relocation site; it was thought that the island could support up to 50 deer. In the fall of 2010, 15 deer were moved to Cottonwood Island from the Westport population in Oregon (Cowlitz Indian Tribe 2010, p. 1). Seven confirmed mortalities resulted from vehicle collisions as CWTD dispersed off the island (Cowlitz Indian Tribe 2010, p. 3). Telemetry monitoring by Washington Department of Fish and Wildlife (WDFW) personnel in the spring of 2011 detected three radio-collared CWTD on Cottonwood Island and two on the Oregon mainland near Rainier, Oregon. A second translocation of 12 deer to Cottonwood Island (from Puget Island) occurred in conjunction with the 2013 emergency translocation effort (U.S. Fish and Wildlife Service 2013a, p. 24). All but four of these new CWTD subsequently died or moved off

the island, with five deer dying from vehicle strikes (U.S. Fish and Wildlife Service, unpublished data). We are uncertain why the deer moved off the island, but we suspect that habitat quality may have been a factor. Approximately 6 ha (15 ac) of habitat was improved in 2013, by eliminating reed canary grass and other invasive plants and by planting native vegetation. Staff from JBHR and staff representing the Cowlitz Indian Tribe continue to conduct periodic monitoring of CWTD translocated to Cottonwood Island.

Viable and secure subpopulations. Tenasillahe Island in Oregon is part of the JBHR. The Revised Recovery Plan recommended increasing the Tenasillahe Island subpopulation to a minimum viable herd of 50 CWTD. The Service has accomplished this recovery goal through several translocation efforts and habitat enhancement, and the island's subpopulation, though still susceptible to flood events, has remained above 50 individuals for the past 20 years. The most current FLIR survey at this location (in 2015) estimated the population at 155 CWTD (see Table 1, above). Because this population has been stable and occurs within the JBHR boundaries, it is considered secure.

Puget Island is a mix of private and public land. The private land consists mainly of pasture for cattle and goats, residential lots, and hybrid cottonwood plantations that provide food and shelter for the deer. Farmers and ranchers on the island often implement predator (coyote, *Canis latrans*) control on their lands to protect poultry and livestock, and this management activity likely benefits the CWTD population on the island. In fact, Puget Island has supported one of the largest and most stable subpopulations of CWTD. While densities have historically been lower than on refuge lands, the size of Puget Island (about 2,023 ha (5,000 ac)) has enabled it to support a robust number of deer. Since regular surveys began in 1984, the population at Puget Island has averaged between 175 and 200 deer. The latest survey (2015) estimated the population at a high of 228 deer, although 11 deer were removed from the area for the 2014 translocation to the Ridgefield NWR. Although Puget Island is not formally set aside for the protection of CWTD, the fawn:doe (F:D) ratios are higher than on the protected JBHR Mainland Unit, and the area has supported a stable CWTD population without active management in the midst of continued small-scale development for several decades.

Of the three viable subpopulations, only the Tenasillahe Island and Puget Island subpopulations are located on secure habitat. Page 37 of the Revised Recovery Plan states, ''. . . protection and enhancement (of off-refuge CWTD habitat) can be secured through local land use planning, zoning, easement, leases, agreements, and/or memorand[a] of understanding'' (U.S. Fish and Wildlife Service 1983, p. 37). In much of the 30 years following the development of the Revised Recovery Plan, the Service interpreted this to mean that the only ways to securing habitat in order to meet recovery criteria were the ones listed in the above citation. This led the Service to focus most CWTD recovery efforts on increasing and maintaining the subpopulations within the boundaries of the JBHR rather than working in areas that did not meet this narrow interpretation of ''secure'' habitat. These efforts resulted in some successful recovery projects such as growing and stabilizing the subpopulation on Tenasillahe Island, which is part of JBHR and currently one of the largest subpopulations in the Columbia River DPS. However, it also led the Service to put significant resources and time toward efforts that have shown less consistent success, such as establishing viable and stable herds on the Upper Estuary Islands. At present, a total of 314 deer have been translocated in an effort to move CWTD to ''secure'' habitats. As discussed earlier in this section, some translocations appear to have yielded success (Ridgefield NWR) and some failed to create viable and secure subpopulations (Cottonwood Island and the Upper Estuary Islands).

Two subpopulations, Puget Island and Westport/Wallace Island, have maintained relatively large and consistent numbers over the last 3 decades even though these areas are not under conservation ownership or agreement. The number of CWTD in these two areas clearly demonstrates a measure of security in the habitat regardless of the ownership of the land and may be related to the type of activity taking place in these areas.

The 30-year population trends from Puget Island and Westport/Wallace Island make it clear that CWTD can maintain secure and stable populations on suitable habitat that is not formally set aside by acquisition, conservation easement, or agreement. In light of this information, we have reevaluated the current status of CWTD and have determined that ''secure'' habitat includes locations that, regardless of ownership status, have supported viable subpopulations of CWTD for 20 or more years, and have no anticipated change to land management in the foreseeable future that would make the habitat less suitable to CWTD.

While Puget Island and Westport/Wallace Island had previously not been considered ''secure'' habitat, they have been supporting two of the largest and most stable subpopulations in the Columbia River DPS since listing. Although CWTD numbers at these 2 locations have fluctuated, the Westport/Wallace Island subpopulation had 150 deer in 1984 and 164 deer in 2010, and the Puget Island population had 170 deer in 1984 and 227 deer in 2014 (see Table 1, above). The Revised Recovery Plan identified Puget Island and the Westport area as suitable sources for CWTD translocations due in large part to their population stability. Subsequently, these two locations have been the donor source for numerous translocations over the last 30 years, including the removal of 23 deer from Puget Island and 10 deer from Westport as part of the 2013 and 2014 translocation efforts. Removal of CWTD from these two locations on multiple occasions for the purpose of translocation has not resulted in any significant decrease in donor population numbers.

Since the late 1980s, the total acreage of tree plantations on Puget Island decreased by roughly half (Stonex 2012, pers. comm.). However, a proportional decrease in the numbers of CWTD did not occur. Furthermore, though Puget Island has experienced changes in land use and increases in development over time, such as the break-up of large agricultural farms into smaller hobby farms, the changes have not inhibited the ability of CWTD to maintain a very stable population on the island. The Wahkiakum Comprehensive Plan (2006) anticipates that future development on Puget Island will continue to be tree farms, agricultural farms, and rural residential (both low density with 1- to 2-ha (2.5- to 5-ac) lots and medium density with 0.4- to 1-ha (1- to 2.5-ac) lots), with a goal of preserving the rural character of the area (Wahkiakum County 2006, p. 392). Puget Island's human population has grown at a nominal rate of 1 to 1.5 percent over the past 15 years; that past rate along with building permit growth over the last 5 years leads Wahkiakum County to project a population growth rate on the island of 1.5 percent through the 20-year ''plan horizon'' that extends through the year 2025 (Wahkiakum County 2006, p. 379). Because CWTD have demonstrated the ability to adapt to this type of development on the island, continued development of this type and at this low

level is not expected to impact CWTD on the island in the foreseeable future (Meyers 2013, pers. comm.). Since the CWTD population on the island has been viable for decades and the best available information does not predict significant changes to land management in the foreseeable future that would make the habitat less suitable to CWTD, the Service considers Puget Island secure habitat.

In conclusion, there are currently three viable subpopulations of CWTD: Tenasillahe Island at 155 deer, Puget Island at 228 deer, and Westport/Wallace Island at 190 deer (see Table 1, above). Of those, we consider Tenasillahe Island and Puget Island to be located on secure habitat. Thus, the downlisting criterion to maintain three viable subpopulations, two of which are located on secure habitat, has been met. The Westport/Wallace Island subpopulation has shown consistent stability over the last 30 years, on par with Puget and Tenasillahe Islands, but its long-term security is less certain. While the secure JBHR Mainland Unit and Ridgefield NWR subpopulations have reached the criterion of 50 individuals described in the Revised Recovery Plan, we currently characterize them as non-viable because in defining viability, the Revised Recovery Plan did not account for either the significant changes in the numbers of individuals within a donor subpopulation resulting from translocations or the impacts of significant land disturbances necessary to protect habitat (*i.e.* JBHR Mainland Unit subpopulation), nor for the complex suite of factors that determine the success or failure of translocations and the resulting establishment of a new subpopulation (*i.e.,* Ridgefield NWR subpopulation).

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in reclassifying (in this case, downlisting) a species. We may reclassify a species from endangered to threatened (''downlist'') if the best available scientific and commercial data indicate that the species no longer meets the definition of endangered, but instead meets the definition of threatened because: (1) The species' status has improved to the point that it is not in danger of extinction at the present time throughout all or a significant portion of its range, but the species is not recovered (as is the case with the CWTD); or (2) the original scientific data used at the time the species was classified were in error.

Determining whether a species' status has improved to the point that it can be downlisted requires consideration of whether the species is endangered or threatened because of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The word ''range'' in the significant portion of its range (SPR) phrase refers to the general geographical area in which the species occurs at the time a status determination is made. For the purposes of this analysis, we evaluate whether the currently listed species, the Columbia River DPS of CWTD, continues to meet the definition of endangered.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the five-factor analysis, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (*i.e.,* it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

In the following analysis, we evaluate the status of the Columbia River DPS of CWTD throughout its range as indicated by the five-factor analysis of threats currently affecting, or that are likely to affect, the species within the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

CWTD evolved as a prairie edge/woodland-associated species with historically viable populations that were not confined to river valleys (Bailey 1936, pp. 92–93). However, CWTD have been extirpated in all but two areas of their historical range: the Columbia River DPS area and the Douglas County DPS area. The remnant Columbia River DPS population was forced by anthropogenic factors (residential and commercial development, roads, agriculture, etc., causing fragmentation of natural habitats) into the lowland patches of forest and fields it now inhabits. While CWTD can adapt to scattered human development, the diffusion of urban, suburban, and agricultural areas now limit natural range expansion within the current subpopulations, and existing occupied areas support densities of CWTD indicative of low-quality habitats, particularly lower-lying and wetter habitat than where the species would typically be found.

Loss of habitat is suspected as a key factor in historical CWTD declines; 12,140 ha (30,000 ac) of habitat along the lower Columbia River were converted for residential and large-scale agricultural use from 1870 to 1970 (Northwest Power and Conservation Council 2004, p. B4:13). Over time, CWTD were forced into habitat that was fragmented, wetter, and in more lowland than what would be ideal for the species. The recovery of the Douglas County DPS reflects the availability of more favorable habitat (a mix of conifer and hardwood-dominated vegetation communities, including oak woodlands

and savannah) and compatible land-use practices, such as intensive sheep grazing (Franklin and Dyrness 1988, p. 110).

Though limited access to high-quality upland habitat in the Columbia River DPS remains the most prominent hindrance to CWTD dispersal and recovery today, the majority of habitat loss and fragmentation has already occurred. The most dramatic land-use changes occurred during the era of hydroelectric and floodplain development in the Columbia River basin, beginning with the construction of the Willamette Falls Dam in 1888, and continuing through the 1970s (Northwest Power and Conservation Council 2013, p. 1). Compared to the magnitude of change that occurred in CWTD habitat through activities associated with these types of development (*e.g.,* dredging, filling, diking, and channelization) (Northwest Power and Conservation Council 2004, pp. III, 13–15), significant future changes to currently available habitat for the Columbia River DPS are not anticipated.

Recovery efforts for CWTD have, in large part, focused on formally protecting land for the recovery of the species through acquisitions and agreements such as JBHR, Crims Island, Cottonwood Island, and Wallace Island, as well as restoration activities to increase the quality of existing available habitat. In addition, the Service has expanded CWTD distribution from approximately 8,093 ha (20,000 ac) to 24,281 ha (60,000 ac) through translocations, reducing the risk that a catastrophic event affecting any one subpopulation would lead to extinction. To date, the Service has worked to conserve 3,604 ha (8,918 ac) of habitat for the protection of CWTD (U.S. Fish and Wildlife Service 2013, p. 20). Habitat restoration and enhancement activities on JBHR have improved the quality of habitat since publication of the Revised Recovery Plan in 1983, and the Ridgefield NWR now has an active habitat enhancement program in place to support the translocated population of CWTD. These efforts have added to the available suitable habitat for the Columbia River DPS and helped offset some of the impacts of previous habitat loss.

Although much of the occupied habitat in the Columbia River DPS is fragmented, wetter than the species prefers, and vulnerable to flooding, many variables influence CWTD survival. A mosaic of ownerships and protection levels does not necessarily hinder the existence of CWTD when land use is compatible with the habitat needs of the deer. For example, on Puget Island, which is not formally set aside for the protection of CWTD, the fawn:doe (F:D) ratios are higher than on the protected JBHR Mainland Unit, and the area has supported a stable CWTD population without active management in the midst of continued small-scale development for several decades. Additionally, the Westport/Wallace Island subpopulation has long maintained stable numbers, even though most of the area is not managed for the protection of CWTD. The level of predation, level of disturbance, and condition of habitat all influence how CWTD can survive in noncontiguous habitats.

Flooding, from either anthropogenic or natural events, is a threat to CWTD habitat when browsing and fawning grounds become inundated for prolonged periods. CWTD habitat is susceptible to flooding because a large proportion of occupied CWTD habitat is land that was reclaimed from tidal inundation by construction of dikes and levees for agricultural use in the early 20th century (U.S. Fish and Wildlife Service 2010, p. 2:48). For example, in 1983, the population of CWTD at Karlson Island was estimated to be between 8 and 12 individuals. Since that time, however, the dike on the island has breached such that the island is now prone to sustained and frequent flooding events. CWTD have abandoned the island. On the JBHR Mainland Unit, three major storm-related floods occurred in 1996, 2006, and 2009. These flooding events were associated with a sudden drop in population numbers, followed by population recovery in the next few years.

In recent years, there has been interest in restoring the natural tidal regime to some of the land that was reclaimed from tidal inundation in the early 20th century, mainly for fish habitat enhancement. This restoration could reduce habitat for CWTD in certain areas where the majority of the subpopulation relies upon the reclaimed land. Since 2009, three new tide gates were installed on the JBHR Mainland Unit to improve fish passage and facilitate drainage in the event of large-scale flooding. When the setback levee on the refuge was completed in fall 2014, the original dike under Steamboat Slough Road was breached, and the estuarine buffer created now provides additional protection from flooding to the JBHR Mainland Unit. However, it has also resulted in the loss or degradation of about 28 ha (70 ac) of CWTD habitat, which amounts to approximately 3.5 percent of the total acreage of the JBHR Mainland Unit.

The persistence of invasive species, especially reed canary grass, has reduced forage quality over much of the CWTD's range, but it remains unclear how much this change in forage quality is affecting the overall status of CWTD. While CWTD will eat the grass, it is only palatable during early spring growth, or about 2 months in spring, and it is not a preferred forage species (U.S. Fish and Wildlife Service 2010, p. 3:12). Cattle grazing and mowing are used on JBHR lands to control the growth of reed canary grass along with tilling and planting of pasture grasses and forbs. This management entails a large effort that will likely be required in perpetuity unless other control options are discovered. Reed canary grass is often mechanically suppressed in agricultural and suburban landscapes, but remote areas, such as the upriver islands, experience little control. Reed canary grass thrives in wet soil and excludes the establishment of other grass or forb vegetation that is likely more palatable to CWTD. Increased groundwater due to sea-level rise or subsidence of diked lands may exacerbate this problem by extending the area impacted by reed canary grass. However, where groundwater levels rise high enough and are persistent, reed canary grass will be drowned and may be eradicated, although this rise in water level may also negatively affect CWTD. The total area occupied by reed canary grass in the future may therefore decrease, remain the same, or increase, depending on topography, land management, or both.

Competition with elk (*Cervus canadensis*) for forage on the JBHR Mainland Unit has historically posed a threat to CWTD (U.S. Fish and Wildlife Service 2004, p. 5). To address these concerns, JBHR staff trapped and removed 321 elk during the period from 1984 to 2001. Subsequently, JBHR staff conducted two antlerless elk hunts, resulting in a harvest of eight cow elk (U.S. Fish and Wildlife Service 2004, p. 13). The combination of these efforts and elk emigration reduced the elk population to fewer than 20 individuals. The JBHR considers their elk reduction goal to have been met. Future increases in the population above 20 individuals may be controlled with a limited public hunt (U.S. Fish and Wildlife Service 2010, p. B–20). In a related effort, JBHR personnel have constructed roughly 4 miles (6.4 km) of fencing to deter elk immigration onto JBHR (U.S. Fish and Wildlife Service 2004, p. 10).

Climate Change

Our analyses under the Act include consideration of ongoing and projected

changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (Intergovernmental Panel on Climate Change 2013, p. 1450). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (*e.g.,* temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (Intergovernmental Panel on Climate Change 2013, p. 1450). Various types of climate change may be positive, neutral, or negative and they may vary over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (Intergovernmental Panel on Climate Change 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Environmental changes related to climate change will likely affect CWTD occupying low-lying habitat that is not adequately protected by well-maintained dikes. Furthermore, even in areas that have adequate dikes built, the integrity of those dikes could be at risk of failure due to the effects of climate change. Climatic models have projected significant sea-level rise over the next century (Mote *et al.* 2014, p. 492). Rising sea levels could degrade or inundate current habitat, forcing some subpopulations of CWTD to move out of existing habitat along the Columbia River into marginal or more developed habitat. A rise in groundwater levels could alter vegetation regimes, lowering forage quality of CWTD habitat and allowing invasive plants to expand their range into new areas of CWTD habitat. The increase in ground water levels due to sea-level rise could also allow the threat of hoof rot (see discussion under Factor *C*) to persist or increase.

Maintaining the integrity of existing flood barriers that protect CWTD habitat will be important for recovery of the Columbia River DPS until greater numbers of CWTD can occupy upland habitat through additional translocations, and subsequent recruitment and natural range expansion. The JBHR Mainland Unit has experienced three major storm-related floods since 1996. While we do not have data to indicate that climate change is responsible for past storm-related flooding events, climate change could result in increased storm intensity and frequency, which would exacerbate the impacts of flooding. Flooding events have been associated with sudden drops in the CWTD population (see Table 1, above), which then slowly recovered. An increased rate of occurrence of these events, however, could permanently reduce the size of this subpopulation. To facilitate drainage in the event of large-scale flooding, three new tide gates have been installed on the JBHR Mainland Unit since 2009. Potentially, additional tide gates could be installed and dikes could be elevated to reduce the impact of flooding and sea-level rise on the JBHR Mainland Unit. A new, larger culvert under Highway 4 was also installed in 2015 allowing a tributary better flow from the Elochoman River to facilitate drainage and reduce the likelihood of flooding. Since Puget and Tenasillahe Islands lack stream input from the Elochoman River or other stream sources, the risk of flooding from storm events is low. Additionally, Puget Island and Tenasillahe Island are adequately protected from potential sea level rises due to the height of their levees and their location within the main stem of the Columbia River.

The National Wildlife Federation has employed a model to project changes in sea level in Puget Sound, Washington, and along areas of the Oregon and Washington coastline. The study projected an average rise of 0.28 meters (m) (0.92 feet (ft)) by 2050, and 0.69 m (2.26 ft) by 2100, in the Columbia River region (Glick *et al.* 2007, p. 73). A local rise in sea level would translate into the loss of some undeveloped dry land and tidal and inland fresh marsh habitats. By 2100, projections show that these low-lying habitats could lose from 17 to 37 percent of their current area due to an influx of saltwater. In addition, since the JBHR Mainland Unit and Tenasillahe Island were diked in the early 1900s, the land within the dikes has subsided and dropped to a level near or below groundwater levels. This in turn has degraded CWTD habitat quality in some areas. Although saltwater intrusion does not extend this far inland, the area experiences 2 to 2.5 m (7 to 8 ft) tidal shifts due to a backup of the Columbia River. Sea-level rise may further increase groundwater levels on both of these units, as levees do not provide an impermeable barrier to groundwater exchange.

Due to the reasons listed above, we find the effects of climate change (specifically sea level rise and increased frequency and magnitude of storm events) to be a threat to CWTD in the foreseeable future. The indirect effects of climate change in the form of more frequent or more severe floods may be exacerbated by that threat. Because of the low-lying nature of some currently occupied CWTD habitat in the Columbia River DPS, the long-term stability of the subpopulations in those areas may rely on the availability of and access to upland habitat protected from the effects of projected sea-level rise. The Columbia River DPS would benefit from the identification of additional suitable high-quality upland habitat and the development of partnerships with State wildlife agencies to facilitate the translocation of CWTD to these areas, as well as securing land with existing stable subpopulations, such as the Westport area.

Summary of Factor A

Habitat loss from fragmentation, flooding, and continued urban and suburban expansion remains a threat to CWTD persistence. Stable populations of the species do persist in habitat that was previously dismissed as inadequate for long-term survival such as the subpopulations on Puget Island, Washington, and in Westport, Oregon (Westport/Wallace Island subpopulation). Historical habitat loss was largely a result of development, and while this activity is still a limiting factor, we now understand that the type of development influences how CWTD respond. Areas such as Puget Island have been and are expected to continue experiencing the break-up of large agricultural farms into smaller hobby farms with a continued focus on low- to medium-density rural residential development. This type of change has not inhibited the ability of CWTD to maintain a stable population on Puget Island (about 2,023 ha (5,000 ac)). Therefore, this type of development is not expected to impact CWTD on Puget Island in the foreseeable future. In contrast, areas like Willow Grove will likely see a continued change from an agricultural to a suburban landscape; this type of development may have a negative impact on CWTD depending on the density of development.

The Service's recovery efforts involving habitat acquisition and restoration have led to a corresponding increase in the amount and quality of habitat specifically protected for the benefit of CWTD. Habitat enhancement efforts have been focused primarily on the JBHR Mainland Unit, Tenasillahe Island, and Crims Island where attention has been focused on increasing the quality of browse, forage, and cover. There is also a new habitat

enhancement program at Ridgefield NWR that is focused on increasing the amount of browse and forage available to CWTD. Finally, CWTD now have access to the upland areas at Ridgefield NWR, and it is expected that they will respond positively to the higher quality habitat.

The rise in sea level predicted by climate change models may threaten any low-lying habitat of the Columbia River DPS not adequately protected by dikes, and may also threaten the integrity of dikes providing flood control to certain subpopulations of CWTD. To minimize possible impacts from flooding, dikes and levees will need to be maintained and potentially rebuilt or improved over time. Although the effects of climate change do not constitute a threat to CWTD now, we do expect the effects to constitute a threat in the foreseeable future. Overall, although the threat of habitat loss and modification still remains, it is lower than when the species was listed and the Recovery Plan was developed; this is due to habitat acquisition and enhancement efforts, based on an overall better understanding of the influence of different types of development on CWTD populations.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, scientific, or educational purposes would likely be a threat to CWTD without the continued protections of the Act. Although legal harvest of CWTD in the Columbia River DPS ceased when CWTD were federally listed as endangered, historical overharvest of CWTD in the late 1800s and early 1900s contributed to population decline. Early pioneers and explorers to western Oregon used CWTD as a food resource along main travel corridors, resulting in extirpation of CWTD in these locations (Crews 1939, p. 5).

As long as take prohibitions generally remain in place, poaching is not currently considered a threat. Just after the establishment of the JBHR, poaching was not uncommon given the JBHR's proximity to roads and easy accessibility. Public understanding and views of CWTD have gradually changed, however, and poaching is no longer considered a threat but could become a threat if regulations and enforcement are not maintained to protect CWTD from overutilization. This downlisting and associated 4(d) rule will not change this. There have been only a few cases of intentional shooting of CWTD through poaching in the 49 years since CWTD were first listed (Bergh 2014, pers. comm.). Although poaching cannot be completely ameliorated, this current level of poaching is not considered a threat to the DPS. If poaching levels change, however, then poaching could hinder CWTD population growth because of the DPS's small population size. Small populations face greater risks of extinction because genetic drift and demographic stochasticity (*i.e.,* random change) have a proportionally large effect on small populations. Genetic drift reduces allelic diversity in the population, so poaching could lead to higher levels of homozygosity and inbreeding depression. Loss of such genetic variation can reduce the population's ability to respond to environmental changes and increase the risk of extinction. In addition, preferential pursuit of bucks for trophy reasons can skew buck to doe ratios and possibly reduce the overall age structure of bucks. If these larger and older bucks are removed from the population, the genetic advantages they may pass down to offspring would also be removed from the population. Thus, while overutilization does not constitute a threat to CWTD now, it would likely become a threat without the continued protections of the Act.

C. Disease or Predation

Disease

The Revised Recovery Plan lists necrobacillosis (hoof rot) as a primary causal factor in CWTD mortality on the JBHR (U.S. Fish and Wildlife Service 1983, p. 13). *Fusobacterium necrophorum* is identified as the etiological agent in most cases of hoof rot, although concomitant bacteria such as *Arcanobacterium pyogenes* may also be at play (Langworth 1977, p. 383). Damp soil or inundated pastures increase the risk of hoof rot among CWTD with foot injuries (Langworth 1977, p. 383); increased flooding frequency thus may have potential to increase these risk factors in the future. Among 155 carcasses recovered from 1974 to 1977, hoof rot was evident in 31 percent (n=49) of the cases, although hoof rot was attributed directly to only 3 percent (n=4) of CWTD mortalities (Gavin *et al.* 1984, pp. 30–31). Currently, CWTD on the JBHR Mainland Unit have occasionally displayed visible evidence of hoof rot, and recent cases have been observed on Puget Island, but its prevalence is not known to be a limiting factor in population growth (U.S. Fish and Wildlife Service 2010, p. 4:53). Of the 49 CWTD captured from the JBHR Mainland Unit and Puget Island in 2013, none displayed evidence of hoof rot at the time of capture (U.S. Fish and Wildlife Service, unpublished data).

Deer hair loss syndrome (DHLS) was documented in black-tailed deer in northwestern Oregon from 2000 to 2004 (Biederbeck 2004, p. 4). DHLS results when a deer with an immune system weakened by internal parasites is plagued with ectoparasites such as deer lice (*Damalinia* (*Cervicola*) spp.). The weakened deer suffer increased inflammation and irritation, which result in deer biting, scratching, and licking affected areas and, ultimately, removing hair in those regions. This condition is found most commonly among deer occupying low-elevation agricultural areas (below 183 m (600 ft) elevation). While the study found a higher instance in black-tailed deer, cases in CWTD have also been observed. Most cases (72 percent) of DHLS detected at the Saddle Mountain Game Management Unit in northwestern Oregon were associated with black-tailed deer. Twenty-six percent of black-tailed deer surveyed in the Saddle Mountain Game Management Unit showed symptoms of DHLS, while only 7 percent of CWTD were symptomatic (Biederbeck 2004, p. 4). Additionally, cases were identified in CWTD in 2002 and 2003, but none of the CWTD surveyed in 2004 showed evidence of the disease (Biederbeck 2004, p. 4). CWTD captured during translocations in recent years have occasionally exhibited evidence of hair loss. Mild hair loss has been observed in a few fawns and yearlings (U.S. Fish and Wildlife Service 2010, p. 4:53).

DHLS is not thought to be highly contagious, nor is it considered to be a primary threat to CWTD survival, although it has been associated with deer mortality (Biederbeck 2002, p. 11; 2004, p. 7). Reports of DHLS among black-tailed deer in Washington have indicated significant mortality associated with the condition. In 2006, a high number of Yakima area mule deer (*Odocoileus hemionus*) mortalities were reported with symptoms of DHLS (Washington Department of Fish and Wildlife 2010, p. 1), although their mortality may be more related to a significant outbreak of lice in the population at the time. With respect to CWTD, however, there has been no documented mortality associated with the disease on the JBHR Mainland Unit (U.S. Fish and Wildlife Service 2010, p. 4:53), and DHLS is not a current or foreseeable threat.

Parasite loads were tested in 16 CWTD on the JBHR Mainland Unit and Tenasillahe Island in February of 1998 (Creekmore and Glaser 1999, p. 3). All CWTD tested via fecal samples showed

evidence of the stomach worm *Haemonchus contortus.* Lung worm (*Parelaphostrongylus* spp.) and trematode eggs, possibly from liver flukes (*Fascioloides* spp.), were also detected. These results are generally not a concern among healthy populations, and although the Columbia River DPS of CWTD has less than optimal forage and habitat quality available in some subpopulations, their relatively high parasite load has never been linked to mortality in the DPS. Parasites are not a current or future threat to CWTD, as the parasite load appears to be offset by a level of fecundity that supports stable or increasing populations.

Predation

Coyote predation on CWTD has been a problem for the Columbia River DPS, but careful attention to predator control has demonstrated that predation can be managed. Since 1983, studies have been conducted to determine the primary factors affecting fawn survival throughout the range of the Columbia River DPS of CWTD (U.S. Fish and Wildlife Service, unpublished data), and coyote predation is thought to be the most significant impact on fawn recruitment. On the JBHR Mainland Unit, Clark *et al.* (2010, p. 1) fitted 131 fawns with radio collars and tracked them for the first 150 days of age from 1978 to 1982, and then again from 1996 to 2000 (16 deer were dropped from the analyses due to collar issues). The authors found only a 23 percent survival rate. They also determined that predation from coyotes was the primary cause of fawn mortality, accounting for 69 percent (n = 61) of all documented deaths. Of the remaining fatalities, 16 percent were attributed to disease and starvation, and 15 percent were attributed to unknown causes. The percentage of mortalities from predation for CWTD fawns is comparable to that of other ungulate species; however, CWTD fawn survival rate is much lower. Using 111 papers and reports, Linnell *et al.* (1995, p. 209) found the average fawn survival rate of northern ungulates was approximately 54 percent, with predation accounting for 67 percent of fawn mortality.

Between 1997 and 2008, 46 coyotes were removed from the JBHR Mainland Unit by the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (U.S. Fish and Wildlife Service 2010, p. 4:62). Coyote removal appears to result in an increase in fawn survival, although this has not been analyzed statistically. In 1996, the estimated JBHR Mainland Unit fawn:doe (F:D) ratio was 15:100. The following year, after 9 coyotes were removed, the F:D ratio increased to 61:100 (U.S. Fish and Wildlife Service 2010, p. 4:54); however, this was the year following catastrophic flooding, so some F:D ratio improvement could be a result of post-flooding conditions. On Tenasillahe Island, the average F:D ratio between 2001 and 2003 was 6:100. No coyotes were removed during that time. Over the next 5 years (2004 to 2008), 31 coyotes were removed, and the F:D ratio improved and averaged 37:100. Clark *et al.* (2010, p. 14) suggested shifting the timing of coyote removal from winter/early spring to the critical fawning period of June to September. This suggestion has been included in the comprehensive conservation plan for the JBHR and has been implemented since 2008. Since shifting the timing of predator control, a F:D ratio of 37:100 has been maintained on the JBHR Mainland Unit. Due to the evident success of predator control efforts at JBHR, Ridgefield NWR began implementing a coyote control program in May 2013, to support the then-newly translocated CWTD. We do not anticipate a change in predator control levels on refuge lands in the foreseeable future.

It is common for private landowners in the region to practice predator control on their property, but we do not know the extent of predator control occurring currently or the amount that is likely to occur in the future. On private lands with sheep and other livestock, we have no information that leads us to anticipate a decrease in the level of predator control in the foreseeable future (Meyers 2016, pers. comm.). Even with predation occurring on private lands, the populations of Puget Island and Westport still demonstrate a positive growth rate over time (see Table 1, above). Additionally, coyote control has been in practice on refuge lands for some time and will continue to be implemented on both the JBHR and Ridgefield NWR to support CWTD populations. While coyote control efforts in the Columbia River DPS have met with some success, there may be other factors, such as habitat enhancement, that are also influencing increased F:D ratios in certain CWTD subpopulations. Doe survival in the DPS depends heavily on the availability of nutritious forage rather than on predation pressure, although fawn predation within subpopulations is most likely influenced by coyote population cycles (Phillips 2009, p. 20). Furthermore, deer and elk populations can be depressed by the interplay between various factors such as habitat quality and predation pressure (Oregon Department of Fish and Wildlife 2013, p. 8).

The causes of mortality in ungulates are often divided into predation and food limitation (Linnell *et. al.* 1995, p. 209). Predation levels on CWTD fawns are comparable to average predation levels for other ungulates; however, average survival rates are lower for CWTD fawns. Thus, further information is needed on food availability and habitat quality within the range of the Columbia River DPS of CWTD to determine how food limitation affects fawn survival. As CWTD increase in numbers and occupy areas with higher quality habitat, predation will likely be offset by increased fecundity. For instance, anecdotal observations of twins on Ridgefield NWR provide some indication that CWTD fecundity is higher in higher quality habitat. The population size of the Ridgefield NWR subpopulation also doubled in 1 year, from 48 individuals in 2014 to 100 individuals in 2015 (see Table 1, above). Fecundity increases that will lead to self-sustaining population levels are anticipated as a result of long-term improvement of habitat conditions and continued focus on coyote control on refuge lands (and monitoring of predation by other species such as bobcat). As predation on CWTD fawns is comparable to fawn predation levels in other ungulates, and as we anticipate increases in fecundity, and potentially fawn survival, with habitat improvement, predation is not a threat to the DPS.

Summary of Factor C

Naturally occurring diseases such as hoof rot, DHLS, and parasite loads can often work through an ungulate population without necessarily reducing the overall population abundance. Although the relatively high parasite load in the Columbia River DPS of CWTD is compounded by the additional stressor of suboptimal forage and habitat quality for some subpopulations, the load itself has never been linked to mortality in the DPS. Disease in the Columbia River DPS of CWTD is not a threat now, and we have no evidence to suggest it may become a threat in the foreseeable future.

Predation in the Columbia River DPS of CWTD is not a threat now, and we have no reason to expect it to become a threat in the foreseeable future. Depredation of fawns by coyotes is common in the Columbia River DPS; however, many factors, such as food availability, work in conjunction with each other to determine the overall level of fawn recruitment. Coyote control is in practice on some private lands in the

region as well as on both the JBHR and Ridgefield NWR to decrease the likelihood of fawn depredation, and the level of control is not anticipated to change in the foreseeable future on refuge lands. Even with a large proportion of fawns being lost to predation, the population of the Columbia River DPS has increased since surveys began in the late 1980s. As CWTD increase in numbers and habitat quality improves through restoration efforts, population increases will likely offset the impact of predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms adequately address the threats to the CWTD discussed under other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account, ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. Examples are State governmental actions enforced under a State statute or constitution, or Federal action under statute.

The following section includes a discussion of State, local, or Federal laws, regulations, or treaties that apply to CWTD. It includes legislation for Federal land management agencies and State and Federal regulatory authorities affecting land use or other relevant management. Before CWTD was federally listed as endangered in 1967, the species had no regulatory protections. Existing laws were considered inadequate to protect the subspecies. The CWTD was not officially recognized by Oregon or Washington as needing any special protection or given any special consideration under other environmental laws when project impacts were reviewed.

Now the CWTD is designated as ''State Endangered'' by the WDFW. Although there is no State Endangered Species Act in Washington, the Washington Fish and Wildlife Commission has the authority to list species (Revised Code of Washington (RCW) 77.12.020), and they listed CWTD as endangered in 1980. State-listed species are protected from direct take, but their habitat is not protected (RCW 77.15.120). Under the Washington State Forest Practices Act, the Washington State Forest Practices Board has the authority to designate critical wildlife habitat for State-listed species affected by forest practices (Washington Administrative Code (WAC) 222–16–050, WAC 222–16–080), although there is no critical habitat designated for CWTD.

The WDFW's hunting regulations remind hunters that CWTD are listed as endangered by the State of Washington (Washington Department of Fish and Wildlife 2015, pp. 18, 20). This designation means it is illegal to hunt, possess, or control CWTD in Washington. There has been one documented case of an accidental shooting of CWTD by a black-tailed deer hunter due to misidentification, and a few cases of intentional shooting of CWTD through poaching in the 49 years since CWTD were first listed (Bergh 2014, pers. comm.). The State endangered designation protects individual CWTD from direct harm, but offers no protection to CWTD habitat.

The Washington State Legislature established the authority for Forest Practices Rules (FPR) in 1974. The Forest Practices Board established rules to implement the Forest Practices Act in 1976, and has amended the rules continuously over the last 30 years. The WDNR is responsible for implementing the FPR and is required to consult with the WDFW on matters relating to wildlife, including CWTD. The FPR do not specifically address CWTD, but they do address endangered and threatened species under their ''Class IV-Special'' rules (WAC 222–10–040). If a landowner's forestry-related action would ''reasonably . . . be expected, directly or indirectly, to reduce appreciably the likelihood of the survival or recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species,'' then the landowner would be required to comply with the State's Environmental Policy Act guidelines before the landowner could perform the action in question. The guidelines can require the landowner to employ mitigation measures, or they may place conditions on the action such that any potentially significant adverse impacts would be reduced. Compliance with the FPR does not substitute for or ensure compliance with the Federal Endangered Species Act. A permit system for the scientific taking of State-listed endangered and threatened wildlife species is managed by the WDFW.

Though CWTD (Columbia River DPS) are not listed as endangered or threatened by the State of Oregon, they are classified as a ''protected mammal'' by the State of Oregon because of their federally endangered designation, and this will not change upon CWTD being federally downlisted to threatened (Oregon Department of Fish and Wildlife 2012, p. 1). The CWTD is designated as ''Sensitive-Vulnerable'' by the Oregon Department of Fish and Wildlife (ODFW). The ''Sensitive'' species classification was created under Oregon's Sensitive Species Rule (Oregon Administrative Rules (OAR) 635–100–040) to address the need for a proactive species conservation approach. The Sensitive Species List is a nonregulatory tool that helps focus wildlife management and research activities, with the goal of preventing species from declining to the point of qualifying as ''endangered'' or ''threatened'' under the Oregon Endangered Species Act (Oregon Revised Statutes (ORS) 496.171, 496.172, 496.176, 496.182 and 496.192). Species designated as Sensitive-Vulnerable are those facing one or more threats to their populations, habitats, or both. Vulnerable species are not currently imperiled with extirpation from a specific geographic area or the State, but could become so with continued or increased threats to populations, habitats, or both. This designation encourages but does not require the implementation of any conservation actions for the species. The ODFW does not allow hunting of CWTD, except for controlled hunt of the federally delisted Douglas County DPS in areas near Roseburg, Oregon (Oregon Department of Fish and Wildlife 2015, p. 39). There have been no documented cases of accidental or intentional killing of CWTD in the Columbia River DPS in Oregon (Boechler 2014, pers. comm.).

The State may authorize a permit for the scientific taking of a federally endangered or threatened species for ''activities associated with scientific resource management such as research, census, law enforcement, habitat acquisition and maintenance, propagation and transplantation.'' An incidental taking permit or statement issued by a Federal agency for a species listed under the Federal Endangered Species Act ''shall be recognized by the state as a waiver for any state protection measures or requirements otherwise applicable to the actions allowed under the federal permit'' (ORS 96.172(4)).

The Oregon Forest Practices Act (ORS 527.610 to 527.992 and OAR chapter 629, divisions 600 to 665) lists

protection measures specific to private and State-owned forested lands in Oregon. These measures include specific rules for overall maintenance of fish and wildlife, and specifically for federally endangered and threatened species including the collection and analysis of the best available information and establishing inventories of these species (ORS 527.710, section 3(a)(A)). Compliance with the forest practice rules does not substitute for or ensure compliance with the Federal Endangered Species Act.

The Oregon Department of Forestry recently updated their Northwest Oregon Forest Plan (Oregon Department of Forestry 2010). There is no mention of CWTD in their Forest Plan, but they do manage for elk and black-tailed deer. Landowners and operators are advised that Federal law prohibits a person from taking certain endangered or threatened species that are protected under the Federal Endangered Species Act (OAR 629–605–0105).

The 4(d) rule we are making final in this rulemaking retains most take prohibitions, which will provide additional protections to CWTD that are not available under State laws. Other than the ''take'' that will be allowed for the specific activities outlined in the 4(d) rule, ''take'' of CWTD is prohibited on all lands without a permit or exemption from the Service. Furthermore, the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*) provides additional protection to CWTD. Where CWTD occur on NWR lands (the JBHR and Ridgefield NWRs), this law protects CWTD and their habitats from large-scale loss or degradation due to the Service's mission ''to administer a national network of lands . . . for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats.''

The JBHR was established in Washington in 1971, specifically to protect and manage the endangered CWTD. Approximately one-third of the population of CWTD occurs on the JBHR in the JBHR Mainland Unit subpopulation and the Tenasillahe Island subpopulation. The JBHR's comprehensive conservation plan (CCP) includes goals for the following: (1) Protecting, maintaining, enhancing, and restoring habitats for CWTD; (2) contributing to the recovery of CWTD by maintaining minimum population sizes on JBHR properties; and (3) conducting survey and research activities, assessments, and studies to enhance species protection and recovery (U.S. Fish and Wildlife Service 2010a, pp. 2:48–76). The JBHR implements habitat improvement and enhancement actions on a regular basis as well as predator management. As of early 2013, the Ridgefield NWR is home to a new subpopulation of CWTD. The Ridgefield CCP states that current and proposed habitat management will support a mix of habitats suitable for CWTD (U.S. Fish and Wildlife Service 2010b, p. 48). Habitat conditions on Ridgefield NWR are favorable for CWTD, and both habitat enhancement and predator control are being implemented. Regular monitoring will occur to assess the viability of this subpopulation over time. Both JBHR and Ridgefield NWR must conduct consultations under section 7 of the Act for any refuge activity that may result in adverse effects to CWTD.

Summary of Factor D

Although additional regulatory mechanisms have been developed for the Columbia River DPS since its listing under the Act and these mechanisms are working as designed and help to minimize threats, they do not fully ameliorate the threats to the species and its habitat. Without the continued protections of the Act, the existing regulatory mechanisms for the Columbia River DPS would be inadequate.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Hybridization

Hybridization with black-tailed deer was not considered a significant threat to the Columbia River DPS of CWTD at the time of the development of the Revised Recovery Plan (U.S. Fish and Wildlife 1983, p. 40). Later studies raised some concern over the presence of black-tailed deer genes in the isolated Columbia River DPS population. Gavin and May (1988, p. 1) found evidence of hybridization in 6 of 33 samples of CWTD on the JBHR Mainland Unit and surrounding area. A subsequent study revealed evidence of hybridization on Tenasillahe Island, but not within the JBHR Mainland Unit (Piaggio and Hopken 2009, p. 18). On Tenasillahe Island, 32 percent (8) of the 25 deer tested and identified as CWTD contained genes from black-tailed deer. Preliminary evidence shows no morphological differences in CWTD/black-tailed deer hybrids, suggesting molecular analysis may be the only analytic tool in tracking hybridization. These data suggest that these genes may have been due to a single hybridization event that is being carried through the Tenasillahe Island population (Piaggio and Hopken 2009, p. 18).

Translocation efforts have at times placed CWTD in areas that support black-tailed deer populations. While few black-tailed deer inhabit the JBHR Mainland Unit or Tenasillahe Island, the Upper Estuary Islands population may experience more interspecific interactions. Aerial FLIR survey results in 2006 detected 44 deer on the four-island complex of Fisher/Hump and Lord/Walker. Based upon the proportion of CWTD to black-tailed deer sightings using trail cameras on these islands, Service biologists estimated that, at most, 14 of those detected were CWTD (U.S. Fish and Wildlife Service 2007, p. 1). A study conducted in 2010 by the JBHR and the National Wildlife Research Center using fecal samples collected on Crims, Lord, and Walker Islands showed no hybridization in any of the samples collected, suggesting a low tendency to hybridize even in island situations (Piaggio and Hopken 2010, p. 14). The actual magnitude of hybridization has probably not changed since the listing of CWTD; however, there are not enough data available to confirm this assumption. Hybridization might affect the genetic viability of the Columbia River DPS, and additional research regarding hybridization could give broader insight to the implications and occurrence of this phenomenon, and how it may influence subspecies designation. Although a more complete data set would provide more conclusive information regarding hybridization in CWTD, based upon the minor level of detections of black-tailed deer genetic material and the complete lack of any evidence of hybridization on several islands, we find that hybridization is not a threat to the Columbia River DPS.

Vehicle Collisions

Because deer are highly mobile, collisions between CWTD and vehicles do occur, but the number of collisions in the Columbia River DPS has not prevented the DPS from increasing over time and meeting downlisting criteria. The frequency of collisions is dependent on the proximity of a subpopulation to roads with high traffic levels, and collisions with CWTD have been most frequent among deer that have been translocated to areas that are relatively close to high trafficked roads. In 2010, 7 of 15 deer translocated to Cottonwood Island, Washington, from Westport, Oregon swam off the island and were killed by collisions with vehicles on U.S. Highway 30 in Oregon, and on Interstate 5 in Washington (Cowlitz Indian Tribe 2010, p. 3). In 2013, 5 of 12 deer translocated to Cottonwood Island from Puget Island were killed by collisions with vehicles,

and another 4 may have been killed by vehicles or by other means such as disease or predation (U.S. Fish and Wildlife Service, unpublished data). When combined, 12 of 27 CWTD (44 percent) were killed by vehicle strikes while dispersing from Cottonwood Island. (Translocation efforts to Cottonwood Island are not currently active.) By contrast, of the 58 deer that were translocated to Ridgefield NWR in 2013 and 2014, only 3 have been struck by vehicles, and all 3 were struck after wandering off refuge land. Because of its proximity to Highway 4 in Washington, JBHR sees occasional collisions between vehicles and CWTD on or near the refuge. Refuge personnel recorded four CWTD killed by vehicle collisions in 2010 along Highway 4 and on the JBHR Mainland Unit. These were deer that were either observed by Service personnel or reported directly to the JBHR. There are no trend data available for these collisions because systematic data collection has not occurred.

The Washington Department of Transportation removes road kills without reporting species details to the JBHR, so the actual number of CWTD struck by cars in Washington is probably slightly higher than the number of cases of which JBHR staff is aware. Since the 2013 translocation, ODFW has had an agreement with the Oregon Department of Transportation (ODOT) that ODOT personnel assigned to stations along Highway 30 will report any CWTD mortalities. So far, they have been contacting the Oregon State Police and occasionally ODFW staff when they find a mortality with a collar or ear tags. It is uncertain if the ODOT staff report unmarked CWTD mortalities (VandeBergh 2013, pers. comm.).

Although the number of deer collisions may increase over time as CWTD populations expand in both numbers and range, the rate of collisions in proportion to the Columbia River DPS population size is not limiting. We acknowledge that estimates of the number of deer killed on roads could be low and that increasing human development and deer population sizes could result in increased mortality rates in the future, especially for those populations near highways. Therefore, while vehicle collisions could potentially impact certain subpopulations of CWTD, they do not constitute a threat to the entire DPS now, and we do not expect them to be a threat in the foreseeable future.

Summary of Factor E

Low levels of hybridization have recently been detected between black-tailed deer and CWTD on the JBHR (Piaggio and Hopken 2010, p. 15). Future genetic work could give a broader insight into the implications and occurrence of this phenomenon. However, Piaggio and Hopken concluded that although hybridization can occur between CWTD and black-tailed deer, it is not a common or current event (2010, p. 16). The two species will preferentially breed within their own taxa, and their habitat preferences differ somewhat. Therefore, hybridization does not constitute a threat now, and we have no reason to expect it will become a threat in the foreseeable future. While collisions between CWTD and vehicles do occur, frequency of collisions is dependent on the proximity of a subpopulation to roads with high traffic levels, making some subpopulations more susceptible to vehicle mortality than others. Overall, vehicle collisions have not prevented the DPS population from increasing over time and meeting recovery criteria for downlisting, and there is no evidence to suggest that they will become a threat to the DPS in the foreseeable future.

Overall Summary of Factors Affecting CWTD

The Columbia River DPS has consistently exceeded the minimum population criterion of 400 deer over the past 2 decades. Based on the most recent comprehensive survey data from 2015, the Columbia River DPS has approximately 966 CWTD, with two subpopulations that are both viable and secure (Tenasillahe Island and Puget Island). The current range of CWTD in the lower Columbia River area has been expanded approximately 80.5 km (50 mi) upriver from its easternmost range of Wallace Island in 1983, to Ridgefield, Washington, due to a translocation of animals from the JBHR Mainland Unit, Puget Island, and Westport subpopulations. Based on observations of successful breeding and subpopulation growth to date, the recently established Ridgefield NWR population is expected to continue to grow and represent an additional viable subpopulation, as defined in the recovery plan; however, we will conduct additional demographic monitoring to accurately assess the overall response of the newly established Ridgefield NWR subpopulation and more reliably demonstrate its viability. Like the Ridgefield NWR subpopulation, we anticipate the JBHR Mainland Unit subpopulation will continue to rebound and represent a viable subpopulation in the near future.

Threats to the Columbia River DPS from habitat loss or degradation (Factor A) still remain and will likely continue into the foreseeable future in the form of habitat alteration, and some subpopulations are expected to be affected by habitat changes resulting from the effects of climate change. Predation, diseases, and parasites (Factor C) are not currently known to significantly contribute to mortality in CWTD. While there is potential for increased flood frequency to increase risk factors for hoof rot, available information does not indicate that the disease, in combination with other factors, is currently a significant limiting factor for the population or is likely to become so. Thus we do not consider disease or predation (Factor C) to be a threat. Without the protections of the Act, the existing regulatory mechanisms, including those to prevent overutilization (Factor B), for the Columbia River DPS remain inadequate (Factor D). While hybridization (Factor E) is not a threat, vehicle collisions (Factor E) may pose a threat to some subpopulations during dispersal.

Determination

As stated above, section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to or removing species from the Federal Lists of Endangered and Threatened Wildlife and Plants. An assessment of the need for a species' protection under the Act is based on whether a species is in danger of extinction or likely to become so because of any of five factors described above in the Summary of Factors Affecting the Species section. As required by section 4(a)(1) of the Act, we considered these five factors in assessing whether the Columbia River DPS of CWTD is in danger of extinction or likely to become so in the foreseeable future throughout all of its range.

As required by the Act, we considered the five factors in assessing whether the Columbia River DPS of CWTD is endangered or threatened throughout all or a significant portion of its range. We carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by the DPS. We reviewed the information available in our files and other available published and unpublished information, and we consulted with recognized experts and State and Tribal agencies.

We find that the Columbia River DPS is still affected by habitat loss and degradation, and some subpopulations are likely to be affected in the future by habitat changes resulting from the

effects of climate change and may be affected by vehicle collisions. We did not identify any factors that put the DPS in danger of extinction at the present time; however, without the continued protections of the Act, effects of take could be detrimental to small subpopulations, especially those that have not reached minimum viable population size, due to the proportionally large effects of genetic drift and demographic stochasticity. Conservation efforts have progressed to the point that the minimum population size of 400 has now been met or exceeded for more than 20 years, and we have three viable subpopulations, two of which are considered currently secure, but additional viable and secure subpopulations are needed to achieve the recovery of the DPS. Increasing the amount and quality of habitat to address the ongoing threat of habitat loss or degradation will be a key component of achieving the security of additional subpopulations to attain recovery goals. Thus, although the threats that led to the initial listing of the Columbia River DPS of the CWTD have been ameliorated such that the DPS is not presently in danger of extinction, ongoing threats to the DPS such as habitat loss and threats to certain subpopulations such as effects due to climate change are such that the DPS is likely to become an endangered species within the foreseeable future. Our analysis thus indicates that the Columbia River DPS of CWTD is not at imminent risk of extinction throughout all of its range; therefore, the Columbia River DPS of CWTD does not meet the definition of an endangered species. We conclude that the DPS is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future, such that it now meets the definition of a threatened species. Therefore, on the basis of the best scientific and commercial data available, we find that the Columbia River DPS of CWTD no longer meets the definition of endangered and should be reclassified as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Significant Portion of the Range

Because we have concluded that the Columbia River DPS of CWTD is a threatened species throughout all of its range, no portion of its range can be ''significant'' for purposes of the definitions of ''endangered species'' and ''threatened species.'' See the Service's Significant Portion of its Range (SPR) Policy (79 FR 37578, July 1, 2014).

Effects of the Rule

This final rule revises 50 CFR 17.11(h) to reclassify the Columbia River DPS of CWTD from endangered to threatened on the List of Endangered and Threatened Wildlife. Reclassification of CWTD from endangered to threatened provides recognition of the substantial efforts made by Federal, State, and local government agencies; Tribes; and private landowners to recover the species. This rule formally recognizes that this species is no longer at imminent risk of extinction and therefore does not meet the definition of endangered, but is still impacted by habitat loss and degradation of habitat to the extent that the species meets the definition of a threatened species (a species which is likely to become an endangered species within the foreseeable future) under the Act. However, this reclassification does not significantly change the protection afforded this species under the Act. Other than the ''take'' that will be allowed for the specific activities outlined in the accompanying 4(d) rule, the regulatory protections of the Act will remain in place. Anyone taking, attempting to take, or otherwise possessing a CWTD, or parts thereof, in violation of section 9 of the Act will still be subject to penalties under section 11 of the Act, except for the actions covered under the 4(d) rule. Whenever a species is listed as threatened, the Act allows promulgation of a rule under section 4(d) that modifies the standard protections for threatened species found under section 9 of the Act and Service regulations at 50 CFR 17.31 (for wildlife) and 17.71 (for plants), when it is deemed necessary and advisable to provide for the conservation of the species. These rules may prescribe conditions under which take of the threatened species would not be a violation of section 9 of the Act.

4(d) Rule

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the Act. When a species is listed as endangered, certain actions are prohibited under section 9 of the Act, as specified at 50 CFR 17.21. These include, among others, prohibitions on take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; and shipment in interstate or foreign commerce in the course of a commercial activity.

The Act does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the Act, the Secretary is authorized to issue regulations deemed necessary and advisable to provide for the conservation of threatened species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service has by regulation applied those prohibitions to threatened species unless a special rule is promulgated under section 4(d) of the Act (''4(d) rule'') (50 CFR 17.31(c)). Under 50 CFR 17.32, permits may be issued to allow persons to engage in otherwise prohibited acts for certain purposes unless a special rule provides otherwise.

A 4(d) rule may include some or all of the prohibitions and authorizations set out at 50 CFR 17.31 and 17.32, but also may be more or less restrictive than those general provisions. For the Columbia River DPS of CWTD, the Service has determined that a 4(d) rule is necessary and appropriate for the conservation of the species. As a means to provide continued protection from take and also to facilitate both conservation of CWTD in the Columbia River DPS and to facilitate natural expansion of their range by increasing flexibility in management activities for our State and Tribal partners and private landowners, we are issuing a rule for this species under section 4(d) of the Act.

Under this 4(d) rule, take will generally continue to be prohibited but the following forms of take are allowed:

- Take by landowners or their agents conducting intentional harassment not likely to cause mortality if they have obtained a permit from the applicable State conservation agency;
- Take of problem CWTD (as defined under Provisions of the 4(d) Rule, below) by Federal or State wildlife management agency staff, or private landowners acting in accordance with a permit obtained from a State conservation agency;
- Take by private landowners that is accidental and incidental to an otherwise permitted and lawful activity to control damage by black-tailed deer, and if reasonable due care was practiced to avoid such taking;
- Take by black-tailed deer hunters if the take was accidental and incidental to hunting done in full compliance with the State hunting rules, and if

reasonable due care was practiced to avoid such taking;

- Take by designated Tribal employees and State and local law enforcement officers to deal with sick, injured, or orphaned CWTD;
- Take by State-licensed wildlife rehabilitation facilities when working with sick, injured, or orphaned CWTD; and
- Take under permits issued by the Service under 50 CFR 17.32.

Other than these exceptions, the provisions of 50 CFR 17.31(a) and (b) apply.

The 4(d) rule targets these activities to facilitate conservation and management of CWTD where they currently occur through increased flexibility for State wildlife management agencies, and to encourage landowners to facilitate the expansion of the CWTD's range by increasing the flexibility of management of the deer on their property (see Justification, below). Activities on Federal lands or with any Federal agency involvement will still need to be addressed through consultation under section 7 of the Act. Take of CWTD in defense of human life in accordance with 50 CFR 17.21(c)(2) or by the Service or designated employee of a State conservation agency responding to a demonstrable but non-immediate threat to human safety in accordance with 50 CFR 17.21(c)(3)(iv) (primarily in the event that a deer interferes with traffic on a highway) is not prohibited. Any deterrence activity that does not create a likelihood of injury by significantly disrupting normal CWTD behavioral patterns such as breeding, feeding, or sheltering is not take and is therefore not prohibited under section 9. Non-injurious deterrence activities for CWTD damage control may include yelling at the deer, use of repellents, fencing and other physical barriers, properly deployed noise-making devices (including explosive devices such as propane cannons, cracker shells, whistlers, etc.), scarecrows, plant protection devices (bud caps, netting, tree tubes, etc.), and artificial lighting.

If there is potential that an activity would interrupt normal CWTD behavior to the point where the animal would stop feeding or not find adequate cover, creating a likelihood of injury, then the activity would have the potential to cause take in the form of harassment. Under this 4(d) rule, if the activity is not likely to be lethal to CWTD, it is classified as intentional harassment not likely to cause mortality and is allowed if the activity is carried out under and according to a legally obtained permit from the Oregon or Washington State conservation agency. Actions that may create a likelihood of injury, but are determined by State wildlife biologists not likely to cause mortality, may include the use of nonlethal projectiles (including paintballs, rubber bullets, pellets or ''BB's'' from spring- or air-propelled guns, etc.) or herding or harassing with dogs, and are only allowed if the activity is carried out under and according to a legally obtained permit from the Oregon or Washington State conservation agency.

This 4(d) rule allows a maximum of 5 percent of the DPS to be lethally taken annually for the following activities combined: (1) Damage management of problem CWTD, (2) misidentification during black-tailed deer damage management, and (3) misidentification during black-tailed deer hunting. The identification of a problem CWTD will occur when the State conservation agency or Service determines in writing that: (1) A CWTD is causing more than *de minimus* negative economic impact to a commercial crop, (2) previous efforts to alleviate the damage through nonlethal methods have been ineffective, and (3) there is a reasonable certainty that additional property losses will occur in the near future if a lethal control action is not implemented.

The current estimated population of the DPS is 966 deer; therefore 5 percent would currently equate to 48 deer. We will set the allowable take at 5 percent of the most current annual November population estimate of the DPS based on FLIR surveys and ground counts to provide sufficient flexibility to our State wildlife agency partners in the management of CWTD and to strengthen our partnership in the recovery of the DPS. Although the fecundity and overall recruitment rate is strong and will allow the DPS to persist and continue to recover even with take up to the maximum allowable 5 percent, we do not expect that the number of deer taken per year will ever exceed 2 percent of the DPS per year for several reasons. First, no CWTD have been injured or killed as a result of management activities because damage management activities have not been required for successfully translocated CWTD, although most translocations were to NWR lands. We anticipate that the necessity of damage management activities may increase as the CWTD population increases and as CWTD are able to disperse to areas previously unavailable, such as those agricultural areas surrounding the Ridgefield NWR. Furthermore, the Service expects that most CWTD will respond to non-injurious or nonlethal means of dispersal so that lethal take of problem CWTD will not often be necessary. We are, therefore, confident that the amount of CWTD lethally taken under this 4(d) rule during CWTD damage management actions will be relatively low. Additionally, the Service expects that the potential for accidental shooting by mistaking a CWTD for a black-tailed deer will be low because there has been only one documented case of an accidental shooting of CWTD by a black-tailed deer hunter due to misidentification (Bergh 2014, pers. comm.) and there have been no documented accidental shootings of CWTD during black-tailed deer damage management. The 2015 big game hunting regulations in both Oregon and Washington provide information on distinguishing black-tailed deer from CWTD and make it clear that shooting CWTD from the Columbia River DPS is illegal under State law (Oregon Department of Fish and Wildlife 2015, p. 39; Washington Department of Fish and Wildlife 2015, pp. 18, 20). Even with this 4(d) rule in place, a hunter who shot a CWTD due to misidentification will still be required under the Act to report the incident to the Service, be required under State law to report the incident to State authorities, and be subject to potential prosecution under the discretion of State law.

Because the maximum amount of take allowed for these activities is a percentage of the DPS population in any given year, the exact number of CWTD allowed to be taken will vary from year to year in response to each calendar year's most current estimated population. As mentioned above, we do not expect that the number of deer taken will ever exceed 2 percent of the DPS per year. If take does exceed 2 percent of the DPS population in a given year, the Service will convene a meeting with the Oregon and Washington Departments of Fish and Wildlife to discuss CWTD management and strategies to minimize further take from these activities for the rest of the year. If take should exceed 5 percent of the total DPS population in any given year, no further take will be allowed for these activities in the DPS as a whole, and, should any further take occur, it would be subject to potential prosecution under the Act.

We encourage any landowner concerned about potential take of listed species on their property that is not covered under this rule (see Regulation Promulgation, below) to contact the Service to explore options for developing a safe harbor agreement or habitat conservation plan that can provide for the conservation of the species and offer management options

to landowners associated with a permit to protect the party from violations under section 9 of the Act (see **FOR FURTHER INFORMATION CONTACT**).

Justification

As habitat destruction remains a threat to the species, continued application of the prohibition on harm is needed to discourage significant habitat modification that would kill or injure CWTD. In addition, in light of the relatively small size of the subpopulations and the history of overutilization of CWTD, the species is vulnerable to hunting and poaching unless the prohibitions on take are generally maintained. As the Columbia River DPS of CWTD grows in number and range, however, the deer are facing increased interaction and potential conflict with the human environment. Reclassification of the Columbia River DPS of CWTD from endangered to threatened status under the Act allows employees of State conservation agencies operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, and who are designated by their agencies for such purposes, and who are acting in the course of their official duties, to take CWTD to carry out conservation programs (see 50 CFR 17.31(b)). There are many activities carried out or managed by the States, Tribes, and private landowners that help reduce conflict with CWTD and thereby facilitate the movement of CWTD across the landscape, but would not be afforded take allowance under reclassification alone. These activities include CWTD damage management, black-tailed deer damage management, and black-tailed deer hunting. The 4(d) rule provides incentive to States, Tribes, and private landowners to support the movement of CWTD across the landscape by alleviating concerns about unauthorized take of CWTD.

One of the limiting factors in the recovery of the Columbia River DPS has been the concern of landowners and State wildlife agencies regarding CWTD on their property due to the potential property damage from the species. Landowners express concern over their inability to prevent or address the damage because of the threat of penalties under the Act. These concerns may lead landowners to modify unoccupied habitat in such a way that it could no longer support deer or to erect fences or other manmade structures to exclude deer from their lands. If landowners take actions to deter CWTD from areas where they could occur to avoid the burden of take restrictions, then natural range expansion and connectivity on the landscape could be negatively impacted. Increased management flexibility is intended to create an incentive for private landowners to voluntarily maintain, create, or restore habitat for the benefit of CWTD. Furthermore, State wildlife agencies expend resources addressing landowner complaints regarding potential CWTD damage to their property, or concerns from black-tailed deer hunters who are hunting legally but might accidentally shoot a CWTD even after reasonable due care was practiced to avoid such taking. For instance, the majority of translocation efforts have moved CWTD to refuge lands; however, some areas of State and private land offer high-quality habitat for CWTD, and future translocations to these areas would benefit the species by either creating a new subpopulation or creating connectivity between existing subpopulations. Small-scale agricultural lands, especially, can provide potential habitat for CWTD, as demonstrated on Puget Island, as opposed to other types of land management changes. By providing more flexibility to the States, Tribes, and landowners regarding management of CWTD, we expect to enhance support for both the movement of CWTD within areas where they already occur, as well as the expansion of the subspecies' range into additional areas of Washington and Oregon through translocations. In addition, easing the general take prohibitions on non-Federal agricultural lands is intended to encourage continued responsible land uses that provide an overall benefit to CWTD and facilitate private lands partnerships that promote conservation efforts.

The 4(d) rule addresses intentional CWTD damage management by private landowners and State and Tribal agencies; black-tailed deer damage management and hunting; and management of sick, injured, and orphaned CWTD by Tribal employees, State and local law enforcement officers, and State licensed wildlife rehabilitation facilities. Addressing these targeted activities that may normally result in take under section 9 of the Act increases the incentive for landowners and land managers to allow CWTD on their property, and provides enhanced options for State wildlife agencies with respect to CWTD damage management and black-tailed deer management, thereby encouraging the States' participation in recovery actions for CWTD.

The actions and activities allowed under the 4(d) rule, while they may have some minimal level of harm or disturbance to individual CWTD in the Columbia River DPS, are not expected to adversely affect efforts to conserve and recover the DPS. In fact, conservation efforts should be facilitated by increasing the likelihood of natural range expansion, providing support for translocations onto State and Tribal lands, and creating private lands partnerships to promote conservation efforts throughout the current range of the DPS. The take of CWTD from these activities will be strictly limited to a maximum of 5 percent of the most current annual DPS population estimate in order to have a negligible impact on the overall DPS population. Though there would be a chance for lethal take to occur, recruitment rates appear to be high enough in the DPS to allow for continued population growth despite the take that is allowed in this final rule. For example, the Service removed 34 CWTD, which constituted 20 percent of the subpopulation, from Puget Island for translocations in 2012. The estimated size of the subpopulation on Puget Island was 228 CWTD in 2015, representing an average annual population growth rate of 16 percent. If the subpopulation continues to grow 16 percent each year, then removing a maximum of 5 percent would still allow the subpopulation, and the DPS as a whole, to continue to grow.

For the reasons described above, we find that it is necessary and advisable to apply the provisions of 50 CFR 17.31(a), which prohibit take of threatened species, with exceptions intended to facilitate the growth and expansion of CWTD subpopulations within the DPS required to achieve recovery. By generally extending section 9 take prohibitions but allowing take under specified circumstances, the rule will provide needed protection to the species while allowing management flexibility to benefit the species' long-term conservation. Thus, the provisions of this rule meet the statutory requirement under section 4(d) of the Act of being necessary and advisable to provide for the conservation of the species.

Provisions of the 4(d) Rule

The increased interaction of CWTD with the human environment increases the potential for property damage caused by CWTD, as well as the potential for conflict with legal black-tailed deer management activities. Therefore, this 4(d) rule applies the prohibitions of 50 CFR 17.31(a) with some exceptions to increase the flexibility of CWTD management for the States, Tribes, and private landowners by allowing take of CWTD resulting from CWTD damage management, and

black-tailed deer damage management and hunting. The maximum allowable annual take per calendar year for these activities combined is 5 percent of the most current annual CWTD DPS population estimate.

A State conservation agency will be able to issue permits to landowners or their agents to harass CWTD on lands they own, rent, or lease if the State conservation agency determines in writing that such action is not likely to cause mortality of CWTD. The techniques employed in this harassment must occur only as specifically directed or restricted by the State permit in order to avoid causing CWTD mortality. The State conservation agency will also be able to issue a permit to landowners or their agents to lethally take problem CWTD on lands they own, rent, or lease if the State conservation agency or Service determines in writing that: (1) The CWTD are causing more than *de minimus* negative economic impact to a commercial crop; (2) previous efforts to alleviate the damage through nonlethal methods have been ineffective; and (3) there is a reasonable certainty that additional property losses will occur in the near future if a lethal control action is not implemented. Lethal take of problem CWTD will have to be implemented only as directed and allowed in the permit obtained from the State conservation agency. Additionally, any employee or agent of the Service or the State conservation agency, who is designated by their agency for such purposes and when acting in the course of their official duties, will be able to lethally take problem CWTD.

Take of CWTD in the course of carrying out black-tailed deer damage control will be a violation of this rule unless: The taking was accidental; reported within 72 hours; reasonable care was practiced to avoid such taking; and the person causing the take was in possession of a valid black-tailed deer damage control permit from a State conservation agency. Take of CWTD in the course of hunting black-tailed deer will be a violation of this rule unless: (1) The take was accidental; (2) the take was reported within 72 hours; (3) the take was in the course of hunting black-tailed deer under a lawful State permit; and (4) reasonable due care was exercised to avoid such taking.

The increased interaction of CWTD with the human environment increases the likelihood of encounters with injured or sick CWTD. Therefore, take of CWTD will also be allowed by Tribal employees, State and local government law enforcement officers, and State-licensed wildlife rehabilitation facilities to provide aid to injured or sick CWTD. Tribal employees and local government law enforcement officers will be allowed take of CWTD for the following purposes: (1) Aiding or euthanizing sick, injured, or orphaned CWTD; (2) disposing of a dead specimen; and (3) salvaging a dead specimen that may be used for scientific study. State-licensed wildlife rehabilitation facilities will also be allowed to take CWTD for the purpose of aiding or euthanizing sick, injured, or orphaned CWTD.

Required Determinations

National Environmental Policy Act

We have determined that an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted pursuant to section 4(a) and 4(d) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have coordinated the development of this reclassification and 4(d) rule with the Cowlitz Indian Tribe, which manages land where one subpopulation of CWTD population is located, Cottonwood Island. Biologists from the Cowlitz Indian Tribe are members of the CWTD Working Group and have worked with the Service, WDFW, and ODFW to incorporate conservation measures to benefit CWTD into their management plan for the island.

References Cited

A complete list of all references cited in this rule is available at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2014–0045, or upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are staff members of the Oregon Fish and Wildlife Office in Portland, Oregon (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Deer, Columbian white-tailed'' under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Deer, Columbian white-tailed [Columbia River DPS].	*Odocoileus virginianus leucurus.*	Columbia River (Clark, Cowlitz, Pacific, Skamania, and Wahkiakum Counties, WA, and Clatsop, Columbia, and Multnomah Counties, OR).	T	32 FR 4001; 3/11/1967, 68 FR 43647; 7/24/2003, [Insert **Federal Register** citation 10/17 2016, 50 CFR 17.40(i) [4d].
*	*	*	*	*

■ 3. Amend § 17.40 by adding paragraph (i) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(i) Columbian white-tailed deer (*Odocoileus virginianus leucurus*) (CWTD), the Columbia River distinct population segment. (1) *General requirements.* Other than as expressly provided at paragraph (i)(3) of this section, the provisions of § 17.31(a) apply to the CWTD.

(2) *Definitions.* For the purposes of this entry:

(i) *CWTD* means the Columbia River distinct population segment (DPS) of Columbian white-tailed deer or individual specimens of CWTD.

(ii) *Intentional harassment* means an intentional act which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Intentional harassment may include prior purposeful actions to attract, track, wait for, or search out CWTD, or purposeful actions to deter CWTD.

(iii) *Problem CWTD* means an individual specimen of CWTD that has been identified in writing by a State conservation agency or the Service as meeting the following criteria:

(A) The CWTD is causing more than *de minimus* negative economic impact to a commercial crop;

(B) Previous efforts to alleviate the damage through nonlethal methods have been ineffective; and

(C) There is a reasonable certainty that additional property losses will occur in the near future if a lethal control action is not implemented.

(iv) *Commercial crop* means commercially raised horticultural, agricultural, or forest products.

(v) *State conservation agency* means the State agency in Oregon or Washington operating a conservation program for CWTD pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Endangered Species Act.

(3) *Allowable forms of take of CWTD.* Take of CWTD resulting from the following legally conducted activities is allowed:

(i) Intentional harassment not likely to cause mortality. A State conservation agency may issue permits to landowners or their agents to harass CWTD on lands they own, rent, or lease if the State conservation agency determines in writing that such action is not likely to cause mortality of CWTD. The techniques employed in this harassment must occur only as specifically directed or restricted by the State permit in order to avoid causing CWTD mortality.

(ii) Take of problem CWTD resulting in mortality. Take of problem CWTD is authorized under the following circumstances:

(A) Any employee or agent of the Service or the State conservation agency, who is designated by their agency for such purposes, may, when acting in the course of their official duties, take problem CWTD. This take must occur in compliance with all other applicable Federal, State, and local laws and regulations.

(B) The State conservation agency may issue a permit to landowners or their agents to take problem CWTD on lands they own, rent, or lease. Such take must be implemented only as directed and allowed in the permit obtained from the State conservation agency.

(iii) Accidental take of CWTD when carrying out State-permitted black-tailed deer damage control. Take of CWTD in the course of carrying out black-tailed deer damage control will be a violation of this rule unless the taking was accidental; reasonable care was practiced to avoid such taking; and the person causing the take was in possession of a valid black-tailed deer damage control permit from a State conservation agency. When issuing black-tailed deer damage control permits, the State conservation agency will provide education regarding identification of target species. The exercise of reasonable care includes, but is not limited to, the review of the educational material provided by the State conservation agency and identification of the target before shooting.

(iv) Accidental take of CWTD when carrying out State-permitted black-tailed deer hunting. Take of CWTD in the course of hunting black-tailed deer will be a violation of this rule unless the take was accidental; the take was in the course of hunting black-tailed deer under a lawful State permit; and reasonable due care was exercised to avoid such taking. The State conservation agency will provide educational material to hunters regarding identification of target species when issuing hunting permits. The exercise of reasonable care includes, but is not limited to, the review of the educational materials provided by the State conservation agency and identification of the target before shooting.

(4) *Take limits.* The amount of take of CWTD allowed for the activities in paragraphs (i)(3)(ii), (iii), and (iv) of this section will not exceed 5 percent of the CWTD population during any calendar year, as determined by the Service. By December 31 of each year, the Service will use the most current annual DPS population estimate to set the maximum allowable take for these activities for the following calendar year. If take exceeds 2 percent of the DPS population in a given calendar year, the Service will convene a meeting with the Oregon Department of Fish and Wildlife and the Washington Department of Fish and Wildlife to discuss CWTD management and strategies to minimize further take from these activities for the rest of the year. If take exceeds 5 percent of the CWTD population in any given calendar year, no further take under paragraphs (i)(3)(ii), (iii), and (iv) will be allowed during that year and any further take that does occur may be subject to prosecution under the Endangered Species Act.

(5) *Reporting and disposal requirements.* Any injury or mortality of CWTD associated with the actions authorized under paragraphs (i)(3), (6), and (7) of this section must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports should be made to the Service's Law Enforcement Office at (503) 231–6125, or the Service's Oregon Fish and Wildlife Office at (503) 231–6179. The Service may allow additional

reasonable time for reporting if access to these offices is limited due to closure.

(6) *Additional taking authorizations for Tribal employees, State and local law enforcement officers, and State-licensed wildlife rehabilitation facilities.* (i) Tribal employees and State and local government law enforcement officers. When acting in the course of their official duties, both Tribal employees designated by the Tribe for such purposes, and State and local government law enforcement officers working in the States of Oregon or Washington, may take CWTD for the following purposes:

(A) Aiding or euthanizing sick, injured, or orphaned CWTD;

(B) Disposing of a dead specimen; and

(C) Salvaging a dead specimen that may be used for scientific study.

(ii) Such take must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service.

(7) *Wildlife rehabilitation facilities licensed by the States of Oregon or Washington.* When acting in the course of their official duties, a State-licensed wildlife rehabilitation facility may take CWTD for the purpose of aiding or euthanizing sick, injured, or orphaned CWTD. Such take must be reported to the Service within 72 hours as required by paragraph (i)(5) of this section, and specimens may be retained and disposed of only in accordance with directions from the Service.

(8) *Take authorized by permits.* Any person with a valid permit issued by the Service under § 17.32 may take CWTD, pursuant to the special terms and conditions of the permit.

* * * * *

Dated: October 5, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–24790 Filed 10–14–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101206604–1758–02]

RIN 0648–XE959

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2016–2017 Commercial Accountability Measures and Closure for King Mackerel in Western Zone of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercial king mackerel in the western zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) through this temporary rule. NMFS has determined that the commercial quota for king mackerel in the western zone of the Gulf EEZ will be reached by October 14, 2016. Therefore, NMFS closes the western zone of the Gulf EEZ to commercial king mackerel fishing on October 14, 2016. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective at noon, local time, October 14, 2016, until 12:01 a.m., local time, on July 1, 2017.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial quota for the Gulf migratory group king mackerel in the Gulf western zone is 1,071,360 lb (485,961 kg) for the current fishing year, July 1, 2016, through June 30, 2017 (50 CFR 622.384(b)(1)(ii)).

Regulations at 50 CFR 622.388(a)(1)(i) require NMFS to close the commercial sector for Gulf migratory group king mackerel in the western zone when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the commercial quota of 1,071,360 lb (485,961 kg) for Gulf migratory group king mackerel in the western zone will be reached by October 14, 2016. Accordingly, the western zone is closed to commercial fishing for Gulf migratory group king mackerel effective at noon, local time, October 14, 2016, through June 30, 2017, the end of the current fishing year. The western zone of Gulf migratory group king mackerel is that part of the EEZ between a line extending east from the border of the United States and Mexico and 87°31.1′ W. long., which is a line extending south from the state boundary of Alabama and Florida.

Except for a person aboard a charter vessel or headboat, during the closure no person aboard a vessel that has been issued a Federal commercial permit for king mackerel may fish for or retain Gulf migratory group king mackerel in the EEZ in the closed zone (50 CFR 622.384(e)(1)). A person aboard a vessel that has a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zone under the recreational bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2), provided the vessel is operating as a charter vessel or headboat (50 CFR 622.384(e)(2)). A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to king mackerel from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(3)).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf migratory group king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.388(a)(1)(i) and 622.384(e), and is

exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the commercial quota and the associated AMs has already been subject to notice and public comment, and all that remains is to notify the public of the closure. Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the king mackerel stock, because the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 12, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–25052 Filed 10–12–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 81, No. 200

Monday, October 17, 2016

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

OFFICE OF SPECIAL COUNSEL

5 CFR Part 1800

Filing of Complaints of Prohibited Personnel Practices or other Prohibited Activities and Filing Disclosures of Information; Correction

AGENCY: U.S. Office of Special Counsel.

ACTION: Notice of proposed rulemaking and related information collection activity; Correction.

SUMMARY: This document corrects the Addresses section to a proposed rule published in the **Federal Register** as of September 2, 2016, regarding Filing of Complaints of Prohibited Personnel Practices or other Prohibited Activities and Filing Disclosures of Information. This correction addresses a typographical error in the email address used for submitting a comment pursuant to the notice.

FOR FURTHER INFORMATION CONTACT: Kenneth Hendricks, (202) 254–3600.

Correction

In proposed rule FR Doc. 2016–20527, on page 1 in the issue of September 2, 2016, make the following correction in the **ADDRESSES** section of the preamble. On page 1 on the last line of the second bullet, change the email address to the following: ''*oira_submission@omb.eop.gov*''

Dated: October 11, 2016.

Bruce Gipe,

Chief Operating Officer.

[FR Doc. 2016–24974 Filed 10–14–16; 8:45 am]

BILLING CODE 7405–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No.: FAA–2016–9275; Notice No. 16–07]

RIN 2120–AK91

Rotorcraft Pilot Compartment View

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to revise its rules for pilot compartment view to allow ground tests to demonstrate compliance for night operations. The current regulations require night flight testing to demonstrate compliance, which is not necessary in every case. The proposed rule would relieve the burden of performing a night flight test under certain conditions.

DATES: Send comments on or before November 16, 2016.

ADDRESSES: Send comments identified by docket number (Docket No.: FAA–2016–9275) using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Clark Davenport, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5151; email *Clark.Davenport@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is issued under the authority described in Subtitle VII, Part A, Subpart III, Sections 44701 and 44704. Under that section, the FAA is charged with prescribing regulations promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft. Under section 44704, the Administrator issues type certificates for aircraft, aircraft engines, propellers, and specified appliances when the Administrator finds the product is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a). This regulation is within the scope of these authorities because it would promote safety by updating the existing minimum prescribed standards used during the type certification process to address an equivalent method of showing compliance.

I. Background

Statement of the Problem

The FAA's rules on airworthiness standards for the pilot compartment in rotorcraft and the requirements for each pilot's view from that compartment are located in parts 27 and 29 of title 14 of

the Code of Federal Regulations. Specifically, §§ 27.773(a) and 29.773(a) require that each pilot compartment must be free of glare and reflection that could interfere with the pilot's view. Sections 27.773(b) and 29.773(b) require a flight test to show compliance with paragraph (a) if certification for night operations is requested. While this requirement applies to all applicants for rotorcraft installations that may affect the pilot's ability to see outside the aircraft, the FAA has determined that a flight test may not be the only means available to show compliance for some modifications. As a result, the FAA has concluded that the current requirements in §§ 27.773 and 29.773 are imposing an unnecessary economic burden on applicants for certification for night operation.

II. Discussion of the Proposal

Currently, §§ 27.773(b) and 29.773(b) require all applicants for certification for night operations to conduct a night flight test to show compliance with §§ 27.773(a) and 29.773(a). While manufacturers of newly type certificated rotorcraft will conduct night flight tests to comply with other rules and do not view this requirement as a significant additional burden, supplemental type certificate (STC) and field approval applicants have questioned the night flight test requirement for changes to the rotorcraft type design. STC and field approval applicants who add a piece of avionics equipment that minimally changes the lighting characteristics of the cockpit, for example a navigation or communication radio, have stated the requirement for a flight test is too costly compared to the scope of the modification.

As an alternative, the applicants have proposed performing a ground test simulating night conditions. In some cases, a ground test will meet the requirements of §§ 27.773(b) and 29.773(b) while significantly reducing the cost and burden to the applicant.

Upon review of the flight test requirements in §§ 27.773(b) and 29.773(b), based on the feedback received from numerous applicants, the FAA proposes to allow a ground test as an alternative to a night flight test in certain cases to show compliance for night operations. The FAA has determined that internal lighting modifications can be evaluated with a ground test, whereas external lighting modifications may require a flight test. For example, the applicant could demonstrate compliance by creating an environment where external light is blocked from entering the cockpit or where the rotorcraft is placed in a darkened hangar, paint booth, or other environment. In such a situation, the FAA has concluded that a ground test should provide the same level of safety as the existing regulations. The conditions under which a ground test would be acceptable and an acceptable means of compliance for the ground test would be addressed in Advisory Circular (AC) 27–1B, Certification of Normal Category Rotorcraft and AC 29–2C, Certification of Transport Category Rotorcraft.[1]

Though the proposed rule would allow applicants to show compliance either by a flight test or ground test, it would not preclude the use of a night flight test. An applicant may conduct a flight test at night for other reasons and choose to use that flight to show compliance with §§ 27.773 or 29.773. The FAA finds that the proposed change to allow a ground test as an option would be relieving to industry.

III. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows. The current regulations require night flight testing to demonstrate compliance for night operations. The proposed rule provides a ground test as an alternative to a night flight test in certain cases, such as internal lighting modifications. The requirements for a ground test are less stringent than a night flight test. Thus, the proposed rule would relieve the industry from the burden of performing a night flight test under certain conditions. The expected outcome would be a minimal economic impact with positive net benefits, and a regulatory evaluation was not prepared. The FAA requests comments with supporting justification about the FAA determination of minimal economic impact. The FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/.*

the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule provides a ground test as an alternative to a night flight test in certain cases, such as internal lighting modifications. The requirements for a ground test are less stringent than a night flight test. Thus, the proposed rule would relieve the industry from the burden of performing a night flight test under certain conditions. The expected outcome would be a minimal economic impact with positive net benefits on any small entity affected by this rulemaking action.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that offers potential regulatory relief to both domestic and international entities—thus does not create unnecessary obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

V. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 27

Aircraft, Aviation safety

14 CFR Part 29

Aircraft, Aviation safety

The Proposed Amendment

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

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 2. Amend § 27.773 by revising paragraph (b) to read as follows:

§ 27.773 Pilot Compartment View

* * * * *

(b) If certification for night operation is requested, compliance with paragraph (a) of this section must be shown by ground or night flight tests.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

■ 1. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 2. Amend § 29.773 by revising paragraph (a)(2) to read as follows:

§ 29.773 Pilot Compartment View

(a) * * *

(2) Each pilot compartment must be free of glare and reflection that could interfere with the pilot's view. If certification for night operation is requested, this must be shown by ground or night flight tests.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on October 6, 2016.

Dorenda D. Baker,

Director, Aircraft Certification Service.

[FR Doc. 2016–24957 Filed 10–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 807

[Docket No. FDA–2016–N–2491]

RIN 0910–AG79

Electronic Submission of Labeling for Certain Home-Use Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to implement provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to require electronic submission of the device label and package insert of certain home-use devices when these devices are listed with FDA. FDA plans to make this device labeling available to the public through the Internet and would also provide search tools to facilitate locating information concerning a particular home-use device or a particular type of home-use device.

DATES: Submit either electronic or written comments on the proposed rule by January 17, 2017. In accordance with 21 CFR 10.40(c), in finalizing this rulemaking FDA will review and consider all comments submitted before the time for comment on this proposed regulation has expired.

Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by November 16, 2016; see section VI, the ''Information Collection Requirements'' section of this document. See section VIII of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions*): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–2491 for ''Electronic Submission of Labeling for Certain Home-Use Medical Devices.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your

comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.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 *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit comments on information collection issues to the Office of Management and Budget in the following ways:

- Fax to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or email to *oira_submission@omb.eop.gov.* All comments should be identified with the title, ''Medical Devices: Submission of Home-Use Device Labels and Package Inserts to FDA''.

FOR FURTHER INFORMATION CONTACT:

Antoinette (Tosia) Hazlett, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5424, Silver Spring, MD 20993, 301–796–6119, email: *Tosia.Hazlett@fda.hhs.gov.*

With regard to the information collection: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

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I. Executive Summary

A. Purpose of the Proposed Rule

FDA is proposing to require certain medical device establishments listing devices under section 510(j) of the FD&C Act (21 U.S.C. 360(j)), if the device is labeled for home use, to submit the device label and package insert of such listed medical device, in the electronic format mandated in the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85), when the device is listed with FDA. (See section 510(p) of the FD&C Act.) FDA plans to make this device labeling information available to the public through an FDA-managed or partner Internet Web site.

B. Summary of the Major Provisions of the Proposed Rule

The electronic submission requirements of the proposed rule would be limited to only devices labeled for home use that are regulated by the Center for Devices and Radiological Health (CDRH) as class II and class III devices. For purposes of the proposed rule, a ''home-use device'' is any medical device that is labeled for use outside a professional health care facility. Sampling information indicates that this device group has a higher risk of misuse due to lost or misplaced labeling and operating instructions. In addition, the proposed rule would allow the voluntary electronic submission of device labels and package inserts for any class I home-use device or other home-use device not subject to the electronic submission requirements of the rule.

C. Legal Authority

FDA is issuing the provisions of this proposed rule that would implement the listing requirement for the submission of labels and package inserts for home-use medical devices under section 510(j) and section 701(a) (21 U.S.C. 371(a)) of the FD&C Act, which provides FDA the authority to issue regulations for the efficient enforcement of the FD&C Act. Section 510(p) of the FD&C Act requires that registrations and listings under section 510 be submitted to the Secretary by electronic means unless the Secretary grants a request for waiver because the use of electronic means is not reasonable for the person requesting such waiver.

D. Costs and Benefits

FDA will use the existing FDA's Unified Registration and Listing System (FURLS) database and software systems to receive the submitted electronic labeling information and will bear the incremental cost of launching and maintaining the FDA-managed or partner Web site to display and make the submitted information available for the public to search and retrieve. The

benefits of this proposed rule would stem from a reduced incidence of adverse events due to the increased availability of medical device labeling. We estimate that the present discounted value number of people most likely to benefit from this rule over 10 years is 66.9 million, using a 7 percent discount rate, or 80.1 million, using a 3 percent discount rate. We estimate that the present discounted value of costs over 10 years would range from $48.5 to $51.7 million at a 7 percent discount rate and from $52.5 to $56.5 million at a 3 percent discount rate.

II. Background

A. Introduction

The Medical Device Amendments of 1976 amended section 510(j) of the FD&C Act to add requirements for registration of device establishments and listing of medical devices. Section 510(j) requires that every person who registers shall list all devices manufactured, prepared, propagated, compounded, or processed by him for commercial distribution. The statute provides that, for all devices subject to the listing requirement, the list must be accompanied by copies of the device label and, as defined in this proposed rule, the package insert. (See section 510(j)(1)(B)(ii) of the FD&C Act.) Our definition of ''package insert'' in this proposed rule would apply only to proposed subpart F. The statute also provides additional listing requirements for the submission of labeling and advertising for certain categories of devices (see section 510(j)(1)(A) and 510(j)(1)(B)(i) of the FD&C Act), which are not relevant to this proposed rulemaking.

When section 510(j) was added to the FD&C Act in 1976, and for many years thereafter, medical device registration and listing required the submission of paper forms to FDA. The forms had to be manually transcribed by FDA into its data systems, and the data stored primarily on reels of magnetic tape and floppy disks. There was no practical way for FDA to compile, update, or access the information submitted on these forms, much less provide routine public access to the information.

Taking these factors into consideration, when FDA proposed regulations regarding the device listing requirements, we explained that, instead of requiring the submission of ''information that FDA may not have immediate need for, and unless constantly updated by the owner or operator, would be out of date when needed,'' FDA by regulation would require that the owner or operator maintain a historical file of labels, labeling, and for restricted devices, advertisements, and make all or part of that file available to FDA upon request. (See 42 FR 52808 at 52809 (September 30, 1977).) That approach has remained in place since the final rule was issued in 1978 (43 FR 37990 (August 25, 1978)). The regulation made clear that FDA could require the submission of device labeling upon request by letter. Id.

In 2002, Congress recognized the technological and practical impact of the Internet when it passed the Medical Device User Fee and Modernization Act (MDUFMA) (Pub. L. 107–250). Section 206 of MDUFMA amended section 502(f) of the FD&C Act (21 U.S.C. 352(f)) to authorize electronic labeling for a device intended for use in health care facilities, provided the manufacturer afforded health care facilities the opportunity to request the labeling in paper form without additional cost. Section 207 of MDUFMA added section 510(p) to the FD&C Act, giving FDA the authority to collect registrations and listings ''by electronic means'' at such time as FDA determined it was feasible to receive such information through electronic means. In doing so, Congress observed the following:

> The Internet and increased computer usage have created a preference in many users for information for use applicable to prescription devices in electronic form. Even casual users of computers have become used to receiving electronic information . . . . The [legislation] conforms FDA practice to the norm by allowing manufacturers to provide healthcare facilities (such as hospitals, doctors' offices and clinics) labeling in this alternative medium . . . . This will better allow manufacturers to provide such facilities with information that is more robust, up-to-date, and user-friendly. . . . Given the increased reliance on computer usage, [MDUFMA section 207] requires manufacturers to provide registration information required under section 510 by electronic means . . . upon a finding by [FDA] . . . that electronic receipt of such information is feasible. . . .[1]

Subsequently, section 224 of FDAAA struck the language that required FDA to make a finding that receipt of electronic submissions ''is feasible'' and instead made the submission of registration and listing information by electronic means mandatory in all instances, except where FDA grants a request for waiver of the requirement for a person for whom electronic submission ''is not reasonable.'' (See section 510(p) of the FD&C Act.)

[1] H.R. Report. No. 107–728, at 41, 107th Cong., 2d Sess. (2002) (explaining MDUFMA sections 206 and 207).

This preamble explains how FDA is proposing to further implement sections 510(j) and 510(p) of the FD&C Act, by amending FDA's listing regulations to require the submission of electronic versions of the label and package insert for certain home-use medical devices when these devices are listed with FDA. For purposes of this proposed rule, the term ''home-use device'' would mean a medical device labeled for use in any environment outside a professional health care facility.

A ''professional health care facility'' is either (1) any environment where personnel with medical training are continually available to oversee or administer the use of medical devices, including, but not limited to, hospitals, long-term care facilities, nursing homes, emergency medical services, clinics, physicians' offices, and outpatient treatment facilities; or (2) a clinical laboratory. A ''clinical laboratory'' is a facility that (1) performs testing on materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or assessment of the health of, human beings; and (2) has been certified to perform such testing under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (42 U.S.C. 263a) in accordance with 42 CFR part 493, or is CLIA-exempt. These definitions of ''professional health care facility'' and ''clinical laboratory'' are only meant to provide guidance as to the application of proposed subpart F and are not meant for any other purpose, including the application of 42 U.S.C. 263a and 42 CFR part 493.

FDA is proposing that the home-use devices that would be subject to this proposed rule, if finalized, are those that are regulated by CDRH as class II or class III devices. This proposed rule would not apply to any class I devices, nor would it apply to devices regulated by the Center for Biologics Evaluation and Research (CBER), except to allow the voluntary submission of a device's label and package insert for such home-use devices under proposed § 807.220(a) (21 CFR 807.220(a)).

This proposed rule is intended to focus on higher-risk home-use devices. Under the FDA device classification system, the Agency classifies a device into a particular class based on the level of control necessary to provide a reasonable assurance of its safety and effectiveness, with class I requiring the least amount of control and class III requiring the most. (See sections 513(a)(1)(B) and 513(a)(1)(C)(i)(I) of the FD&C Act (21 U.S.C. 360c(a)(1)(B) and 360c (a)(1)(C)(i)(I)).) The proposed rule

focuses on class II and class III devices, which are considered moderate- to high-risk devices, and, except for permitted voluntary submissions, does not implicate class I home-use devices. By limiting implementation to these home-use devices, the proposed rule would focus on those types of home-use devices where patients, caregivers, and health care professionals have a significant need for quick and easy access to information to help ensure a device can be used safely to achieve its intended health benefits. Further, limiting the scope of the proposed rule to a small subset of important home-use devices will allow FDA to gain experience with the receipt, archiving, and dissemination to the public of electronic versions of device labels and package inserts before we consider any broader implementation, which should create efficiencies with regard to Agency resources.

B. Public Health Benefits

Home-use devices have significant public health importance to patients, caregivers, and health care professionals. But when used in an environment where a health care professional is not available to provide supervision and assistance, the Agency recognizes that these devices can present unique concerns and challenges (Ref. 1). In this preamble, we use the term ''patient'' to refer to any health care recipient, including someone who is not receiving care from a health care professional, *e.g.,* a person with a chronic condition who self-administers a treatment, or a person who receives care from a family member or friend. We use the term ''caregiver'' to refer to a person who provides voluntary help or care, *e.g.,* a family member, friend, neighbor, or acquaintance, and we use ''health care professional'' to refer to someone whose profession is in the health care sector, *e.g.,* a physician or a visiting nurse who provides care in the course of his or her duties. Because our use of these terms corresponds to their ordinary (plain language) meanings, we are not proposing regulatory definitions. In discussing patient labeling considerations for medical devices in general, we used similar terminology in ''Guidance on Medical Device Patient Labeling: Final Guidance for Industry and FDA Reviewers'' (Ref. 2).

Medical devices are different from other FDA-regulated medical products—*e.g.,* drugs and biologics—in that many devices are commonly intended to be used for many years and often do not have explicit expiration or recommended ''use-by'' dates. When a home-use device is used over a period of years, it becomes increasingly more likely that it may be separated from its original labeling or that its original labeling will not include current safety information or instructions for use. Additionally, home-use devices are much more likely to be used by lay users, who frequently have not been trained to use such medical devices and who are especially reliant on the instructions for use and other information provided by the device label and package insert. In contrast with use in professional health care settings, a patient or caregiver using a home-use device in a setting without professional oversight may not have extensive experience in the use of a device and may not have ready access to the original packaging or to alternative sources of information about a device.

Those people that use home-use devices are particularly vulnerable to adverse events because they may be inexperienced in the proper use and maintenance of the devices. In 2014, there were over 800,000 adverse events associated with medical devices. Our review of adverse reports that meet the criteria for faster level of review (Code Blue reports of deaths, fires, explosions, etc.) found, on average, three to five such reported events per week as having occurred in the home environment, *i.e.,* outside of a clinical facility. The Agency believes that device labeling information that would be submitted under this proposed rule and made readily accessible on an FDA-managed or partner Web site could reduce the incidence of adverse events when the labeling is lost or misplaced and the user is inexperienced with the home-use device, or when the labeling of the device has been updated with new information.

When a home-use device becomes separated from its labeling—and the user no longer has ready access to the important information provided in those materials, such as indications for use, contraindications, warnings, precautions, and instructions for setup, use, and maintenance of the device—the device user may be faced with serious obstacles to the safe and effective use of the device (Ref. 3). The absence of such critical information may lead to the device being used incorrectly, which could result in the delay of proper treatment or even injury to the patient. Improper use of a device can expose both the patient and caregiver to potentially serious risks—risks that could be avoided if information presented in the device's labeling was readily available. In addition, health care professionals, including emergency personnel who need to gain a rapid understanding of the operation and limitations of a device, may be left unsure as to how to best respond to a critical situation.

When the labeling that describes how to operate a device is missing, there is a higher chance that a device might be misused. CDRH has received reports of unavailable labeling for devices that could be dangerous when used by patients or caregivers outside a professional health care facility. For example, missing labeling for something as simple as a patient lift is dangerous when an elderly caregiver needs to understand how to assemble and safely operate the lift. Another example is a patient on home hemodialysis who needs to refer to available labeling for proper warnings and precautions, water type, or filters needed.

Although many manufacturers have Internet sites that provide information concerning the devices they currently market, those sites typically focus on newer products and often do not provide any information on devices that they no longer actively market. Sites also vary considerably in the types of information provided and may lack important details concerning their devices. Although some manufacturers' Web sites provide some labeling, FDA believes that most do not provide the label and package insert for all of their home-use devices listed with FDA.

The proposed rule would help to address these concerns by making it possible for FDA to establish an electronic database, published online and accessible to the public through the Internet, of labels and package inserts for listed home-use devices that would be submitted under this proposed rule. This database would fill an important gap in the information available to patients, caregivers, and the health care community concerning these home-use devices, and would allow both broad searches to identify legally marketed home-use devices that may fill a particular need and focused searches to obtain information concerning the use of a specific home-use device. In recent years, patients have become more involved in decisions concerning their health care, including the types of treatments they will undergo, the selection of specific home-use devices to be used in their treatment, and administration of the course of treatment (Ref. 4). This trend shows no signs of abating. With less day-to-day oversight by health care professionals, consumers have assumed responsibilities that have been traditionally borne by health care professionals. For example, consumers

may take on responsibility for setting up a home-use device, monitoring its performance, performing basic maintenance, and more. Because of this expanding role, consumers need to understand the risks and benefits of particular home-use devices in order to make informed decisions concerning their treatment options, and need ready access to information that will help them use devices properly, as intended by the manufacturers.

The FDA-managed or partner Internet Web site would provide a consolidated and easily accessible source of FDA database information concerning class II and class III home-use devices, including their approval or clearance status, intended uses, limitations, setup, and operation. The FDA database would not contain identifiable private information nor provide access to ''lock out'' information that is not included on the device labeling but is furnished through a source referenced in the device labeling, *e.g.,* information contained on a manufacturer's Web site, access to which is limited to professionals or some other restricted class of users. The FDA-managed or partner Internet site would contain links to other FDA information concerning the device, such as premarket submission information (*e.g.,* the summary of safety and effectiveness for a device), adverse event reports, alerts and notices, and recalls, as well as FDA information concerning the manufacturer. The information provided by FDA would help ensure greater safety and effectiveness of class II and class III home-use devices, particularly when a device has become separated from its labeling or when health care professionals, including visiting home nurses and emergency rescue personnel with varied skills and experience, need rapid access to information about unfamiliar products to help resolve a medical emergency. FDA would be able to make such information available from the time the device is first listed and, because the use of a device can continue long after a manufacturer ceases to market the specific device, we would continue to provide information even after the device is no longer marketed and no longer listed. FDA expects to provide search tools to facilitate locating information concerning a particular device or a particular type of device.

FDA also intends to make available the information collected under this rule through other partner Web sites that provide medical and health information to the public. For example, ''Daily Med'' (*http://dailymed.nlm.nih.gov*) is an Internet site administered by the National Institutes of Health's National Library of Medicine (NLM) that provides access to the labels and package inserts of prescription drugs. FDA believes that the public access to the labels and package inserts of the home-use medical devices covered by this proposed rule would provide a benefit similar to that provided by Daily Med in the drugs context.

C. Overview of the Proposed Rule

The proposed rule, if finalized, would implement provisions of sections 510(j)(1)(B)(ii) and 510(p) of the FD&C Act by amending FDA's listing regulations to provide that the label and package insert must be submitted electronically to FURLS, as part of the information required to list any home-use device regulated by CDRH as a class II or class III device. Section 510(j) requires manufacturers to list their medical devices and outlines the types of information that must accompany each listing. However, this proposed rule would apply only to class II and class III home-use devices regulated by CDRH, which represents a subset of devices that are subject to section 510(j) of the FD&C Act. For class II and class III home-use devices, the rule would amend the device listing regulations to provide that establishments listing such devices must submit to FDA a copy of the label and package insert of such home-use devices, when they are listed with FDA by electronic means, in an electronic format that we will specify and not as printed (paper) copies.

Unless a request for waiver is granted, all of the information submitted to FDA under the proposed rule would have to be submitted by electronic means, as required by section 510(p) of the FD&C Act, in a format to be specified by FDA that we can process, review, and archive. Initially, we intend to allow for the submission of labels and package inserts saved in Portable Document Format (PDF). The PDF format is a broadly used format that preserves both the content and appearance of a source document (such as a device label or package insert) and which can be read on all mainstream personal computers, regardless of the operating system, using freely available software. In addition, a wide variety of software packages and operating systems allow a source document to be saved as a PDF file. FDA believes that all listing establishments are already familiar with the PDF format, and that most already have the ability to save source documents as PDF files. We intend to make available additional information that will provide details and recommendations regarding this process by the time we publish a final rule.

At a later time, we expect to provide processes for the submission of labels and package inserts based on FDA's Structured Product Labeling (SPL) document standard. This would make it easier for FDA and the public to store, retrieve, and search information in home-use device labels and package inserts. We are considering at least two such processes—one process that would make it easy for a small business with limited means to submit SPL information by manually entering or uploading the information for one product at a time on an FDA Web page (this type of process is often referred to as a ''data entry'' process), and a second process that would provide an efficient way to submit SPL data for multiple devices in a single submission (this type of submission process is often referred to as a ''batch submission'' process). We intend to provide information explaining each process as it becomes available.

FDA plans to retain all labels and package inserts submitted under this rule in FDA's FURLS database. Not all information in the FURLS database is available to the public, so we intend to make the submitted labeling accessible to the public through an FDA-managed or partner Internet Web site, such as NLM, even after a device is no longer listed. However, if FDA bans a device under section 516 of the FD&C Act (21 U.S.C. 360f), we intend to remove any label and package insert from our FURLS database and from any other FDA or partner Web site we might use and replace those materials with a statement explaining that the device has been banned. If a device is recalled, we may add a notice to the labeling database, with additional information to help ensure the safe and effective use of the device, or advice to discontinue use of the device and additional steps to take to help ensure the health and safety of the patient or user of the device.

D. Public Participation in Setting the Scope and Objectives of the Proposed Rule

FDA used comments from the medical device industry, health care professionals, caregivers, and patients to help formulate the objectives and define the scope of this proposed rule. In September 2009, CDRH established the ''510(k) Working Group'' and the ''Task Force on the Utilization of Science in Regulatory Decision Making'' to address concerns about how well the 510(k) program (the primary regulatory route to market for medical devices) was meeting its public health goals of

facilitating innovation and assuring the safety and effectiveness of medical devices. As part of these reviews, FDA held two public meetings and three town hall meetings, solicited comments through three open public dockets, and met with many stakeholders over several months. In August 2010, CDRH released for public comment preliminary reports from these committees. The preliminary reports expressed concern regarding the lack of ready access to final device labeling and recommended:

- FDA should ''take steps to improve medical device labeling, and to develop an online labeling repository to allow the public to easily access this information.'' (Ref. 5)
- FDA should ''revise existing regulations to clarify the statutory listing requirements for the submission of labeling.'' (Ref. 6)
- FDA should ''explore the feasibility of requiring manufacturers to electronically submit final device labeling to FDA . . . and also to provide regular, periodic updates to device labeling, potentially as part of annual registration and listing or through another structured electronic collection mechanism.'' (Ref. 6)

The preliminary reports also recommended that if FDA requires submission of device labels, they be ''posted as promptly as feasible on the Center's public 510(k) database.'' (Ref. 6)

FDA received comments on these recommendations from industry, consumer, and health care professional groups. Some industry representatives expressed concern regarding the potential for disclosure of confidential or proprietary information. According to some industry representatives, device-specific information on device labels is not necessarily appropriate for the general public, but rather is intended for physicians or other health care professionals and may cause confusion if they are made available in a public database. Furthermore, industry suggested that the responsibility for disseminating labeling should rest solely with the manufacturer and should remain in the manufacturer's control. Industry also stated that many updates to labeling are made for marketing purposes and not related to regulatory requirements or device alterations.

Consumer and health care professional groups supported the recommendation of the 2010 510(k) Working Group and the Task Force preliminary reports. Their comments noted that providing access to online labeling resources would facilitate better-informed clinical decisionmaking.

In January 2011, FDA issued a ''Plan of Action'' outlining steps we will take to improve the 510(k) program and explaining our views and responses to comments we received concerning recommendations made in the August 2010 preliminary reports (Ref. 7). FDA agreed with comments that making labeling readily available could lead to better-informed clinical decisionmaking. Just as the FDA's central database for drug labeling conveys a public health benefit, we believe that a similar database for devices would be of significant benefit to the public health by providing useful information to health care professionals and patients. Although submission of labels and certain other labeling for all devices is a statutory requirement, FDA determined that it was important to seek additional stakeholder input at a public meeting before proposing any regulatory changes.

FDA held another public meeting in April 2011, specifically to discuss options, benefits, costs, and concerns regarding the collection of device labels and certain labeling and means of making the resulting information available to the public, including industry, health care professionals, caregivers, and patients (Ref. 8). Industry representatives did not support a system that would require submission of labels and other labeling for all devices to FDA, but generally agreed that there would be value in a more limited system, particularly with regard to devices intended for home use. Health care professionals and caregiver representatives were supportive of a broad system, but willing to consider any approach that would increase their access to reliable device information.

Reports by FDA's committees recommended that FDA fully implement section 510(j) by developing an electronic submission method for labels and package inserts for devices generally and many stakeholders supported the creation of a broad ''repository'' (essentially, an FDA-managed database accessible to the public through an Internet site) of labeling for *all* devices. However, FDA believes, at this stage, that the public health need for, and the opportunity to improve access to home-use device information call initially for the more-limited actions pursued in this proposed rule. In order to minimize risks and costs while we gain experience with implementing and managing electronic labeling, the Agency is limiting this proposed rule to only include the submission of labels and package inserts from home-use devices regulated by CDRH as class II or class III devices. As FDA and the public gain experience with the electronic submission of labeling and use of the planned searchable FDA-managed or partner Internet Web site, FDA will consider whether to implement this requirement for other categories of devices, or for devices generally.

FDA also conducted a series of followup focus group interviews of health care professionals to obtain their individual views concerning a wide variety of topics relating to medical device labeling, resulting in a series of reports, including ''Medical Device Labeling for Health Care Practitioners: Focus Group Study'' (May 2011) (Ref. 9) and ''Device Labeling Study: Practitioner Perspectives on Utility, Format, and Content of an Abbreviated Version of Labeling'' (March 2013) (Ref. 10). Participants saw considerable value in having device labeling available online for quick access when needed; participants noted that labeling that is not directly placed on a device—for example, a manual—can be hard to find when needed. Unlike a device label or package insert, information made available through the Internet is always readily available and cannot be lost or misplaced. Most participants favored having access to labeling through an Internet Web site, particularly if well-organized.

Additionally, in September 2015, FDA held a public meeting to discuss issues associated with medical device patient labeling that involved development, use, and access to device information (Ref. 11). At this meeting, many external stakeholders stated their belief that providing labeling in one place for consumers that is reliable and dynamic would increase accessibility to labeling for legacy devices and to labeling updates as new information becomes available for currently marketed devices. Also, while device information from other sources such as Web sites and YouTube videos may be useful, stakeholders indicated concern that some may be potentially erroneous and contain mostly promotional information.

III. Description of the Proposed Rule

A. Scope of the Proposed Rule

1. What devices would be subject to the proposed rule?

A device would be subject to the proposed rule if it is a ''home-use device'' as defined by proposed § 807.200, that is regulated by CDRH as a class II or class III medical device. Under this proposed regulation, a

''home-use device'' would be any medical device that is labeled for use outside a professional health care facility. Home-use devices that are co-labeled for, or can be used in a professional health care facility, would be subject to this proposed rule if the device is labeled for use in a patient's home or in any other environment that is not a professional health care facility.

Class I devices and devices regulated by CBER are not within the scope of the proposed rule, except for the authorized voluntary submission of a device's label and package insert for these home-use devices (under proposed § 807.220(a)). For more information about the definition of ''home-use device,'' please refer to section III.D.1 of this document.

2. When would a home-use device label and package insert have to be submitted to FDA?

Proposed § 807.205 would require the label and package insert of a home-use device subject to the proposed rule to be submitted whenever any provision within part 807 (21 CFR part 807) requires listing information to be submitted or updated. For example, the label and package insert would be required with such home-use device's initial listing required by § 807.22(a), with each annual listing under § 807.22(b), and whenever an action triggers a reporting requirement under § 807.28. If the label and package insert have already been submitted and have not been changed since they were last submitted to FDA, the establishment may simply certify that no change has been made to the previously submitted labeling; see proposed § 807.300(a). An updated label or package insert could be submitted voluntarily at any time; see proposed § 807.300(b).

3. Would every type of package insert regarding a home-use device have to be submitted to FDA?

No. The rule would limit the definition of ''package insert'' to include only those informational materials directed to the intended user of the device, and which are provided in a device package or which accompany the device when it is delivered to the user, including when already provided by electronic means. (See the proposed definition of *package insert* at § 807.200.) Only package inserts meeting this definition would have to be submitted to FDA. We have chosen to limit the scope of package insert in order to focus the proposed rule on those package inserts that are essential to typical intended uses and typical users of the home-use devices subject to this proposed rule. Examples of materials that would not be within the scope of the proposed rule include materials that are not intended for a patient (care recipient) or for the caregiver, health care professional, or family member who directly operates or handles the device or provides assistance to the patient in using the device, *e.g.,* an installation and calibration manual intended for technical or support personnel; supplemental training materials; supplemental service manuals; supplemental materials that concern optional additional uses that require accessories not included with the listed home-use device; and any supplemental materials that are made available only upon request or only upon payment of a separate fee.

4. Would the rule provide for the submission of advertisements or of labeling other than device labels and package inserts?

No. The proposed rule would not address the submission of advertisements or of labeling other than the device label and package insert.

5. Would the rule require any change to an existing label or package insert?

No. The proposed rule would not affect the form or content of home-use device labeling. Existing labeling requirements would continue to apply, including those of part 801 (Labeling) and § 809.10 (*Labeling for in vitro diagnostic products.*).

B. Submission of Device Labels and Package Inserts to FDA for Certain Home-Use Devices

1. Who would be required to submit labels and package inserts to FDA when listing a home-use device?

The owner or operator of an establishment (the remainder of this preamble will simply refer to ''the establishment'') that lists a class II or class III home-use device subject to this proposed rule would be responsible for submission of the label and package insert, just as the establishment is responsible for submitting all other listing information pertaining to the device. (See proposed § 807.205.)

2. How would labels and package inserts have to be submitted to FDA?

The proposed rule provides for the electronic submission of this information to FDA, as required by section 510(p) of the FD&C Act, in a form specified by FDA that we can process, review, and archive; see proposed § 807.205. Initially, FDA expects to specify saving the device label and package insert as PDF files and submitting those materials to FDA. Later, we expect to transition from submission of PDFs to submission of SPL-formatted information. We intend to publish information describing the entire proposed process by the time we publish a final rule. If a waiver from filing registration and listing information electronically has been obtained under § 807.21(b), the establishment would be required to submit the device labels and package insert called for in this proposed rule in the same manner as permitted for other registration and listing information covered by the waiver, as directed by § 807.34.

When the proposed rule is finalized, an establishment submitting a home-use device's label and package insert would confirm or provide the FDA-assigned premarket submission number of the device (§ 807.25(g)(4)) or the product codes for 510(k)-exempt devices (§ 807.25(g)(2)).

3. What would the consequences be of failing to submit the listing information identified in this proposed rule?

The failure to provide information required by section 510(j) of the FD&C Act, as implemented by part 807, including proposed subpart F, causes a device to be misbranded under section 502(o) of the FD&C Act and is a prohibited act under section 301(p) of the FD&C Act (21 U.S.C. 331(p)), which may result in seizure, injunction, or other penalties.

C. Dissemination of the Information Collected Under the Rule

1. How does FDA intend to make available the information collected under this rule?

FDA intends to make the labels and package inserts collected under this rule available on an FDA-managed or partner Internet Web site. We intend to link the labels and package inserts submitted under this rule to the listing record for the particular device. Over time, and as resources permit, we also intend to link each device listing to other FDA information, such as the device identifier required by FDA's unique device identification system, FDA premarket submission numbers, adverse event reports, and public health notifications, so that users of the planned FDA-managed or partner Internet Web site will also be able to access public information that is maintained in FDA's other databases concerning devices marketed or manufactured in the United States.

2. How will members of the public be able to find information collected under this rule and related FDA information concerning a home-use device?

We intend to provide several ways to search for information, such as the ability to search by:

- Proprietary name (for a specific device);
- Product code (for a generic type of device);
- Firm name (for all devices listed by a particular firm);
- FDA premarket submission number;
- Device identifier (the static portion of the unique device identifier required by §§ 801.20 and 801.40).

We also intend to provide a means to search the full text of labels and package inserts using free-form searches.

D. Proposed Amendments to Part 807

1. New Defined Terms

FDA is proposing to add definitions for two terms to part 807; these terms have not been defined in any prior medical device regulation: *Home-use device* and *package insert.*

Home-use device would mean a medical device that is labeled for use in any environment outside a professional health care facility. This definition is meant to make clear that ''home-use device,'' as defined in this proposed rule, would not be restricted in a literal sense to use in a patient's home, but is instead meant to take in a broader range of environments in which a device may be used outside of a professional health care facility.

If finalized, the definition of home-use device is meant to apply only to proposed subpart F for purposes of submitting the device's label and package insert when listing under section 510(j) of the FD&C Act. This proposed regulation would not apply for other purposes, including premarket submission determinations. Additionally, proposed § 807.200 would not apply for purposes of CLIA categorization under 42 CFR 493.15. The fact that a device would be considered a ''home-use device'' under this proposed regulation would not mean that the device has been ''cleared by FDA for home use'' within the context of 42 CFR 493.15, a regulatory provision related to the implementation of the CLIA provisions found at 42 U.S.C. 263a.

Package insert would mean all informational materials directed to the user of the device, and which are provided in a device package or which contemporaneously accompany the device when it is delivered to the user, including by electronic means. Although the term is used in section 510(j)(1)(b)(ii) of the FD&C Act (see the discussion of section 510(j) in section I. Background) and in various medical device regulations, this term is not defined in the FD&C Act or by any medical device regulation. A *package insert* is one type of device labeling. Our definition of ''package insert'' in this proposed rule would also apply only to proposed subpart F.

2. Conforming Proposed Amendment of § 807.26(e)

We would amend the first sentence of § 807.26(e) to strike the word ''only.'' This change is necessary to avoid conflict between the proposed regulatory amendments pertaining to the submission of labels and package inserts of home-use devices under new subpart F of this proposed rule and § 807.26(e), which states that owners or operators shall be prepared to submit such information ''*only* upon specific request'' (emphasis added). The submission of labeling for home-use devices that new subpart F of this proposed rule would require would not be responding to a targeted ''specific request'' for information under existing § 807.26(e). The proposed requirements to submit such information under new subpart F would conflict with § 807.26(e), as currently worded, but would not conflict with proposed § 807.26(e), as amended. FDA does not intend this change to result in a greater number of requests for information under § 807.26(e), and we do not intend to request the resubmission of information under § 807.26(e) that has already been submitted for home-use devices under new subpart F. Related § 807.26(f) prohibiting the submission of information requested under § 807.26(e) from ''using the FDA electronic device registration and listing system'' likewise would not apply to the information that would be submitted under proposed new subpart F if finalized, which provides instead for such information to be submitted ''in a format specified by FDA that we can process, review, and archive'' (proposed § 807.205).

3. Proposed Requirement To Submit the Label and Package Insert for Certain Home-Use Devices

We are proposing a new subpart to part 807, ''Subpart F—Submission of Labeling When Listing Certain Home-Use Devices.'' For establishments listing home-use devices subject to this proposed rule, proposed § 807.205 would require that the device label and package insert be submitted to FDA whenever any provision within part 807 requires submission of listing information regarding the device.

Proposed § 807.220 would make clear that the voluntary submission of the label and package insert of a home-use device that is not required under this proposed rule would be permitted. Proposed § 807.220(a) would make clear that for such devices, including a home-use device regulated by CBER, the owner or operator subject to part 807 could voluntarily submit the device label and package insert, which FDA could then make available to the public.

Proposed § 807.220(c) would make clear that the label and package insert for a discontinued home-use device could be submitted, which FDA could then make available to the public. This provision would provide a way for an establishment to make information about a discontinued home-use device available to the public, potentially reducing the burden of responding to requests for information about a discontinued device.

Proposed § 807.300 would explain when an updated device label and package insert must be submitted.

Proposed § 807.300(a) would reduce the burdens of the proposed rule, if finalized, following the initial submission of listing information to FDA by making it clear that resubmission of the label and package insert of a home-use device each year during the annual listing process, and in other circumstances when updated listing information must be submitted, would not be required unless changes have been made. Instead, if no change has been made to the most-recently submitted label and package insert, FDA would only require a statement to that effect. We expect this statement will be as simple as clicking a check-box within one of the processes FDA expects to provide.

Proposed § 807.300(b) would make clear that updated labeling information for a home-use device that is not required under this proposed rule, such as a CBER-regulated home-use device, could voluntarily be submitted at any time. We expect the majority of labelers will see advantages to keeping this information up-to-date, as a way of better serving current and potential users of their devices.

We would make a conforming amendment to § 807.40 to apply the requirements of proposed subpart F to listings by foreign establishments. This would ensure that both domestic and foreign establishments will be subject to the same requirements regarding the submission of labels and package inserts for home-use devices.

E. Effective Date

FDA is proposing that this rule would go into effect 90 days after publication of a final rule, if that results in an effective date prior to October 1 of the year of publication; otherwise, the rule would go into effect on January 1 of the year following publication of a final rule. This ensures adequate notice and avoids any possibility that a final rule might go into effect part way through an ongoing registration and listing cycle (October 1 through December 31 each year).

The proposed rule would implement provisions of the FD&C Act to require the submission of class II and class III home-use device labels and package inserts with device listing information submitted to FDA on or after the effective date of the rule. The rule would not be retroactive, and there would be no obligation to submit the label or package insert of a discontinued home-use device that was listed at any time prior to the effective date of a final rule; but if that device is listed during a subsequent registration and listing cycle (a cycle that begins after the effective date of a final rule), all listing requirements would have to be met, including submission of the label and package insert.

IV. Legal Authority

Section 510(j) of the FD&C Act requires all persons who register with the Secretary to file a list of all devices that are being manufactured, prepared, propagated, compounded, or processed by them for commercial distribution. The listing of all devices is required to be accompanied by a copy of the label, package insert, and a representative sampling of the labeling for such devices. (See section 510(j)(1)(B)(ii).) Accordingly, FDA is issuing the provisions of this proposed rule that would implement the listing requirement for the submission of labels and package inserts for home-use medical devices regulated by CDRH under section 510(j) and section 701(a), which provides FDA the authority to issue regulations for the efficient enforcement of the FD&C Act.

The provisions of the proposed rule that would require the electronic submission of labeling are issued under the authority of sections 510(p) and 701(a) of the FD&C Act. Section 510(p) requires that registrations and listings under section 510 be submitted to the Secretary by electronic means unless the Secretary grants a request for waiver because the use of electronic means is not reasonable for the person requesting such waiver.

The failure to include a device in a list required by section 510(j) causes the device to be misbranded under section 502(o) of the FD&C Act. The failure to provide any information required by section 510(j) is a prohibited act under section 301(p) of the FD&C Act.

V. Economic Analysis of Impacts

A. Introduction

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

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because annualized costs to small entities are estimated to be less than 0.4 percent of firm revenue, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

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

B. Summary of Costs and Benefits

This rule proposes to implement provisions of the FD&C Act by requiring firms to electronically submit to FDA the device labels and package inserts, hereafter in this section of the document referred to as ''labeling,'' of certain home-use medical devices. In particular, all devices regulated by CDRH as class II and class III devices and labeled for use in any environment outside a professional health care facility would be covered by this rule. FDA intends to make the labeling of these devices available to the public in a searchable FDA-managed or partner Internet Web site, hereafter referred to in this section of the document as ''labeling database.'' Firms would be required to submit the device labeling to FDA, initially in PDF format but later in SPL format. Firms would incur three types of costs as a result of this rule: Costs to read and understand the rule, costs to reformat labeling according to the rule, and costs to train personnel to comply with the rule. FDA would incur costs to establish and maintain the public online labeling database. The public would benefit from access to information and instructions on the proper use of medical devices in home settings.

The costs and benefits of the proposed rule are summarized in the table 1, entitled ''Economic Data: Costs and Benefits Statement.'' This table shows the estimated average annualized costs and other quantified but not monetized effects of this rule using both 7 and 3 percent annual discount rates over a 10-year evaluation period. We estimate that the present value of costs over 10 years would range from $48.5 to $51.7 million at a 7 percent discount rate and from $52.5 to $56.5 million at a 3 percent discount rate. Annualizing these costs over 10 years yields estimated costs ranging from $6.5 to $6.9 million at a 7 percent discount rate and $6.0 to $6.4 million with a discount rate of 3 percent.

As table 1 shows, the primary benefit stems from a reduced incidence of adverse events due to the increased availability of medical device labeling. We use, as a proxy for those most likely to benefit from this proposed rule, individuals who receive instruction from home health providers on the proper and safe use of their home-use devices. We estimate that the present value number of home-use device training events over 10 years is 66.9 million using a 7 percent discount rate or 80.1 million using a 3 percent discount rate. Annualized over 10 years, we estimate the annual number of home-use device training events is 8.9 million with a 7 percent discount rate and 9.1 million with a 3 percent discount rate. Under the proposed rule, we estimate that for each home-use device training event, the rule would cost between $0.73 and $0.77 using a 7 percent discount rate; with a 3 percent discount rate, the cost per event would range from $0.66 to $0.71.

TABLE 1—ECONOMIC DATA: COSTS AND BENEFITS STATEMENT

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
Benefits							
Annualized Monetized $millions/year.	.....	.....	.....	.....	7 3		
Annualized Quantified.	8.9 million home-use device training events. 9.1 million home-use device training events.	.....	.....	.....	7	10 years	Reduced incidence of adverse events due to availability of labeling.
		.....	.....	.....	3	10 years.	
Qualitative							
Costs							
Annualized Monetized $millions/year.	$6.6 million ..... $6.1 million	$6.5 million $6.0 million	$6.9 million $6.4 million	2011 2011	7 3	10 years ..... 10 years	Includes industry costs to read and understand the rule, reformat labeling, and train personnel as well as FDA costs to establish and maintain the labeling database.
Annualized Quantified.	.....	.....	.....	.....	7		
	.....	.....	.....	.....	3	.....	
Qualitative							
Transfers							
Federal Annualized Monetized $millions/year.	.....	.....	.....	.....	7 3	.....	None.
From/To	From:			To:			
Other Annualized Monetized $millions/year.	.....	.....	.....	.....	7 3	.....	
From/To	From:			To:			
Effects.							
State, Local, or Tribal Government.							
Small Business.							
Annual cost per affected small entity is estimated to be less than 0.4 percent of revenues.							
Wages: No estimated effect.							
Growth: No estimated effect.							

C. Summary of Regulatory Flexibility Analysis

To determine the impact of the proposed rule on small entities, we compare the estimated cost of the rule to the average revenues of the small entities. Assuming that each small firm is composed of a single establishment, the annualized cost to small entities of the proposed rule is not expected to exceed 0.22 percent of firm revenue. The largest impact would be felt by firms with fewer than 100 employees. If instead we assume that each small firm is composed of three establishments, the annualized cost to small entities of the proposed rule is not expected to exceed 0.38 percent of firm revenue. Given that we estimate the cost of the proposed rule to be a very small percentage of firm revenue, the Agency proposes to certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The full analysis of economic impacts is available in the docket for this proposed rule (Ref. 12) and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses.*

VI. Information Collection Requirements

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given in the *Description* section of this document with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices: Submission of Certain Home-Use Device Labels and Package Inserts to FDA

Description: This proposed rule implements statutory directives of section 510(j) of the FD&C Act regarding information required to list a medical device, and amendments enacted in 2002 and 2007 with respect to section 510(p) of the FD&C Act that require all registration and listing information to be submitted ''by electronic means'' (except where FDA grants a waiver from the use of electronic means). The collection requirements associated with this regulation will help ensure that patients, caregivers, and health care professionals have free, timely, and unimpeded access to a trusted source of comprehensive information essential to the safe and effective use of class II and class III home-use devices, even if such devices become separated from their original labeling. We believe that the public will benefit from the improved availability of information, accompanying search tools, and links to other FDA information. Ultimately, it is FDA's hope that access to this information will contribute to improved medical outcomes and a reduction in adverse events.

Specifically, if a home-use device is subject to the proposed rule its label and any package insert would be required to be submitted whenever that device is listed with FDA. Device listing information must be submitted electronically to FDA once each year, during the period from October 1 through December 31. Once a device's labeling has been submitted to FDA, the establishment may thereafter either submit revised labeling with each annual listing of the device to which it pertains, or may certify that no change has been made to the previously submitted labeling. The certification option would simplify the process by not requiring the submission of materials that would duplicate materials previously submitted to FDA. The proposed rule would make clear that the voluntary submission of the label and package insert of a home-use device would be permitted in some circumstances. When finalized, the information collection requirements outlined in this section will amend the current OMB PRA approval for the current Registration and Listing Information collection approved under OMB control number 0910–0625.

Description of Respondents: The likely respondents for this collection of information are domestic device establishments who plan to sell, or who are continuing to sell, their products within the United States.

FDA estimates the burden, on average, of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Section 510(p)/information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Initial Electronic Labeling Submission	2,280	5.4114	12,338	0.25 (15 minutes)	3,084.5
Ongoing Annual Certification of Labeling Submission	2,280	1.0825	2,468	0.25 (15 minutes)	617
Ongoing Annual Electronic Labeling	2,280	6	13,680	0.25 (15 minutes)	3,420
Total					7,121.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**). All comments should be identified with the title ''Medical Devices: Submission of Home-Use Device Labels and Package Inserts to FDA''.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register**.

VII. Analysis of Environmental Impact

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

VIII. Proposed Effective Date

FDA proposes that this rule will go into effect 90 days after publication of a final rule, if that results in an effective date prior to October 1 of the year of publication; otherwise, FDA proposes this rule will go into effect on January 1 of the year following publication of a final rule.

IX. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule, if finalized, does not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we

conclude that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. ''Medical Device Home Use Initiative,'' FDA, April 2010, available at *http://www.fda.gov/downloads/MedicalDevices/Productsand MedicalProcedures/HomeHealt handConsumer/HomeUseDevices/UCM209056.pdf.*
2. ''Guidance on Medical Device Patient Labeling; Final Guidance for Industry and FDA Reviewers,'' FDA, April 2001, available at *http://www.fda.gov/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm070782.htm.*
3. ''Medical Instrumentation—Accessibility and Usability Considerations,'' Jack M. Winters and Molly Follette Story, eds., CRC Press, 2007.
4. ''Basic Statistics About Home Care,'' The National Association for Home Care and Hospice 2010, available at *http://www.nahc.org/assets/1/7/10hc_stats.pdf.*
5. ''CDRH Preliminary Internal Evaluations—Volume II: Task Force on the Utilization of Science in Regulatory Decision Making,'' August 2010, p. 10, available at *http://www.fda.gov/downloads/aboutfda/centersoffices/officeofmedical productsandtobacco/cdrh/cdrhreports/ucm220783.pdf.*
6. ''CDRH Preliminary Internal Evaluations—Volume I: 510(k) Working Group Preliminary Report and Recommendations,'' FDA, August 2010, pp. 85–86, available at *http://www.fda.gov/downloads/aboutfda/centersoffices/officeofmedical productsandtobacco/cdrh/cdrhreports/ucm220784.pdf.*
7. ''510(k) and Science Report Recommendations: Summary and Overview of Comments and Next Steps,'' FDA, January 2011, available at *http://www.fda.gov/downloads/aboutfda/centersoffices/cdrh/cdrhreports/ucm239449.pdf.*
8. Transcript of April 7, 2011, public meeting, ''Medical Device Use in the Home Environment Workshop: Implications for the Safe and Effective Use of Medical Device Technology Migrating into the Home'' (May 24, 2011), available at *http://www.fda.gov/MedicalDevices/NewsEvents/Workshops Conferences/ucm215636.htm.*
9. ''Medical Device Labeling for Health Care Practitioners: Focus Group Study,'' RTI International, May 2011, OMB control number 0910–0497, available at *http://www.fda.gov/downloads/MedicalDevices/ProductsandMedical Procedures/HomeHealthandConsumer/HomeUseDevices/UCM335197.pdf.*
10. ''Device Labeling Study: Practitioner Perspectives on Utility, Format, and Content of an Abbreviated Version of Labeling: Report Summary,'' RTI International, March 2013, OMB control number 0910–0715, available at *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/HomeUseDevices/ucm386369.htm.*
11. ''Public Workshop—Medical Device Patient Labeling, September 29–30, 2015'' available at *http://www.fda.gov/MedicalDevices/NewsEvents/Workshops Conferences/ucm455361.htm.*
12. ''Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, and Unfunded Mandates Reform Act Analysis for Electronic Submission of Labeling for Certain Home-Use Medical Devices,'' available at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses//default.htm.*

List of Subjects

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 807 be amended as follows:

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES

■ 1. The authority citation for part 807 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374, 381, 393; 42 U.S.C. 264, 271.

§ 807.26 [Amended]

■ 2. Amend § 807.26(e) introductory text by removing the word ''only''.

§ 807.40 [Amended]

■ 3. Amend § 807.40(a) by removing the words ''subpart B'' and adding in their place ''subparts B and F''.

■ 4. Add subpart F, consisting of §§ 807.200 through 807.300, to read as follows:

Subpart F—Submission of Labeling When Listing Certain Home-Use Devices

Sec.
807.200 Home-use device definitions.
807.205 Submission of labeling required for listing certain home-use devices.
807.220 Voluntary submission of labeling for a home-use device.
807.300 When updated labeling for a home-use device must be submitted to FDA.

Subpart F—Submission of Labeling When Listing Certain Home-Use Devices

§ 807.200 Home-use device definitions.

The definitions of this section apply only to this subpart and not for other purpose, including the categorization of in vitro diagnostic products under 42 CFR 493.15:

Home-use device means a medical device that is labeled for use in any environment outside a professional health care facility.

Package insert means all informational materials directed to the user of the device, and which are provided in a device package or which contemporaneously accompany the device when it is delivered to the user, including by electronic means.

§ 807.205 Submission of labeling required for listing certain home-use devices.

Whenever this part requires the owner or operator of an establishment to submit listing information, and the listing concerns a home-use device regulated by the Center for Devices and Radiological Health as a class II or class III medical device, the owner or operator must submit the label and package insert of that home-use device by electronic means in a format specified by FDA that we can process, review, and archive. If a waiver from filing registration and listing information electronically has been obtained under § 807.21(b), the label and package insert shall be submitted in the same manner as other registration and listing information, as directed by § 807.34.

§ 807.220 Voluntary submission of labeling for a home-use device.

(a) If listing a home-use device that is not regulated by the Center for Devices and Radiological Health as a class II or class III medical device, the owner or operator may submit the label and package insert for the device.

(b) If a listing of a home-use device represents more than one product catalog or model number, the owner or operator may submit the label and package insert for each catalog or model number.

(c) An owner or operator may submit the label and package insert for a home-use device that is not currently listed if that device was previously listed pursuant to this part but has been discontinued.

§ 807.300 When updated labeling for a home-use device must be submitted to FDA.

(a) Whenever this part requires updated listing information to be submitted, and the updated listing concerns a home-use device regulated by the Center for Devices and Radiological Health as a class II or class III medical device, the owner or operator shall determine whether any change has been made to the labeling most-recently submitted to FDA for the device. If any change has been made to the most recently submitted labeling, the owner or operator shall submit the current labeling. If no change has been made to the most recently submitted labeling, the owner or operator shall provide a statement to that effect.

(b) The owner or operator may voluntarily submit updated labeling for a listed device at any time prior to the time this part requires such labeling to be submitted.

Dated: October 11, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25026 Filed 10–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–108792–16]

RIN 1545–BN37

User Fees for Installment Agreements; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of the cancellation of a public hearing on proposed regulation relating to proposed amendments to the regulations that provide user fees for installment agreements.

DATES: The public hearing, originally scheduled for October 19, 2016 at 2:00 p.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Regina Johnson of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 317–6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, August 22, 2016 (81 FR 56543) announced that a public hearing was scheduled for October 19, 2016 at 2 p.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 6159 of the Internal Revenue Code.

The public comment period for these regulations expired on October 6, 2016. The notice of proposed rulemaking and notice of hearing instructed those interested in testifying at the public hearing to submit a request to speak and outline of the topics to be addressed. As of October 6, 2016, no one has requested to speak. Therefore, the public hearing scheduled October 19, 2016 at 2 p.m. is cancelled.

Crystal Pemberton,

Senior Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel.

[FR Doc. 2016–25055 Filed 10–14–16; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Proposed Price Changes

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: In October 2016, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC) for products and services covered by *Mailing Standards of the United States Postal* Service, International Mail Manual (IMM®), to be effective on January 22, 2017. The Postal Service will revise Notice 123, *Price List* on *Postal Explorer®* at *http://pe.usps.com* to reflect the new prices.

DATES: We must receive your comments on or before November 16, 2016.

ADDRESSES: Mail or deliver comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza SW., RM 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–2906 in advance. Email comments, containing the name and address of the commenter, may be sent to: *ProductClassification@usps.gov,* with a subject line of ''January 2017 International Mailing Services Price Change.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Paula Rabkin at 202–268–2537.

SUPPLEMENTARY INFORMATION: The Postal Service hereby gives notice that, pursuant to 39 U.S.C. 3622, on October 12, 2016, it filed with the Postal Regulatory Commission a *Notice of Market-Dominant Price Adjustment.* Proposed prices and other documents relevant to this filing are available under Docket No. R2017–1 on the PRC's Web site at *www.prc.gov.*

This proposed rule includes price changes for certain international extra services.

First-Class Mail International

We propose no increase to prices for single-piece First-Class Mail International® letters, postcards, and flats. The price of a single piece 1-ounce letter is proposed to continue to be $1.15. The First-Class Mail International letter nonmachinable surcharge will not increase.

International Extra Services and Fees

The Postal Service proposes to increase prices for certain market dominant international extra services including:

- Certificate of Mailing (5.36%)
- Registered Mail™ (11.57%)
- Return Receipt (4.1%)
- Customs Clearance and Delivery Fee (4.3%)
- International Business Reply™ Service (average of 2.9%).

Extra Services

CERTIFICATE OF MAILING

Individual pieces	Fee
Individual article (PS Form 3817)	$1.35
Firm mailing books (PS Form 3665), per article listed (minimum 3)	0.39
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	1.35
Bulk quantities	**Fee**
First 1,000 pieces (or fraction thereof)	$7.95
Each additional 1,000 pieces (or fraction thereof)	0.99
Duplicate copy of PS Form 3606	1.35

Registered Mail

Fee: $14.95.

Return Receipt

Fee: $3.85.

Customs Clearance and Delivery

Fee: per piece $6.00.

International Business Reply Service

Fee: Cards $1.35; Envelopes up to 2 ounces $1.85.

Following the completion of Docket No. R2017–1, the Postal Service will adjust the prices for products and services covered by the International Mail Manual. These prices will be on *Postal Explorer* at *pe.usps.com.*

Additionally, as general information, the product name of Standard Mail®, which is used in two instances in the International Mail Manual but is not an International product, will change to USPS Marketing Mail effective January 22, 2017.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, we propose to amend 39 CFR part 20 as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

1 International Mail Services

110 General Information

* * * * *

116 Trademarks of the USPS

116.1 USPS Trademarks in the IMM

* * * * *

Exhibit 116.1 USPS Trademarks in the IMM

[Delete Standard Mail and add USPS Marketing Mail in correct alphabetical order]

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7 Treatment of Inbound Mail

* * * * *

760 Forwarding

* * * * *

762 Mail of Domestic Origin

762.1 Addressee Moved to Another Country

* * * * *

762.12 Mail Other Than Letters and Postcards

[In the first sentence, delete the term Standard Mail and replace it with USPS Marketing Mail to read as follows:]

Domestic mail (Periodicals mail, USPS Marketing Mail, and Package Services) addressed to a domestic addressee who has moved to another country must not be forwarded to another country but must be returned to the sender.* * *

* * * * *

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–24968 Filed 10–14–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products

AGENCY: Postal Service™.

ACTION: Proposed Rule.

SUMMARY: In October 2016, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective January 22, 2017. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) that we would adopt to implement the changes coincident with the price adjustments.

DATES: We must receive comments on or before November 16, 2016.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza SW., Room 4446, Washington DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday, by calling 1–202–268–2906 in advance. Email comments, containing the name and address of the commenter, may be sent to: *ProductClassification@usps.gov,* with a subject line of ''January 2017 Domestic Mailing Services Proposal.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Audrey Meloni at (856) 933–4360 or Lizbeth Dobbins at (202) 268–3789.

SUPPLEMENTARY INFORMATION: Proposed prices will be available under Docket Number(s) R2017–1 on the Postal Regulatory Commission's Web site at *www.prc.gov.*

The Postal Service's proposed rule includes: Changes to prices, several mail classification updates, mailpiece marking changes, modifications to mailpiece weights and mail preparation categories, multiple product simplification efforts, a few minor revisions to the DMM to condense language and eliminate redundancy, a change to the redemption period of a money order claim from two years to one year, the addition of Official Mail Accounting System (OMAS) stamp shipment fee language, and updates to Enterprise Post Office Box Online (ePOBOL) process that changes payment periods for online Post Office Box activity.

Flats Sequencing System (FSS)—Overview of Changes

As background, the Postal Service required bundle and pallet preparation of flat-size Standard Mail®, Periodicals, and Bound Printed Matter mailpieces for delivery within ZIP Codes™ served by FSS processing in the December 18, 2013 **Federal Register** final rule [78 FR 76533–76548] which was incorporated into the DMM on January 26, 2014. Subsequently, on May 31, 2015, the Postal Service introduced FSS-specific price structures for flat-sized Bound Printer Matter, Standard Mail, and Periodicals mailpieces, pursuant to PRC Order no. 2472, issued on May 7, 2015. This current **Federal Register** proposal if adopted, removes all FSS-specific pricing structures from Periodicals, Standard Mail and Bound Printed Matter but leaves mail preparation requirements intact with a few updated requirements. One change, for example, requires mailers to add necessitate optional endorsement lines (OEL) on each FSS scheme mailpiece.

Again, FSS preparation rules remain intact for Standard Mail, Periodicals and Bound Printed Matter for applicable FSS zones as defined by Labeling List L006. The required carrier route separation is new for Standard Mail High Density and High Density Plus and for Saturation bundles. As a reminder, all presorted and carrier route Bound Printed Matter (BPM) , and Periodicals flats meeting the standards in 201.6.2 must be sorted to FSS schemes, properly bundled and placed on or in pallets, trays, sacks or approved containers, for FSS scheme ZIP Code combinations within the same facility. Mailings (excluding saturation mailings of Standard Mail) with non presorted BPM flats may be included in FSS preparation, but will not be eligible for presorted, or carrier route prices.

To reiterate, all mailpieces in a 5-digit scheme FSS bundle must be identified with an optional endorsement line (OEL), as described in DMM 708.7.0. Mailpieces entered under a combined mailing of Standard Mail and Periodicals flats (DMM 705.15.0) still include class and price markings, applicable to the price paid, in addition to the OEL.

Periodicals, Standard Mail, and Bound Printed Matter flats properly included in a FSS scheme pool qualify for the piece price applied prior to inclusion in the FSS scheme pool with the following exceptions for Standard Mail: (1) A carrier route mailpiece in a FSS bundle on a FSS scheme pallet will receive the Basic CR-Bundles/Pallet price and (2) a carrier route mailpiece in a FSS bundle on a FSS facility pallet will receive the Basic CR price. Additional information on each mail class affected is under the Bound Printed Matter, Periodicals, and Standard Mail sections in this proposal.

First-Class Mail

Combine First-Class Mail Commercial Automation Automated Area Distribution Center (AADC) and 3-Digit Sortations for Letters and Cards Into One Combined Sortation Level Known as AADC

Currently, there are four presort levels for First-Class Mail Commercial Automation Letters and Cards: Mixed AADC Automation Letters (Cards), AADC Automation Letters (Cards), 3-Digit Automation Letters (Cards), and 5-Digit Automation Letters (Cards). To help simplify the pricing structure, the Postal Service implemented the same price for AADC Automation Letters and 3-Digit Automations Letters in Docket No. R2012–3. In Docket No. R2013–1, the similar change was made for Automation Cards. The Postal Service is now proposing to combine AADC and 3-Digit presort levels into one sortation. The new sortation name will be AADC. The existing labeling List 801 will drive the FCM AADC separations and the L003 list will become obsoleted. Origin entry separations, based on labeling List 002, will be modified to reflect origin entry AADC separations.

Increase the Weight Standard for First-Class Mail (FCM) Commercial Automation and Machinable Letters and Cards From uP to 3.3 Ounces to Up to 3.5 Ounces

Currently, the ''up to'' weight standard for FCM Commercial Machinable Letters is 3.3 ounces. This lower weight break of up to 3.3 ounces is being increased due to mail processing improvements. Since machinable letters must follow the standards for Automation Letters (except for IMb), the same weight maximum should apply. Based on this, the Postal Service is proposing to increase the weight maximum from 3.3 ounces to 3.5 ounces. This change does not apply to the maximum weight of Booklets which are capped at 3.0 ounces.

One Price for Up to 3.5 Ounces for First-Class Mail (FCM) Commercial Automation Letters

Currently, the same price applies for one and two ounce pieces for each individual mail sortation level for First-Class Mail (FCM) Commercial Automation Letters. The Postal Service is proposing one price for up to 3.5 ounces for each individual mail sortation level for FCM Commercial Automation Letters. The weight increase will encourage mailers to insert additional information or sales offers, and will increase the value of the FCM brand. This proposal will also apply to mixed-weight FCM *Residual* mailings up to 3.5 ounces. The current preparation requirements for non-blended trays, such as one ounce, up to two ounces, and now extending to 3.5 ounces will continue if this proposal is adopted. This change does not include FCM Single-Piece Letters (non-Residual) or FCM Flats.

Simplification and Renaming FCM Alternate Postage to FCM Share Mail

The Postal Service is proposing to rename Alternate Postage to Share Mail. This **Federal Register** notice reiterates the content of a previous announcement of this proposal published in the June 9, 2016 Postal Bulletin issue #22443. Share Mail allows Postal Service customers to distribute single-piece First-Class Mail letters or cards to consumers, who may in turn mail those pieces to any domestic address, without having to affix postage. Share Mail pieces are permitted to weigh up to one ounce each. Payment is collected electronically from the customer's Postage Due and Centralized Accounting Postage System (CAPS) Account. Invoicing is performed manually, by the Postal Service's Share Mail Program Office in Marketing.

Share Mail has proven to be a viable option for senders to share information with numerous recipients. To continue the Postal Service's efforts to simplify its product line, the Share Mail payment tiers will be collapsed into one, and upfront postage payment requirements will be eliminated. Unique Intelligent Mail barcodes are no longer required nor is a signed Marketing Agreement. Picture Permit will no longer be available in order to help expedite its approval process. A customer who wishes to participate must submit a request to the Share Mail Program Office along with production pieces to ensure readability for postal processing. Share Mail relies on Intelligent Mail barcode (IMb) technology and scan data collected as the mailpiece travels through the mailstream to determine piece counts, so readability is paramount.

Periodicals

Eliminate Flats Sequencing System (FSS) Pricing

The Postal Service is proposing to eliminate the FSS-specific price structures for Periodicals Outside-County. FSS preparation will still be required and all FSS marking requirements will remain as is. Outside-County Periodicals flats properly included in a FSS scheme pool, qualify for the price applied prior to the FSS scheme pool. If a FSS scheme pallet is drop shipped to a DFSS facility, the pallet will receive Carrier Route pallet pricing. If a FSS facility pallet is drop shipped to a DFSS facility the pallet will receive DSCF pallet pricing. Qualifying FSS scheme pieces entered at a DFSS facility receive DSCF pound pricing. FSS scheme bundles on an FSS scheme pallet will receive carrier route bundle prices. FSS scheme bundles on an FSS facility pallet will receive 3-digit/SCF bundle pricing. FSS scheme and facility sack/trays or other authorized container will receive 3-digit/SCF sack/tray prices.

Standard Mail

Renaming Standard Mail to ''USPS Marketing Mail''

The Postal Service is proposing to rename Standard Mail to ''USPS Marketing Mail''. This name change will better communicate to our customers the message that Standard Mail fits into their marketing mix.

The 2015 Household Diary Study shows that customers primarily use Standard Mail to send advertisements. According to the study, taken in Fiscal Year 2015, 84.1 percent of Standard Mail volume [1] received by households, contained advertising. Standard Mail is a primary tool for customers to *market* a product, service, or an organization. Renaming Standard Mail to ''USPS Marketing Mail'' will make it easier for customers to understand what Standard Mail is and how it can be used. The name change further supports the customer engagement message of direct mail, reinforces Postal Service initiatives to promote combining physical and digital advertising formats as part of the omni-channel outreach. This outreach is encouraged by the USPS 2017 Mail Promotions, and enhances the value of the Postal Service's brand. To help smooth the transition for this change, the Postal Service will modify postage statements and the DMM for January 2017 and implement other changes to postal forms or documents during the normal update cycles. The initial implementation date for mailers to adopt the new USPS Marketing Mail abbreviations (such as MKT in lieu of for STD) is July 1, 2017. Abbreviations and examples of permit imprints will be available in a future Postal Bulletin.

Bound Printed Matter

Eliminate Flat Sequencing System (FSS) Pricing

The Postal Service is proposing to eliminate FSS-specific price structures for Bound Printed Matter Flats. FSS preparation will still be required and all FSS marking requirements will remain as is. Bound Printed Matter flat pieces included in an FSS scheme bundle pool qualify for zone and entry piece pricing and pound pricing. If an FSS container is drop shipped to a DFSS facility, those pieces will receive DSCF pricing.

[1] John Mazzone & Samie Rehman, *The Household Diary Study: Mail Use & Attitudes in FY 2015,* United States Postal Service (May 2016). Available at: *http://www.prc.gov/docs/96/96795/Household%20Diary%202015_2.pdf.*

[1] *The Household Diary Study,* Table A3–1.

Combine AADC and 3 Digit Automation Sorts for Letters Into One Sort level

Currently there are four presort levels for Standard Mail and Standard Mail Nonprofit Automation Letters: Mixed AADC Automation Letters, AADC Automation Letters, 3-Digit Automation Letters, and 5-Digit Automation Letters. To help simplify the pricing structure, the Postal Service implemented the same price for AADC Automation Letters and 3-Digit Automations Letters in Docket No. R2013–1. The Postal Service is now proposing to combine these two presort levels (AADC and 3-Digit) into one sortation. The new sortation name will be AADC if this proposal is adopted.

Increase the Weight Standard for Standard Mail and Standard Mail Nonprofit Nonautomation Machinable Letters From Up to 3.3 Ounces to Up to 3.5 Ounces

Currently, the ''up to'' weight standard for Standard Mail and Standard Mail Nonprofit Machinable Letters is 3.3 ounces. This lower weight break of up to 3.3 ounces is no longer needed due to improvements in mail processing equipment. Since machinable letters must follow the standards for Automation Letters (except for the IMb standards), the weight maximum should also follow. Thus the Postal Service is proposing to increase the weight maximum from 3.3 ounces to 3.5 ounces. This change does not include Standard Mail Ride-Along mailpieces which are capped at 3.3 ounces and are inserted into a host Periodicals mailpiece.

It's important for both the Industry and the Postal Service to evaluate the effects of higher weight breaks for First-Class Mail automation letters and cards along with Standard Mail letters. Collaboration and feedback throughout calendar year 2017 will be critical in helping to determine whether higher weights cause processing and/or address quality metrics to be put at risk.

Reduce Simple Sample Tiers

There are currently six volume tiers for Standard Mail Commercial and Nonprofit Simple Samples. Based on the volume thresholds currently used by most customers, the Postal Service is proposing to collapse the existing six tiers into two new tiers: Volumes up to and equal to 200,000 pieces, and volumes greater than 200,000 pieces.

Eliminate Flat Sequencing System (FSS) Pricing

The Postal Service is proposing to eliminate the FSS-specific price structures within Standard Mail and Standard Mail Nonprofit. FSS preparation will still be required and all FSS marking requirements will remain intact. Standard Mail and Standard Mail Nonprofit flats properly included in a FSS scheme pool, qualify for the price applied prior to the FSS scheme pool with the following exceptions: (1) A carrier route mailpiece in an FSS bundle on an FSS scheme pallet will receive the Basic CR-Bundles/Pallet price, and (2) a carrier route mailpiece in a FSS bundle on an FSS facility pallet will receive the Basic CR price. If an FSS pallet is drop shipped to a DFSS facility, those pieces will receive DSCF pricing.

Increase Standard Mail and Standard Mail Nonprofit Flats, Nonautomation Letters, and Nonmachinable Letters Piece Price Weight Break Structure From 3.3 Ounces to 4.0 Ounces

The current piece/pound price structure for Standard Mail and Standard Mail Nonprofit Flats, Nonautomation Letters, and Nonmachinable Letters does not provide a simple, clear view of the actual price of a mailing especially when here are nonidentical-weight pieces when some pieces are between 3.3 and 4 ounces. The Postal Service is proposing to increase the Standard Mail and Standard Mail Nonprofit Flats, and Nonautomation and Nonmachinable Letters piece price weight break structure from 3.3 ounces to 4.0 ounces. Pieces up to 4 ounces will pay the same price and a pound price will apply over 4 ounces. This proposal does not include Nonautomation Machinable Letters.

Extra Services

Collect on Delivery (COD) Redesign

Currently, Collect on Delivery allows for both street delivery and Hold for Pickup (HFPU) options and is available at Retail locations, online, and through commercial channels. Letter Carriers may accept cash, money order or checks for the amount due up to $1,000.00 from the recipient upon delivery. Recipients of COD shipments can currently pick up their items at USPS Retail locations or wait for a USPS Letter Carrier to deliver them to a street address. Carriers may have to redeliver COD pieces at the street address if the customer is not home or able to pay on the first attempt.

The Postal Service is proposing to make Hold For Pickup the only delivery method for Collect on Delivery items. COD items would be addressed to the delivery address of the recipient's Post Office. The recipient would receive a notification message to pick-up the item at the Post Office. A reminder email,

text or phone call message will be sent for Priority Mail Express shipments on day 3 and for all other packages on day 5. After 5 days, Priority Mail Express shipments will be returned to sender. After 15 days all other shipments returned to the sender. As a result of these changes the sender will have their items back in less time than under the current delivery attempt processes. Holding all COD shipments for pick-up has the potential to reduce delivery costs for the Postal Service, as well as ensure prompt payment for the sender.

Returns Simplification

Eliminate BRM Parcels Permit & Account Maintenance Fee

Currently, Business Reply Mail (BRM) consists of letters, flats, and parcels. Occasionally BRM customers choose to use Business Reply Mail for return parcels because they possessed a BRM permit for inbound correspondence. The Postal Service is proposing to waive the annual permit fee for those current customers using BRM exclusively for return parcels. This will align BRM parcels with other returns products. BRM permit fees for letters and flats, and for weight-averaged BRM letters, flats & parcels, will remain.

Eliminate QBRM Permit Fees

To further support simplification, the Postal Service is also proposing to eliminate the annual permit fees for Business Reply Customers who use only QBRM Basic and High Volume Qualified for letters and cards. All other fees and postage pricing remain intact.

Implement a Simplified Approach for Shipping Services

The Postal Service is proposing to eliminate the fees for certain outbound and return permits used for parcel shipments including associated annual account maintenance fees. This proposal streamlines the application and returns process and also eliminates the need to pay permit application fees for additional entry points. Shipping Products included under this umbrella are outbound shipments of Priority Mail Express, Priority Mail, First-Class Package Service, Parcel Select (including Parcel Select Lightweight), Bound Printed Matter, Media Mail, Library Mail and for return shipments of MRS, Parcel Return Service and BRM (parcels only).

Address Correction Service

Adjust Standard Mail Forwarding Fee to 2 Decimal Places

Currently, Standard Mail Letters and Flats mailers that use this service are charged the Forwarding Fee via Address Correction Service (ACS) billing which is managed by the ACS Department of Address Management Systems in Memphis, TN. The ACS data file, Shipping Notice data file, and the Invoice data file have an implied decimal position that is conducive to the 2-decimal places for address correction services. When mailers use these files to track their ACS fees and costs, they must recognize that the Forwarded Fee product codes have an implied 3-decimal place price and must manipulate the data files provided to them through ACS so that the decimal place differences are recognized in all of the data files provided via ACS. This proposal would adjust the Standard Mail Forwarding Fee to 2-decimal point places to allow mailers to track their ACS fees and costs without making adjustments for the Forwarding Fees.

Money Order Redemption Period

To help simplify Postal accounting procedures and comport with Banking Industry Standards, and other companies' comparable money order offerings, the Postal Service proposes to change the time limit for claims for improper payment to a limit of one year. This language will be updated on the reverse side of the domestic and international money order form so the purchaser is aware of the time limit.

Enterprise PO Boxes Online (ePOBOL) Payment Process Change

The U.S. Postal Service continues to seek opportunities to streamline mailers' experience when using our products and services. For example, we plan to allow Enterprise PO Boxes Online customers to modify their current payment period to align their multiple PO Boxes, Caller Service, and Reserve payments to one due date per year, when using an Enterprise Payment Account (EPA).

Eligible customers will be allowed to pay pro-rated fees, on a one time basis to align all payments to a selected annual renewal date in the future. This method is optional and will be available for all of an eligible customer's PO Boxes and Caller Service numbers. When the true-up date is reached they will continue to pay for the 12 month term as committed when first enrolled in the Enterprise Payment Account.

OMAS Stamp Delivery Fee

Federal Agencies Ordering Stamps From the Stamp Fulfillment Center

Federal agencies have the option today to order stamps from the USPS Stamp Fulfillment Services in Kansas City and to pay for the stamps through their Official Mail Accounting System (OMAS) accounts.

It has been a long-standing practice to charge customers other than federal agencies a nominal handling fee for all purchases ordered through Stamp Fulfillment Services. Beginning January 1, 2017, these fees will apply to federal agencies using OMAS.

The handling fee schedule can be found in section 1560 of the *Mail Classification Schedule,* under References, on the Postal Regulatory Commission Web site at *http://www.prc.gov/*.

Resources

The Postal Service provides additional resources to assist customers with this price change for competitive products. These tools include price lists, downloadable price files, and **Federal Register** Notices, which may be found on the Postal Explorer® Web site at *pe.usps.com*.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Incorporation by reference, Postal Service.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1. Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

100 Retail Letters, Cards, Flats, and Parcels

* * * * *

110 Priority Mail Express

* * * * *

115 Priority Mail Express—Mail Preparation

* * * * *

2.0 Priority Mail Express 1-Day and 2-Day

* * * * *

2.3 Signature Required

[Revise the last sentence of 2.3 to read as follows:]

* * * A mailer must select signature service for Priority Mail Express COD HFPU, or Priority Mail Express with additional insurance.

* * * * *

200 Commercial Letters, Cards, Flats, and Parcels

201 Physical Standards

* * * * *

4.0 Physical Standards for Flats

* * * * *

4.7 Flat-Size Pieces Not Eligible for Flat-Size Prices

* * * * *

Exhibit 4.7b Pricing for Flats Exceeding Maximum Deflection (see 4.6)

[Revise Exhibit 4.7b as follows:]

* * * * * * *	
PERIODICALS OUTSIDE COUNTY	
Piece price eligibility as presented	*Piece price eligibility with failed deflection.*
[Delete Machinable barcoded FSS]	*[Delete Nonmachinable barcoded 5-digit flat.*
* * * * * * *	
[Delete Machinable nonbarcoded FSS]	*[Delete Nonmachinable nonbarcoded 5-digit flat].*
* * * * * * *	
STANDARD MAIL	
Eligibility as presented	*Eligibility with failed deflection.*
[Delete Automation FSS Sch Pallet, Automation FSS Other, Automation FSS Sch Cont., and Automation FSS Facility Cont.].	*[Delete Nonautomation FSS Sch Pallet, Nonautomation FSS Other, Nonautomation FSS Sch Cont., and Nonautomation FSS Facility Cont.].*
* * * * * * *	
BOUND PRINTED MATTER	
Eligibility as presented	*Eligibility with failed deflection.*
* * * * * * *	
[Delete Barcoded/nonbarcoded FSS Sch flat]	*[Delete Presorted parcel].*

* * * * *

207 Periodicals

* * * * *

12.0 Nonbarcoded (Presorted) Eligibility

* * * * *

12.3 Prices—In-County

* * * * *

12.3.2 Three-Digit Prices

3-digit prices apply to:

* * *

[Add new item c as follows:]

c. Qualifying flats sorted to a FSS scheme under 705.14.0.

* * * * *

13.0 Carrier Route Eligibility

* * * * *

13.2 Sorting

13.2.1 Basic Standards

* * * * *

b. *Nonletter-size mailings.* Carrier route prices apply to carrier route bundles that are sorted in one of the following ways:

[Revise item 13.2.1b1 to read as follows:]

1. Bundles sorted onto pallets prepared under 705.8.0, 705.10.0, 705.12.0, 705.13.0 or 705.14.0, as appropriate.

* * * * *

14.0 Barcoded (Automation) Eligibility

* * * * *

14.4 Prices—In-County

* * * * *

14.4.2 Three-Digit Prices

3-digit automation prices apply to:

* * *

[Add new item c as follows:]

c. Qualifying flats sorted to a FSS scheme under 705.14.0.

* * * * *

17.0 Documentation

* * * * *

17.4.0 Detailed Zone Listing for Periodicals

17.4.1 Basic Standards

[Revise the first sentence of 17.4.1 to read as follows:]

The publisher must be able to present documentation to support the actual number of copies of each edition of an issue, by entry point, mailed to each zone, at DDU, DSCF, DADC, DFSS (DFSS entered with DSCF prices) and In-County prices. * * *

17.4.2 Format

Report the number of copies mailed to each 3-digit ZIP Code area at zone prices using one of the following formats:

* * * * *

[Revise the first sentence of item b to read as follows.]

b. Report copies by zone (In-County DDU, In-County others, Outside-County DDU, Outside-County DSCF, Outside-County DSCF entered at a DFSS and Outside-County DADC) and by 3-digit ZIP Code, in ascending numeric order, for each zone. * * *

17.4.3 Zone Abbreviations

Use the actual price name or the authorized zone abbreviation in the listings in 17.3 and 17.4.2

Zone abbreviation	Price equivalent
* * * * * * *	
[Revise the Price Equivalent for FSS to read as follows.]	
FSS	Outside-County, DSCF (mail entered at a DFSS).

* * * * *

18.0 General Mail Preparation

* * * * *

18.5 FSS Preparation

[Revise the text of 18.5 to read as follows.]

Flat sized Periodicals In-County priced mailings, along with a maximum of 5,000 Outside-County pieces for the same issue (see 1.1.4) may be optionally sorted under FSS preparation standards. All other Periodicals flats including Saturation (Non-simplified addressed) and High Density priced flats destinating and qualifying to FSS zones in L006, must be prepared under 705.14.0.

* * * * *

29.0 Destination Entry

* * * * *

29.4 Destination Sectional Center Facility

* * * * *

29.4.2 Price Eligibility

[Revise the text of 29.4.2 to read as follows.]

Determine price eligibility as follows:

a. Pound Prices. Outside-County pieces are eligible for DSCF pound prices when placed on an SCF or more finely presorted container, deposited at the DSCF, DFSS or USPS-designated facility (see also 29.4.2b), and addressed for delivery within the DSCF's or DFSS service area. Nonletter-size pieces are also eligible when the mailer deposits 5-digit bundles at the destination delivery unit (DDU) (the facility where the carrier cases mail for delivery to the addresses on the pieces) and the 5-digit bundles are in or on the following types of containers:

1. A merged 5-digit scheme or merged 5-digit sack.

2. A merged 5-digit scheme, merged 5-digit, or 5-digit scheme pallet.

b. Container Prices. Mailers may claim the DSCF container price for SCF or FSS and more finely presorted containers that are entered at and destined within the service area of the SCF or FSS at which the container is deposited.

29.5 Destination Flat Sequencing System (DFSS) Facility Entry

* * * * *

29.5.2 Eligibility

[Revise the first sentence of 29.5.2 to read as follows.]

DSCF prices apply to eligible FSS pieces deposited at a USPS-designated FSS processing facility and correctly placed in a flat tray, sack, alternate approved container or on a pallet, labeled to a FSS scheme processed by that facility, under labeling list L006, column B or C.

* * * * *

210 Priority Mail Express

* * * * *

215 Priority Mail Express—Mail Preparation

* * * * *

2.0 Priority Mail Express 1-Day and 2-Day

* * * * *

2.3 Signature Required

[Add the following text to 2.3 as the last sentence.]

* * * A mailer must select signature service for Priority Mail Express COD HFPU, or Priority Mail Express with additional insurance.

* * * * *

230 First-Class Mail

233 Prices and Eligibility

* * * * *

5.0 Additional Eligibility Standards for Automation First-Class Mail

* * * * *

5.4 Price Application—Automation Cards and Letters

Automation prices apply to each piece that is sorted under 235.6.0 into the corresponding qualifying groups:

[Revise the text in items a, b, and c to read as follows.]

a. Groups of 150 or more pieces in 5-digit/scheme trays qualify for the 5-digit price. Preparation to qualify for the 5-digit price is optional. Pieces placed in full AADC trays in lieu of 5-digit/scheme overflow trays under 235.6.5 are eligible for the 5-digit prices.

b. Groups of 150 or more pieces in AADC trays qualify for the AADC price.

c. Groups of fewer than 150 pieces in AADC origin and pieces placed in mixed AADC trays in lieu of AADC overflow trays under 235.6.5 are eligible for the AADC prices.

* * * * *

235 Mail Preparation

1.0 General Definition of Terms

* * * * *

1.3 Terms for Presort Levels

1.3.1 Letters and Cards

Terms used for presort levels are defined as follows:

[Delete items c through f and renumber items g through j as new c through f]

* * * * *

6.0 Preparing Automation Letters

* * * * *

6.2 Mailings

The requirements for mailings are as follows:

* * * * *

[Revise item b to read as follows.]

b. First-Class Mail. A single automation price First-Class Mail mailing may include pieces prepared at 5-digit, AADC, and mixed AADC prices.

* * * * *

6.5 Tray Preparation

[Revise the introductory text of 6.5 to read as follows.]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in an existing qualified tray of at least 150 or more pieces at the next tray level. (For example, if a mailer has 30 overflow 5-digit pieces for ZIP Code 20260, these pieces may be added to an existing qualified AADC tray for the correct destination (ZIP Code prefix 202) and the overflow 5-digit pieces will still qualify for the 5-digit price.). Mailers must note these trays on standardized documentation (see 708.1.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front or back of that tray. Mailers may use this option selectively for AADC ZIP Codes. This option does not apply to origin/entry trays. Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[Delete item b and renumber items c and d as b and c.]

[Revise renumbered item b to read as follows.]

b. AADC: Optional, but required for AADC price (150-piece minimum except no miminum for origin entry AADC); overflow allowed; group pieces by 3-digit (or 3-digit scheme) ZIP Code. For Line 1, use L801, Column B.

6.6 Tray Line 2

Line 2: ''FCM LTR'' and:

* * * * *

[Delete items c and d and renumber items e and f as c and d.]

* * * * *

240 USPS Marketing Mail

243 Prices and Eligibility

* * * * *

4.0 Price Eligibility for USPS Marketing Mail

* * * * *

4.2 Minimum Per Piece Prices

The minimum per piece prices (the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Revise the second sentence of item c to read as follows.]

c. * * * Except for Customized MarketMail pieces, discounted per piece prices also may be claimed for destination network distribution center (DNDC), destination sectional center facility (DSCF), and destination delivery unit (DDU)) under 246. * * *

4.3 Piece/Pound Prices

[Revise the last sentence of 4.3 to read as follows.]

* * * Discounted per pound prices also may be claimed for destination entry mailings-DNDC, DSCF, and DDU under 246.

* * * * *

5.0 Additional Eligibility Standards for Nonautomation USPS Marketing Mail Letters, Flats, and Presorted Standard Mail Parcels

* * * * *

5.6 Nonautomation Price Application—Flats

5.6.1 5-Digit Prices for Flats

The 5-digit price applies to flat-size pieces:

[Add new item d as follows.]

* * * * *

d. In an FSS bundle of 10 or more pieces properly placed in sack of at least 125 pieces or 15 pounds of pieces or on a pallet under 705.14.0.

5.6.2 3-Digit Prices for Flats

* * * * *

[Add new item c as follows.]

c. In an FSS bundle of 10 or more pieces properly placed in sack of at least 125 pieces or 15 pounds of pieces or on a pallet under 705.14.0.

* * * * *

[Delete items 5.6.5 and 5.6.6]

* * * * *

6.0 Additional Eligibility Standards for Enhanced Carrier Route USPS Marketing Mail Letters and Flats

* * * * *

6.3 Basic Price Enhanced Carrier Route Standards

* * * * *

6.3.3 Basic Price Eligibility—Flats

Basic prices apply to each piece in a carrier route bundle of 10 or more pieces that is:

[Revise item a to read as follows.]

a. Palletized under 705.8.0, 705.10.0, 705.12.0, 705.13.0 or 705.14.0 (FSS scheme bundles).

* * * * *

6.5 High Density and High Density Plus (Enhanced Carrier Route) Standards—Flats

* * * * *

6.5.2 High Density and High Density Plus Prices for Flats

High density or high density plus prices apply to each piece meeting the density standards in 6.5.1 or in a carrier route bundle of 10 or more pieces that is:

[Revise item a to read as follows.]

a. Palletized under 705.8.0, 705.10.0, 705.12.0, 705.13.0 or 705.14.0 (FSS scheme bundles).

* * * * *

7.0 Eligibility Standards for Automation USPS Marketing Mail

* * * * *

7.4 Price Application for Automation Letters

Automation prices apply to each piece that is sorted under 245.10.0, into the corresponding qualifying groups:

* * * * *

[Delete item b and renumber item c as item b.]

[Revise renumbered item b to read as follows.]

b. Groups of fewer than 150 pieces in origin/entry AADC trays qualify for the AADC price. Pieces placed in mixed AADC trays under 245.7.5 in lieu of AADC overflow trays also are eligible for AADC prices (see 245.7.5).

* * * * *

7.5 Price Application for Automation Flats

Automation prices apply to each piece properly sorted into qualifying groups:

[Revise items a and b to read as follows.]

a. The 5-digit price applies to flat-size pieces in a 5-digit/scheme bundle or pooled in a FSS scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable;

b. The 3-digit price applies to flat-size pieces in a 3-digit/scheme bundle or pooled in a FSS scheme bundle of 10 or more pieces.

* * * * *

[Delete items e through h.]

* * * * *

245 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.6 FSS Preparation

[Revise the text of 1.6 to read as follows.]

Except for Standard Mail flats mailed at Saturation prices, all Standard Mail flats and meeting the physical standards in 201.6.2 destinating to a FSS scheme in accordance with labeling list L006 must be prepared under 705.14.0.

* * * * *

7.0 Preparing Automation Letters

* * * * *

7.5 Tray Preparation

[Revise the introductory text to read as follows.]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in an existing qualified tray of at least 150 or more pieces at the next tray level. (For example, if a mailer has 30 overflow 5-digit pieces for ZIP Code 20260, these pieces may be added to an existing qualified AADC tray for the correct destination and the overflow 5-digit pieces will still qualify for the 5-digit price). Mailers must note these trays on standardized documentation (see 708.1.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front or back of that tray. Mailers may use this option selectively for AADC ZIP Codes. This option does not apply to origin/entry AADC trays. Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[Delete item b and renumber items c and d as items b and c.]

[Revise renumbered item b to read as follows.]

c. AADC: optional, but required for AADC price (150-piece minimum except no minimum for origin entry AADC); overflow allowed; group pieces by 3-digit (or 3-digit scheme) ZIP Code prefix. For Line 1, use L801, Column B.

* * * * *

7.6 Tray Line 2

Line 2: ''STD LTR'' and:

[Delete items c and d and renumbered items e and f as c and d.]

* * * * *

246 Enter and Deposit

* * * * *

6.0 Destination Flat Sequencing System (DFSS) Facility Entry

* * * * *

6.2 Eligibility

[Revise the first sentence of 6.2 to read as follows.]

DSCF prices apply to pieces deposited at a USPS-designated FSS processing site and correctly placed in or on a container labeled to a FSS scheme or FSS Facility processed by that site under labeling list L006 (Column B or Column C).

* * * * *

260 Bound Printed Matter

263 Prices and Eligibility

1.0 Prices and Fees for Bound Printed Matter

1.1 Nonpresorted Bound Printed Matter

1.1.1 Prices

[Revise the second sentence of 1.1.1 to read follows.]

* * * The nonpresorted price applies to BPM not mailed at the Presorted or carrier route prices. * * *

* * * * *

1.2 Presorted and Carrier Route Bound Printed Matter

* * * * *

1.2.3 Price Application

[Revise the first sentence of 1.2.3 to read as follows.]

The presorted Bound Printed Matter price has a per piece charge and a per pound charge. * * *

* * * * *

1.2.8 Computing Postage for Permit Imprint

[Revise the introductory text of 1.2.8 to read as follows.]

Presorted and Carrier Route Bound Printed Matter mailings paid with permit imprint are charged a per pound price and a per piece price as follows:

* * * * *

4.0 Price Eligibility for Bound Printed Matter

4.1 Price Eligibility

BPM prices are based on the weight of a single addressed piece or 1 pound, whichever is higher, and the zone (where applicable) to which the piece is addressed. Price categories are as follows:

* * * * *

[Revise items b and c to read as follows.]

b. Presorted Price. The Presorted price applies to BPM prepared in a mailing of at least 300 BPM pieces, prepared and presorted as specified in 265.5.0, 265.8.0, 705.8.0, 705.14.0 and 705.21.0. Each parcel must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

c. Carrier Route Price. The Carrier Route price applies to BPM prepared in a mailing of at least 300 pieces presorted to carrier routes, prepared and presorted as specified in 265.6.0, 265.9.0, 705.8.0 or 705.14.0. Each parcel must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

* * * * *

4.2 Destination Entry Price Eligibility

[Revise the first sentence of the introductory text to read as follows.]

BPM destination entry prices apply to BPM mailings prepared as specified in 705.8.0, 705.14.0 and 265, and addressed for delivery within the service area of a destination network distribution center, sectional center facility, or delivery unit where they are deposited by the mailer. * * *

* * * * *

[Revise item b to read as follows.]

b. A destination sectional center facility (DSCF) includes all facilities in L005 and destination flats sequencing system (DFSS) in L006.

* * * * *

265 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.6 FSS Preparation

[Revise text of 1.6 to read as follows.]

BPM flats claiming presorted prices in FSS scheme bundles, meeting the standards in 201 and destinating to a FSS scheme in accordance with labeling list L006, must be prepared under 705.14.0.

* * * * *

266 Enter and Deposit

* * * * *

5.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

5.2 Presorted Flats

[Revise the text of 5.2 to read as follows.]

Presorted flats and automation flats in sacks for the FSS scheme, 5-digit, 3-digit, and SCF sort levels or on pallets at the 5-digit scheme, 5-digit, 3-digit, SCF, and ASF sort levels may claim DSCF prices. Mail must be entered at the appropriate facility under 5.1.

* * * * *

7.0 Destination Flat Sequencing System (DFSS) Facility Entry

* * * * *

7.2 Eligibility

[Revise the first sentence of 7.2 to read as follows.]

DSCF prices apply to pieces deposited at a USPS-designated FSS processing facility and correctly placed on a container labeled to a FSS scheme or a

FSS facility processed by that facility or to a single 5-digit destination processed by that facility under labeling list L006.

* * * * *

503 Extra and Additional Services

503.1.0 Basic Standards for All Extra Services

* * * * *

1.4 Matter Eligible for Extra Services

1.4.1 Eligible Matter

* * * * *

Exhibit 1.4.1 Eligible Matter—Domestic Destinations

[Revise Exhibit 1.4.1 as follows.]

Extra service	Eligible mail class	Additional combined services
Registered Mail * * *	* * *	*[Revise Registered Mail COD to read Registered Mail COD HFPU]* * * *
* *	* * *	* *
Return Receipt * * *	* * *	* * * *[Revise Collect on Delivery and Collect on Deliver Restricted Delivery to read as follows]* Collect on Delivery HFPU Collect on Delivery HFPU Restricted Delivery * * *
USPS Signature Services		
Signature Confirmation	* * *	*[Revise Collect on Delivery to read as follows.]* Collect on Delivery Hold for Pickup (COD HFPU) * * *
Signature Confirmation Restricted Delivery	* * *	*[Revise Collect on Delivery to read as follows.]* Collect on Delivery Hold for Pickup (COD HFPU) * * *
* *	* * *	* *
[Revise the entire section for Collect on Delivery to read as follows:] Collect on Delivery Hold for Pickup (COD HFPU) COD HFPU Restricted Delivery	Priority Mail Express (1-Day and 2-Day only) Priority Mail First-Class Package Service Parcel Select Ground Bound Printed Matter[2]	Return Receipt Signature Confirmation[2] (not available for purchase with Priority Mail Express COD HFPU) Special Handling-Fragile
* *	* * *	* *
Special Handling		
Special Handling—Fragile	* * * * * *	*[Revise Collect on Delivery to read as follows.]* Collect On Delivery Hold for Pickup (COD HFPU) * * *

[Revise the footnotes to read as follows.]

[1] Not at retail.
[2] Parcels only.
[3] If also purchased with Certified Mail, COD HFPU, insurance over $500.00 or Registered Mail, as eligible for the mail class.
[4] If also purchased with bulk insurance over $500.00.
[5] If also purchased with COD HFPU insurance over $500.00, as eligible for the mail class.
[6] If purchased with insurance over $500.00, COD HFPU, Registered Mail, or Signature Confirmation Restricted Delivery.
[7] Excludes Marketing Parcels.

* * * * *

Exhibit 1.4.2 Eligible Matter—Offshore Domestic Destinations

Extra service	APO/FPO/DPO	U.S. territories and possessions	Freely associated states
[Revise the heading for COD to read as follows:]			
COD HFPU	No	Yes	Limited.[3]

* * * * *

1.5 Mailing

1.5.1 Where to Mail

[Revise the second and third sentences of 1.5.1 to read as follows.]

* * * Except for Registered Mail (see 2.0), COD HFPU (see 9.0), and Adult Signature (see 8.0), items with postage and extra service fees affixed may be placed in, but not on, a Post Office maildrop, a street letterbox, or a rural mailbox, or may be given to the carrier (for that delivery address). A mailer may schedule a Pickup on Demand, or schedule a Package Pickup using *www.usps.com* for items bearing extra services (except for Registered Mail, COD HFPU, and Adult Signature in certain circumstances); however a physical scan must be received from the USPS as evidence of acceptance (See 1.10 for obtaining mailing receipts for extra service items). * * *

1.5.2 Presenting to Rural Carriers

[Revise the second sentence of 1.5.2 to read as follows.]

* * * When Registered Mail, Insured Mail, Certificate of Mailing, Collect on Delivery Hold for Pickup (COD HFPU) (shipping label must already be affixed), and Adult Signature in certain circumstances, is desired, additional conditions under the standards for the extra service must be met. * * *

* * * * *

1.10 Receipts

[Revise the text of 1.10 to read as follows.]

Except for certificate of mailing under 5.0, the mailer receives a USPS sales receipt and the postmarked (round-dated) extra service form for services purchased at retail channels. The mailer must provide the receipt when submitting an insurance claim or filing an inquiry. For articles mailed via PC Postage or other online services, the mailer may access a computer printout online that identifies the applicable extra service number, total postage paid, insurance fee amount, declared value, declared mailing date, origin ZIP Code, and delivery ZIP Code. For three or more pieces with extra or accountable services presented for mailing at one time, the mailer uses Form 3877 (firm sheet) or USPS-approved privately printed firm sheets (see 1.7.2) in lieu of the receipt portion of the individual form. All entries made on firm sheets must be computer-generated or made by typewriter, ink, or ballpoint pen. Alterations must be initialed by the mailer and accepting employee. Obliterate all unused portions of the addressee column with a diagonal line. USPS-approved privately printed firm sheets that contain the same information as Form 3877 may be approved by the local Postmaster or manager Business Mail Entry. The mailer may omit columns from privately printed Form 3877 that are not applicable to extra service requested. If the mailer wants the firm sheets receipted by the USPS (postmarked), the mailer must present the firm sheets with the articles to be mailed at a Post Office. The postmarked firm sheets become the mailer's receipts. For Registered Mail and COD HFPU (when Label 3816 is used), the mailer submits the forms in duplicate and receives one copy as a mailing receipt after the entries are verified by the postal employee accepting the mailing. Except for Registered Mail and COD HFPU items, the USPS keeps no mailing records for mail pieces bearing extra services.

2.0 Registered Mail

[Revise the heading and introductory text of 2.1.5 to read as follows.]

2.1.5 Registered Mail COD HFPU

Sealed domestic mail bearing First-Class Package Service or Priority Mail postage may be sent as Registered Mail COD HFPU when meeting the standards in 9.0 and as follows:

* * * * *

[Revise the third sentence of item b to read as follows.]

b. * * * The total fees charged for registered COD HFPU service include the proper registry fee for the value declared plus the registered COD HFPU fee. * * *

[Revise the first sentence of item c to read as follows.].

c. The registered label and the COD HFPU label must be affixed to each article. * * *

* * * * *

4.0 Insured Mail

* * * * *

4.1.1 Additional Insurance-Priority Mail Express

[Revise 4.1.1 to read as follows.]

Additional insurance, up to a maximum coverage of $5,000.00, may be purchased for merchandise valued at more than $100.00 sent by Priority Mail Express. The additional insurance fee is in addition to postage and other fees. See Notice 123—Price List. Coverage is limited to the actual value of the contents, regardless of the fee paid, or the highest insurance value increment for which the fee is fully paid, whichever is lower. When ''signature required'' service is not requested or when ''waiver of signature'' is requested, additional insurance is not available.

* * * * *

[Revise the heading of 9.0 to read as follows.]

9.0 Collect on Delivery Hold for Pickup (COD HFPU)

9.1 Basic Standards

9.1.1 Description

[Revise 9.1.1 to read as follows.]

Collect on Delivery Hold for Pickup (COD HFPU) is subject to the basic standards in 1.0, and 508.7.0 for HFPU; see 1.4 for eligible matter. Any mailer may use COD HFPU to mail an article (using a unique COD HFPU number for each article) for which the mailer has not been paid and have its price and the cost of the postage collected (not to exceed $1,000.00) from the addressee (or agent) and held for pickup at the Post Office of the addressee. COD HFPU service provides the mailer with a mailing receipt and the USPS maintains a record of delivery (including the recipient's signature). The recipient has the option to pay the COD HFPU charges (with one form of payment) by cash, pin-fed debit card, or a personal check or money order made payable to the mailer (accepted by the USPS employee upon the recipient's presentation of adequate identification). The USPS forwards the check or money order to the mailer. If payment is made by cash, a money order fee is will be collected from the recipient separately (unless the mailer is authorized to participate in electronic funds transfer (EFT) for the remittance (contact the National Customer Support Center (NCSC) (See 608.8.0) for EFT enrollment information), in addition to the COD HFPU amount. The Postal Service cannot intervene in disputes between mailers and recipients of COD HFPU mail after payment was returned to the mailer. Customers may obtain a delivery record by purchasing a return receipt. Bulk proof of delivery service (7.0) is also available if electronic return receipt service is purchased at the time of mailing.

[Revise the heading and text of 9.1.2 to read as follows.]

9.1.2 Additional Conditions for COD HFPU Mail

COD HFPU service is available under the following additional conditions:

a. The name and address of the person to whom the remittance is to be sent must appear in the proper location on the COD HFPU label and in the return address area on the COD HFPU article with the postal endorsements for return

if undeliverable. The return address must be the same in both locations.

b. The mailer guarantees to pay any return postage, unless otherwise specified on the label.

c. The goods shipped are ordered by the addressee.

d. COD HFPU service may not be used for:

1. Articles sent to international destinations, or from an APO/FPO/DPO address, including official mail and shipments to Armed Forces agencies.

2. The return of merchandise about which some dissatisfaction arises, unless the new addressee consents in advance to such return.

3. The mailing of only bills or statements of account, even with the addressee's consent. If a legitimate COD HFPU shipment of merchandise is mailed, the balance due on a past or expected transaction may be included in the charges on a COD HFPU article, if the addressee consents in advance to such action. In such a case, USPS indemnity is limited to the value of the article lost or damaged, not the full COD HFPU charges to be collected.

[Revise the heading and text of 9.1.3 to read as follows.]

9.1.3 Registered Mail COD HFPU

Sealed domestic mail bearing First-Class Package Service, or Priority Mail postage may be sent as Registered Mail COD HFPU mail as provided under 9.0 and 2.1.5.

[Revise the heading and text of 9.1.4 to read as follows.]

9.1.4 Priority Mail Express COD HFPU

Any article sent COD HFPU also may be sent by Priority Mail Express (1-Day and 2-Day service only) when a signature is requested. The maximum amount collectible from the addressee on one article is $1,000.00, and indemnity is limited to $1,000.00. Priority Mail Express postage and the proper COD HFPU fees must be paid. Both the Priority Mail Express label and COD HFPU label must be affixed to each article.

9.1.5 Mailing

[Revise 9.1.5 to read as follows.]

COD HFPU mail must be presented for mailing as provided in 1.5 to the local Post Office or to rural carriers when the articles are prepared properly, with stamps for the required postage and fees affixed. If the mailer wants insurance for an amount more than the COD HFPU amount to be collected, that amount must be shown.

9.1.6 Identifying Number

[Revise 9.1.6 to read as follows.]

Each COD HFPU article~~s~~ is identified by a number on each section of the COD HFPU label. When COD HFPU is used with Priority Mail Express or Registered Mail, a separate barcoded shipping label (under 1.7), the mailer must place both the label and the COD HFPU label on the front of the article. The Priority Mail Express article number or the Registered Mail number is used for delivery receipt and indemnity claims.

* * * * *

[Delete 9.1.8 in its entirety.]

[Revise the heading of 9.2 to read as follows.]

9.2 Labels

[Revise the heading and text of 9.2.1 to read as follows.]

9.2.1 Label 3816 COD HFPU

The mailer must securely affix a completed COD HFPU Label 3816 to each article. The label must be attached either above the delivery address or to the right of the return address, or to the left of the delivery address on parcels. Privately printed or computer-generated firm sheets may be used under the standards in 1.10. The mailer must submit firm sheets in duplicate and will receive one copy of the postmarked form as a mailing receipt after the entries are verified by a postal employee. The acceptance Post Office retains the second copy.

[Revise the heading and text of 9.2.2 to read as follows.]

9.2.2 Completing COD HFPU Labels ~~Forms~~

The label must show article number, name and domestic address of the mailer, hold for pickup Post Office location for the addressee, and the amount due from the mailer (for payments made in cash, the money order fee necessary to make remittance will be collected from the recipient separately and is not included in the amount due the mailer indicated on the label). The USPS is not responsible for errors that a mailer makes in stating the charges to be collected. The information required on the COD HFPU label must be handwritten, typed or computer generated in ink. The mailer may not stipulate a specific payment method on the COD HFPU label.

9.2.3 Nursery Stock

[Revise the introductory text of 9.2.3 to read as follows.]

A firm that mails nursery stock may use Form 3816 and include instructions for disposing of shipments not delivered immediately by printing instructions on the back of the delivery office part of the COD HFPU form (item a) and on the remittance coupon (item b) as follows:

* * * * *

12.0 Money Orders

* * * * *

12.3 Cashing Money Orders

* * * * *

[Revise the heading and text of 12.3.8 to read as follows.]

12.3.8 COD HFPU Parcel

No payment is made when a money order is issued in return for a COD HFPU parcel, and is presented by the addressee (purchaser), and the money order is not endorsed by the payee (shipper) or the payee has not authorized payment to the purchaser by written approval.

* * * * *

505 Return Services

1.0 Business Reply Mail (BRM)

* * * * *

1.1.3 Basic Qualified BRM (QBRM)

[Revise the first sentence of 1.1.3 to read as follows.]

For basic qualified BRM a permit holder is required to an account maintenance fee under 1.1.8, and a per-piece fee under 1.1.7 in addition to the applicable letter or card First-Class Mail postage for each returned piece. ***

1.1.4 High-Volume Qualified BRM

[Revise the text of 1.1.4 to read as follows.]

In addition to the account maintenance, per-piece fees and applicable postage required under 1.1.3, a quarterly fee under 1.1.11 is required for high-volume QBRM.

* * * * *

1.2 Permits

* * * * *

1.2.2 Application Process

[Revise the first sentence of 1.2.2 to read as follows.]

The mailer may apply for a BRM permit by submitting a completed Form 3615 to the Post Office issuing the permit and except under 1.2.3 paying the annual permit fee. * * *

1.2.3 Annual Permit Fee

[Revise the first sentence of 1.2.3 to read as follows.]

Except for QBRM permits, a permit fee must be paid once each 12-month period at each Post Office where a BRM permit is held. * * *

1.2.4 Renewal of Annual Permit Fee

[Revise the introductory text of 1.2.4 to read as follows.]

Except for QBRM permits, an annual renewal notice is provided to each BRM permit holder by the USPS. QBRM permits do not expire unless the account is unused for a period of 12 months. The renewal notice and the payment for the next 12 months must be returned by the expiration date to the Post Office that issued the permit. After the expiration date, if the permit holder has not paid the annual permit fee, then returned BRM pieces are treated as follows:

* * * * *

1.2.6 Revocation of a Permit

[Revise the text of 1.2.6 to read as follows.]

The USPS may revoke any BRM permit because of format errors or for refusal to pay the applicable permit fees (annual, accounting, quarterly, or monthly), postage, or per piece fees. If the permit was revoked due to format errors, then a former permit holder may obtain a new permit and permit number by completing and submitting a new Form 3615, paying the required BRM annual permit fee (if applicable), paying a new annual account maintenance fee (if applicable), and, for the next 2 years, submitting two samples of each BRM format to the appropriate Post Office for approval.

507 Mailer Services

1.0 Treatment of Mail

* * * * *

1.3 Directory Service

* * * * *

[Revise item a to read as follows.]

a. Mail with extra services (certified, COD HFPU, registered, special handling).

* * * * *

1.8 Returning Mail

* * * * *

1.8.5 Extra Services

[Revise the first and fourth sentences of 1.8.5 to read as follows.]

If a return receipt is attached to a certified, Collect on Delivery Hold for Pickup (COD HFPU), ~~numbered~~ insured, registered, return receipt for merchandise, or Priority Mail Express piece to be returned, the reason for nondelivery is shown on the face of the piece. * * * The sender must sign a delivery receipt for returned Priority Mail Express, Registered Mail, COD HFPU articles, Adult Signature services, and mail insured for more than $500. * * *

* * * * *

1.8.7 Post Office Box

[Revise 1.8.7 to read as follows.]

Deliverable mail addressed to a Post Office box is not returned until after the box is declared vacant, except for certified, collect on delivery (COD HFPU), insured, registered, postage due, Adult Signature and perishable mail.

* * * * *

2.0 Forwarding

2.3 Postage for Forwarding

* * * * *

2.3.7 Extra Services

[Revise 2.3.7 to read as follows.]

Certified, Collect on Delivery Hold For Pickup (COD HFPU), USPS Tracking, insured, registered, Signature Confirmation, Adult Signature, return receipt for merchandise, and special handling mail, is forwarded to a domestic address only without additional extra service fees, subject to the applicable postage charge.

2.0 Premium Forwarding Service

* * * * *

3.3 Premium Forwarding Service Commercial

* * * * *

3.3.3 Conditions

* * * * *

[Revise item g to read as follows.]

g. Priority Mail Express, or mailpieces with USPS Tracking, Certified Mail, COD HFPU, insurance, Signature Confirmation, or Adult Signature are shipped to the destination delivery office Postmaster separately, for proper handling.

* * * * *

4.0 Address Correction Services

4.3 Sender Instruction

* * * * *

4.3.2 Extra Services

[Revise the first sentence of the introductory text to read as follows.]

A change-of-address order to a domestic address covers Certified Mail, COD HFPU insured, Registered Mail, Signature Confirmation, Adult Signature services, and return receipt for merchandise mail unless the sender gives other instructions.

* * * * *

4.3.4 Holding Mail

[Revise the first sentence of 4.3.4 to read as follows.]

At the sender's request, the delivery Post Office holds mail, other than Registered Mail, insured, Certified Mail, Adult Signature, Signature Confirmation and return receipt for merchandise, for no fewer than 3 days nor more than 30 days.

* * * * *

508 Recipient Services

1.0 Recipient Options

1.1 Basic Recipient Concerns

* * * * *

1.1.3 Refusal After Delivery

* * * * *

[Revise item a to read as follows.]

a. Pieces sent as Registered Mail, insured, Certified Mail, Collect on Delivery Hold for Pickup (COD HFPU), Adult Signature and return receipt for merchandise.

* * * * *

1.1.7 Priority Mail Express and Accountable Mail

[Revise the introductory text to read as follows.]

The following conditions also apply to the delivery of Priority Mail Express, Registered Mail, Certified Mail, mail insured for more than $500.00, Adult Signature, or COD HFPU, as well as mail for which a return receipt is requested or the sender has specified restricted delivery.

* * * * *

[Revise item f to read as follows.]

f. A notice is provided to the addressee for a mailpiece that cannot be delivered. If the piece is not called for or redelivery is not requested, the piece is returned to the sender after 15 days (5 days for Priority Mail Express), unless the sender specifies fewer days on the piece.

* * * * *

1.8 Commercial Mail Receiving Agencies

1.8.1 Procedures

* * * * *

[Revise item d to read as follows.]

d. A CMRA is authorized to accept the following accountable mail from their customers for mailing at the Post Office: Insured, Priority Mail Express, Certified Mail, USPS Tracking, and Signature Confirmation mail. The sender (CMRA customer) must present accountable mail items not listed to the Post Office for mailing.

* * * * *

7.0 Hold For Pickup

* * * * *

7.2 Basic Information

* * * * *

7.2.5 Extra Services

[Delete item e]

* * * * *

602 Addressing

1.0 Elements of Addressing

* * * * *

1.5 Return Addresses

* * * * *

1.5.3 Required Use of Return Addresses

* * * * *

[Revise item l to read as follows.]

l. Collect on Delivery Hold for Pickup (COD HFPU) mail.

* * * * *

3.0 Use of Alternative Addressing

3.1 General Information

* * * * *

3.1.2 Prohibited Use

Alternative addressing formats may not be used on:

* * * * *

e. Mail with the following extra services:

[Revise item 8 to read as follows.]

8. Collect on Delivery Hold for Pickup (COD HFPU).

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

4.0 Postage Meters and PC Postage Products (''Postage Evidencing Systems'')

* * * * *

4.6 Mailings

4.6.1 Mailing Date Format

* * * The mailing date format used in the indicia is also subject to the following conditions.

a. Complete Date. Mailers must use a complete date for the following:

[Revise item 2 to read as follows.]

2. All mailpieces with Insured Mail, COD HFPU (only when a manual office COD HFPU Label 3816 is used), or Special Handling service.

* * * * *

5.0 Permit Imprint (Indicia)

[Revise the heading and text of 5.1.4 to read as follows.]

5.1.4 Permit and Application Information

A mailer may obtain a permit to use a permit imprint indicia by submitting Form 3615 to the Post Office where mailings are made, or online under the terms and conditions in the Business Customer Gateway portal at *https://gateway.usps.com*. Mail Anywhere allows a qualified mailer to maintain a single permit for a postage payment method for mailings at any Business Mail Acceptance site under 705.23.3.2.

5.1.5 Application Fee

[Revise the text of 5.1.5 to read as follows.]

No application fee is required.

* * * * *

5.2 Suspension and Revocation

* * * * *

5.2.2 Revocation of Permit

[Revise the first sentence of 5.2.2 to read as follows.]

A permit may be revoked for use in operating any unlawful scheme or enterprise, if no mailings or payment of postage occurred during any consecutive 2-year period, for refusal to provide information about permit imprint use or mailings, and for noncompliance with any standard applicable to permit imprints. * * *

* * * * *

5.3 Indicia Design, Placement, and Content

* * * * *

5.3.10 Use of a Local Permit Imprint in Other Mailing Locations

A permit imprint displaying the city, state, and permit number of a mailer's original permit may be applied to pieces in a mailing presented for verification and acceptance at another Post Office location under the following conditions:

[Delete item a and renumber items b through d as items a through c]

* * * * *

[Revise the heading and introductory text of 5.5 to read as follows.]

5.5 Share Mail

Share Mail is an electronic postage payment mechanism for single-piece First-Class Mail letters or postcards, addressed to any domestic address, that weigh no more than one ounce each. Customers wishing to participate in this program must submit their request in writing to the Manager, New Solutions, Mailing Services, USPS, 475 L'Enfant Plaza SW., Room 5440, Washington, DC 20260–4440. Customers participating in the Share Mail postage payment program must, at a minimum, meet the following requirements:

a. Have a Centralized Account Processing System (CAPS) account link with USPS;

b. Submit production quality mailpieces to USPS for pre-approval and have received subsequent USPS approval; and

c. Have approved mailpieces that bear unique or static Intelligent Mail barcodes, an approved permit imprint indicia in the upper-right hand corner of the mailpiece, and a special facing identification mark (FIM E) (see 708.9.2e.).

* * * * *

9.0 Exchanges and Refunds

* * * * *

9.2 Postage and Fee Refunds

* * * * *

9.2.4 Postage and Fee Refunds Not Available

Refunds are not made for the following:

* * * * *

[Revise item b to read as follows.]

b. Collect on Delivery Hold for Pickup (COD HFPU), Priority Mail Express insurance, insured mail, and Registered Mail fees, after the USPS accepts the article (even if the article is later withdrawn from the mail).

* * * * *

11.0 Postage Due Weight Averaging Program

11.1 Basic Information

* * * * *

11.1.3 Quality Control

[Revise the first sentence of the introductory text to read as follows.]

PDWA customers may elect to establish a quality control program to ensure that all missorted and accountable mail (including Certified Mail), return receipt for merchandise, USPS Tracking, Adult Signature, and Signature Confirmation) is identified and returned to the servicing Post Office prior to being opened. * * *

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

1.1 Extra Services With Indemnity

[Revise the text of 1.1 to read as follows.]

A customer may file an indemnity claim for insured mail, COD HFPU items, Registered Mail with postal insurance, or Priority Mail Express. See Publication 122, available on *www.usps.com,* for additional information.

* * * * *

1.3 Who May File

A claim may be filed by:

* * * * *

[Revise item e to read as follows.]

e. Only the mailer, for insured or collect on delivery (COD HFPU) parcels paid using eVS under 705.2.9.

1.4 When to File

File claims as follows:

* * * * *

b. *Lost Articles:* customers must file a claim within the time limits in the chart below.

[Revise the table to read as follows.]

Mail type or service	When to file (from mailing date)	
	No sooner than	No later than
Priority Mail Express	7 days	60 days
Priority Mail Express COD HFPU	~~1~~5 days	60 days
Registered Mail	15 days	60 days
Registered COD HFPU	15 days	60 days
Insured Mail (including Priority Mail under 503.4.2)	15 days	60 days
COD HFPU	15 days	60 days
APO/FPO Priority Mail, Express Military Service	21 days	180 days
APO/FPO/DPO Insured Mail and registered Mail (Priority Mail, First-Class Mail, SAM, or PAL).	45 days	1 year
APO/FPO/DPO Insured Mail (Surface only)	75 days	1 year

1.5 Where and How to File

1.5.1 Claims Filed Online

[Revise the first sentence of 1.5.1 to read as follows.]

Domestic indemnity claims should be filed online (preferred) at *ww.usps.com/domestic-claims* for domestic insured mail, COD HFPU, Registered Mail with postal insurance, and Priority Mail Express. * * *

3.0 Providing Evidence of Insurance and Value

3.1 Evidence of Insurance

For a claim involving articles listed in 1.1, the customer must retain evidence showing that the specific USPS service was purchased, until the claim is resolved. Examples of acceptable evidence are:

[Revise items a and b to read as follows.]

a. The original mailing receipt issued at the time of mailing (Registered Mail receipts must contain a USPS postmark). For insured mail and COD HFPU, a photocopy of the original retail mailing receipt is acceptable.

b. The outer packaging showing the names and addresses of the sender and the addressee and the proper label showing that the article was sent insured, COD HFPU, Registered Mail with postal insurance, or Priority Mail Express. (If only the outer packaging is submitted, indemnity can be limited to $100 for insured, $50 for COD HFPU, $100 for Registered Mail, and $100 for Priority Mail Express.)

* * * * *

[Revise the first sentence of item d to read as follows.]

d. For insurance or COD HFPU, purchased online, a printed electronic online label record or a computer printout from the application used to print the label and purchase the insurance. * * *

[Revise the introductory text of item e to read as follows.]

e. For insured mail or COD HFPU mail paid using MMS or eVS under 705.2.0, the mailer must use one of the following:

* * * * *

[Revise item e2 to read as follows.]

2. A printout of the part of Form 3877 that identifies the parcel by article number, the package identification code (PIC) of the insured or COD HFPU parcel, total postage paid, fee paid, declared insured value, amount due sender if COD HFPU, mailing date, origin ZIP Code, and delivery ZIP Code reported in the parcel record in the manifest file.

* * * * *

4.0 Claims

4.1 Payable Claim

[Revise the introductory text and item c to read as follows.]

Insurance for loss or damage to insured, COD HFPU, or Registered Mail within the amount covered by the fee paid, or the indemnity limits for Priority Mail, or Priority Mail Express (under 4.2), is payable for the following:

* * * * *

c. Remittance due on a COD HFPU parcel not received by the sender, subject to the limitations set by the standards for COD HFPU service.

* * * * *

4.3 Nonpayable Claims

[Revise the introductory text of 4.3 to read as follows.]

Indemnity is not paid for insured mail (including Priority Mail Express and Priority Mail), Registered Mail, COD HFPU, or Priority Mail and Priority Mail Express in these situations:

* * * * *

[Revise item w to read as follows.]

w. Items sent COD HFPU without the addressee's consent.

* * * * *

5.0 Compensation

* * * * *

5.4 Loss

[Revise the text of 5.4 to read as follows.]

If the insured, registered, or COD HFPU article is lost the payment includes an additional amount for the postage (not fee) paid by the sender. Postage for Priority Mail Express is refunded under 604.9.5.

* * * * *

5.7 Recovered Article

[Revise the first sentence of 5.7 to read as follows.]

If a lost registered, insured, COD HFPU, or Priority Mail Express article is recovered after payment of a claim, the payee may accept the article and reimburse the USPS for the full amount paid if the article is undamaged.

* * * * *

703 Nonprofit Standard Mail and Other Unique Eligibility

* * * * *

3.0 Department of State Mail

* * * * *

3.2 Conditions for Authorized Mail

* * * * *

3.2.6 Extra Services

* * * * *

[Revise item a to read as follows.

a. Collect on Delivery (COD HFPU).

* * * * *

9.0 Mixed Classes

* * * * *

9.13 Extra Services for Mixed Classes

* * * * *

[Revise the heading and text of 9.13.2 to read as follows.]

9.13.2 Insured and COD HFPU

A combination mailpiece may be sent insured or COD HFPU. The insurance covers only the value of the parcel.

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

14.0 FSS Scheme Preparation

14.1 General

[Revise the introductory text of 14.1 to read as follows.]

All presorted and high density plus, high density and basic carrier route Standard Mail, presorted and carrier route Bound Printed Matter (BPM), and Periodicals flats including all carrier route flats meeting the standards in 201.6.2 must be separated/pooled into FSS schemes, properly bundled and placed on or in pallets, trays, sacks, or approved alternate containers, for FSS scheme ZIP Code combinations within the same facility. Mailings that include 10 or more pieces of Standard Mail flats, 6 or more pieces of Periodicals flats, or 10 or more pieces (or 10 or more pounds) of BPM flats to an FSS scheme must be separated/pooled into FSS scheme bundles. The Postal Service also recommends the use of authorized flat trays in lieu of sacks for FSS bundles. FSS scheme bundles that are not required to be placed in a FSS scheme or FSS facility container are combined with bundles of non-FSS sorted bundles and placed on an applicable SCF, 3-digit or NDC container. Mailers must prepare FSS scheme qualifying mailpieces for each individual FSS scheme combination, and then prepare bundles of uniform size from those pieces. Mailings (excluding saturation mailings of Standard Mail) with nonpresorted BPM flats may be included in FSS preparation, but will not be eligible for presorted or carrier route prices. Mailpieces that meet the eligibility standards for 5-digit or 3-digit automation, 5-digit or 3-digit nonautomation, carrier route (except Standard Mail saturation) or presort will continue to be eligible for those piece prices when prepared in accordance with the FSS preparations standards. Mailpieces and bundles must also be prepared as follows:

* * * * *

14.2 Basic Standards

14.2.1 Basic Standards

[Revise the introductory text and items a through e to read as follows.]

All Periodicals flats (including carrier route flats) meeting the standards in 201.6.2 and destinating to FSS sites as shown in L006 must be prepared according to these standards. Mailings of In-County Periodicals flats and the associated Outside-County Periodicals flats mailings of 5,000 pieces or less may be prepared according to these standards. Periodicals are subject to the following:

a. Pricing eligibility is based on 207.11.0 through 207.14.0. FSS bundles placed on FSS facility pallets, sacks, trays, or approved alternate container will claim the 3-Digit/SCF bundle price. FSS bundles placed on a FSS scheme pallet, sack, tray or approved alternate container will claim the Carrier Route bundle price.

b. FSS scheme pallets will be assessed the Carrier Route Pallet price. FSS facility sort level pallets will be charged a 3-Digit/SCF Pallet container price. FSS scheme or facility sacks or trays will be assessed the 3-Digit/SCF Sack/Tray price. Pallets, sacks and trays entered at a DFSS will claim the DSCF entry price.

c. The Outside-County pound price for mail entered at a DFSS will be the DSCF price. The Inside-County price will claim prices for the ''None'' entry level.

d. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for prices in accordance with 207.14.0 and 207.25.0.

e. Each mailpiece must be identified with an optional endorsement line in accordance with Exhibit 708.7.1.1, or when authorized, using a red Label 5 SCH barcoded pressure-sensitive bundle label.

* * * * *

14.3 Standard Mail

14.3.1 Basic Standards

[Revise the introductory text of 14.3.1 to read as follows.]

All flat-size Standard Mail mailpieces (except saturation) must be separated/pooled into 5-digit FSS scheme bundles and placed on pallets, or in sacks or approved alternate containers, for delivery to ZIP Codes having Flats Sequencing System (FSS) processing capability, as shown in L006. Standard Mail flats are subject to the following:

* * * * *

[Revise items b and c to read as follows.]

b. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for prices in accordance with 243.

c. Each mailpiece must be identified with an optional endorsement line in accordance with Exhibit 708.7.1.1; or when authorized, using a red Label 5 SCH barcoded pressure-sensitive bundle label.

* * * * *

14.4 Bound Printed Matter

14.4.1 Basic Standards

[Revise the introductory text of 14.4.1 to read as follows.]

Bound Printed Matter (BPM) flats that meet the standards in 201.6.2, must be separated/pooled into FSS scheme bundles and placed on pallets, or in flat trays, sacks, or approved alternate containers, for delivery to ZIP Codes having FSS processing capability, as shown in L006. BPM flats are subject to the following:

* * * * *

[Revise items b, c and d to read as follows.]

b. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for prices in accordance with 263.

c. Mailers must separate/pool all eligible flat-size mailpieces into FSS scheme bundles according to L006.

d. Each mailpiece must be identified with an optional endorsement line in accordance with Exhibit 708.7.1.1; or when authorized, using a red Label 5 SCH barcoded pressure-sensitive bundle label.

* * * * *

15.0 Combining Standard Mail Flats and Periodicals Flats

15.1.0 Basic Standards

* * * * *

15.1.6 Piece Prices

[Revise the text of 15.1.6 to read as follows.]

Apply piece prices based on the bundle level except FSS scheme bundles apply the piece prices based on the original bundle level. Pieces contained within mixed class bundles may claim prices based on the presort level of the bundle.

* * * * *

15.1.11 Preparation for FSS Zones

[Revise the introductory text of 15.1.11 to read as follows.]

Mailers authorized to combine mailings of Standard Mail flats and Periodicals flats must prepare these mailings under 14.0, when the mailing includes pieces destinating within one or more of the FSS zones in L006. The following applies:

[Revise item a to read as follows.]

a. Each mailpiece must be identified with an optional endorsement line (OEL), including the correct ZIP Code listed in L006, Column B, in accordance with Exhibit 708.7.1.1. The OEL described in 2.2 must not be used with mailpieces prepared under this option.

* * * * *

15.4.0 Pallet Preparation

15.4.1 Pallet Preparation, Sequence and Labeling

When combining Standard Mail and Periodicals flats within the same bundle or combining bundles of Standard Mail flats and bundles of Periodicals flats on pallets, bundles must be placed on pallets. Preparation, sequence and labeling:

[Reverse the order of items a and b to read as follows.]

a. *5-digit scheme carrier routes, required.* Pallet must contain only carrier route bundles for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit carrier routes pallet preparation begins with 15.4.1c. Labeling:

1. Line 1: L001.
2. Line 2: ''STD/PER FLTS''; followed by ''CARRIER ROUTES'' (or ''CR–RTS''); followed by ''SCHEME'' (or ''SCH''); followed by ''MIX COMAIL.''

b. *Merged 5-digit scheme, optional.* Not permitted for bundles containing noncarrier route automation-compatible flats under 201.6.0. Required for all other bundles. Pallet must contain carrier route bundles and noncarrier route 5-digit bundles (Presorted bundles only) for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, merged 5-digit pallet preparation begins with 15.4.1d. Labeling:

1. Line 1: L001.
2. Line 2: ''STD/PER FLTS CR/5D;'' followed by ''SCHEME'' (or ''SCH''); followed by ''MIX COMAIL.''

* * * * *

708 Technical Specifications

1.0 Standardized Documentation for First-Class Mail, Periodicals, Standard Mail, and Flat-Size Bound Printed Matter

* * * * *

1.3 Price Level Column Headings

The actual name of the price level (or abbreviation) is used for column headings required by 1.2 and shown below:

a. Automation First-Class Mail, Standard Mail, and barcoded Periodicals:

[Revise the table in item a to read as follows.]

Price	Abbreviation
5-Digit scheme [FSS Periodicals flats and Standard Mail flats].	5BF
5-Digit [First-Class Mail letters and flats, Periodicals letters and flats, and Standard Mail letters and flats].	5B
3-Digit FSS [Periodicals flats and Standard Mail flats].	3BF
3-Digit [First-Class Mail letters and flats, Periodicals letters and flats, and Standard Mail letters and flats].	3B
AADC [First-Class Mail, Periodicals, and Standard Mail letters].	AB
ADC [First-Class Mail, Periodicals, and Standard Mail Flats].	AB
Mixed AADC [First-Class Mail, Periodicals, and Standard Mail letters].	MB
Mixed ADC [First-Class Mail, Periodicals, and Standard Mail flats].	MB
Basic [In-County Periodicals]	BB
Firm [Outside-County Periodicals].	FB

[Revise the table in item b to read as follows.]

b. Presorted First-Class Mail, barcoded and nonbarcoded Periodicals flats, nonbarcoded Periodicals letters, and machinable and nonmachinable Standard Mail:

Price	Abbreviation
Presorted [First-Class Mail letters/cards, flats, and parcels].	Presort
5-Digit [all Standard Mail and Periodicals letters].	5D
5-Digit FSS [Periodicals flats and Standard Mail flats].	5DF
3-Digit [all Standard Mail and Periodicals letters].	3D
3-Digit FSS [Periodicals flats and Standard Mail flats].	3DF
SCF [for Standard Mail parcels].	SCF
AADC [Standard Mail machinable letters].	AB
ADC [Standard Mail nonmachinable letters, flats, and irregular parcels, and all Periodicals].	AD
Basic [In-County Periodicals]	BS
Mixed AADC [Standard Mail machinable letters].	MB
Mixed ADC [Standard Mail nonmachinable letters, flats, irregular parcels; and all Periodicals].	MD
NDC [Standard Mail machinable parcels and Marketing parcels 6 ounces and over].	NDC
Mixed NDC [Standard Mail machinable parcels and Marketing parcels 6 ounces and over].	MNDC
Firm [Outside-County Periodicals].	FB

c. Carrier Route Periodicals and Enhanced Carrier Route Standard Mail:

[Revise the table in item c to read as follows.]

Price	Abbreviation
Saturation [letters, flats, and irregular parcels].	WS
Saturation FSS [Periodicals flats].	WSF
High Density [letters, flats, and irregular parcels].	HD
High Density FSS [flats]	HDF
High Density Plus [Standard Mail only; letters and flats].	HDP
High Density Plus FSS [Standard Mail only flats].	HPF
Basic [letters, flats, and irregular parcels].	CR
Basic FSS [flats]	CRF
Firm [Outside-County Periodicals].	FB

* * * * *

1.6 Detailed Zone Listing for Periodicals

1.6.1 Definition and Retention

[Revise the first sentence of 1.6.1 to read as follows.]

The publisher must be able to present documentation to support the number of copies of each edition of an issue, by entry point, mailed to each zone, and at DDU, DSCF, DADC, DNDC, and In-County prices. * * *

* * * * *

1.6.3 Zone Abbreviations

Use the actual price name or the authorized zone abbreviation in the listings in 1.0 and 207.17.4.2:

Zone abbreviation	Rate equivalent
[Delete the row containing FSS]	

* * * * *

7.0 Optional Endorsement Lines (OELs)

7.1 OEL Use

7.1.1. Basic Standards

[Revise the first sentence of the introductory text to read as follows.]

An optional endorsement line (OEL) may be used to label bundles instead of applying pressure-sensitive bundle labels or facing slips to the top piece of bundles except each mailpiece in a FSS bundle must bear an optional endorsement line in human-readable text, including the correct ZIP code listed in Column B of L006, as described in Exhibit 7.1.1. * * *

Exhibit 7.1.1 OEL Formats

[Revise Exhibit 7.1.1 to read as follows.]

Sortation level	OEL example
Firm—BPM machinable parcels	* * * * * * FIRM 12345.
Firm—Periodicals	* * * * * * FIRM 12345.
Origin Mixed ADC—Periodicals (3-digit ZIP Code prefix)	* * * * * * ORIGIN MIXED ADC 117.
Carrier Route—Periodicals basic	* * * * * * CAR–RT LOT**C–001
	* * * * * * CR LOT 1234A**C–001.
Carrier Route—basic FSS	* * * * * * SCH 5-DIGIT 2345 FSSC.
Carrier Route—Periodicals high density	* * * * * * CAR–RT WSH**C–001.
Carrier Route—High density FSS	* * * * * * SCH 5-DIGIT 12345 FSSB.
Carrier Route—Periodicals saturation	* * * * * * CAR–RT WSS**C–001.
Carrier Route—Periodicals Saturation FSS	* * * * * * SCH 5-DIGIT 12345 FSSH.
ECR—Standard Mail basic	* * * * * * ECRLOT**C–001
	* * * * * * ECRLOT 1234A**C–001.
ECR—Standard Mail high density or high density plus	* * * * * * ECRWSH**C–001.
ECR—High Density Plus FSS	* * * * * * SCH 5-DIGIT 12345 FSSA.
ECR—Standard Mail saturation	* * * * * * ECRWSS**C–001.
Carrier Route—Bound Printed Matter	* * * * * * CAR–RT SORT**C–001.
Carrier Route FSS—Bound Printed Matter	* * * * * * SCH 5-DIGIT 12345 FSSC.
5-Digit	* * * * * * 5-DIGIT 12345.
5-Digit (Nonautomation FSS flats)	* * * * * * SCH 5-DIGIT 12345 FSSE.
5-Digit Scheme (Automation flats)	* * * * * * SCH 5-DIGIT 12345.
5-Digit Scheme (Automation FSS flats)	* * * * * * SCH 5-DIGIT 12345 FSSD.
3-Digit	* * * * * * 3-DIGIT 771.
3-Digit (Nonautomation FSS flats)	* * * * * * SCH 5-DIGIT 12345 FSSG.
3-Digit Scheme (Automation flats)	* * * * * * SCH 3-DIGIT 006.
3-Digit Scheme (Automation FSS flats)	* * * * * * SCH 5-Digit 12345 FSSF.
ADC (3-digit ZIP Code prefix)	* * * * * * ALL FOR ADC 105.
ADC (5-digit ZIP Code)	* * * * * * ALL FOR ADC 90197.
Mixed ADC (3-digit ZIP Code prefix)	* * * * * * MIXED ADC 640.
Mixed ADC (5-digit ZIP Code)	* * * * * * MIXED ADC 60821.
Optional tray level piece ID for automation letters:	
AADC (3-digit ZIP Code prefix)	* * * * * * ALL FOR AADC 050.
AADC (5-digit ZIP Code)	* * * * * * ALL FOR AADC 07099.
Mixed AADC (3-digit ZIP Code prefix)	* * * * * * MIXED AADC 870.
Mixed AADC (5-digit ZIP Code)	* * * * * * MIXED AADC 75197.
Additional required human-readable text for use with combined mailings of Standard Mail and Periodical flats:	
5-Digit Scheme (and other sortation levels as appropriate)	* * * * * * SCH 5-DIGIT 12345 MIX COMAIL.
5-Digit Scheme (Automation FSS flats)	* * * * * * SCH 5-DIGIT 12345 FSSD COMAIL.
5-Digit (Nonautomation FSS flats)	* * * * * * SCH 5-DIGIT 12345 FSSE COMAIL.
3-Digit (Automation FSS flats)	* * * * * * SCH 5-DIGIT 12345 FSSF COMAIL.
3-Digit (Nonautomation FSS flats)	* * * * * * SCH 5-DIGIT 12345 FSSG COMAIL.
Carrier Route high density plus (FSS flats)	* * * * * * SCH 5-DIGIT 12345 FSSA COMAIL.
Carrier Route high density (FSS flats)	* * * * * * SCH 5-DIGIT 12345 FSSB COMAIL.
Carrier Route basic	* * * * * * SCH 5-DIGIT 12345 FSSC COMAIL.

* * * * *

7.1.8 Required OEL Use in Combined Mailings of Standard Mail and Periodicals Flats

Mailers authorized to combine Standard Mail flats and Periodicals flats, under 705.15.0, must apply an OEL identifying the presort level of the bundle and other applicable information as specified in 7.1 to each mailpiece. The following additional standards also apply:

* * * * *

[Revise item c to read as follows.]

c. When combined mailings of Standard Mail and Periodicals flats are prepared to FSS zones under 705.15.1.11, each mailpiece must bear an optional endorsement line in human-readable text, including the correct ZIP code listed in Column B of L006, as described in Exhibit 7.1.1.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

* * * * *

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–24710 Filed 10–14–16; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, and 81

[EPA–R05–OAR–2016–0396; FRL–9954–22–Region 5]

Air Plan Approval; Ohio; Redesignation of the Cleveland Area to Attainment of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a July 6, 2016, request from the Ohio

Environmental Protection Agency (Ohio EPA) to redesignate the Cleveland-Akron-Lorain, Ohio area (Cleveland area) to attainment of the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard), because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Cleveland area includes Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit counties. EPA is also proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), Ohio's plan for maintaining the 2008 ozone standard through 2030 in the Cleveland area. Finally, EPA finds adequate and is proposing to approve Ohio's 2020 and 2030 Motor Vehicle Emission Budgets (MVEBs) for the Cleveland area.

DATES: Comments must be received on or before November 16, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0396 at *http://www.regulations.gov* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6832, *Liljegren.Jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

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I. What are the actions EPA is proposing?

EPA is proposing to take several related actions. EPA is proposing to approve Ohio EPA's request to change the legal designation of the Cleveland area from nonattainment to attainment of the 2008 ozone standard. EPA is also proposing to approve, as a revision to the Ohio SIP, the state's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the Cleveland area in attainment of the 2008 ozone NAAQS through 2030. Finally, EPA finds adequate and is proposing to approve the newly-established 2020 and 2030 MVEBs for the Cleveland area. The adequacy comment period for the MVEBs began on July 22, 2016, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on August 22, 2016. EPA did not receive any adverse comments on this submittal during the adequacy comment period. In a letter dated August 23, 2016, EPA informed Ohio EPA that we found the 2020 and 2030 MVEBs to be adequate for use in transportation conformity analyses. See section V. B. of this rulemaking, ''What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Cleveland area?'' for further explanation of this process. We find adequate, and are proposing to approve, the State's 2020 and 2030 MVEBs for transportation conformity purposes.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained in an area when the 3-year average of the annual 4th high daily maximum 8-hour average ozone concentrations is equal to or less than 0.075 ppm when truncated after the thousandth decimal place at all of the ozone monitoring sites in the area. *See* 40 CFR 50.15 and appendix P to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality-assured ozone monitoring data. The Cleveland area was designated as a marginal nonattainment area for the 2008 ozone NAAQS on May 21, 2012 (77 FR 30088) (effective July 20, 2012).

In a final implementation rule for the 2008 ozone NAAQS (SIP Requirements Rule),[1] EPA established ozone standard

[1] The rule, titled ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' and published at 80 FR 12264 (March 6, 2015), addresses nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), new source review (NSR), emission inventories, and the timing requirements for SIP submissions and compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS

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attainment dates based on table 1 of section 181(a) of the CAA. This established an attainment date three years after the July 20, 2012, effective designation date for areas classified as marginal nonattainment for the 2008 ozone NAAQS. Therefore, the attainment date for the Cleveland area was July 20, 2015. On May 4, 2016 (81 FR 26697), based on EPA's evaluation and determination that the Cleveland area failed to attain the NAAQS by July 20, 2015, but met the attainment date extension criteria of CAA section 181(a)(5), EPA granted the Cleveland area a 1-year extension of the applicable marginal area attainment date from July 20, 2015, to July 20, 2016.

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the ''Calcagni memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (the ''Shapiro memorandum'');
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994 (the ''Nichols memorandum''); and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of Ohio's redesignation request?

A. Has the Cleveland area attained the 2008 8-hour ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the 3-year average of the annual 4th high daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm when truncated after the thousandth decimal place. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons,[2] on average, for the 3-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the 3-year period. *See* section 2.3 of appendix P to 40 CFR part 50.

On May 4, 2016 (81 FR 26697), based on EPA's evaluation and determination that the Cleveland area failed to attain the NAAQS by July 20, 2015, but met the attainment date extension criteria of CAA section 181(a)(5), EPA granted the Cleveland area a 1-year extension of the applicable Marginal area attainment date from July 20, 2015, to July 20, 2016. On June 27, 2016 (81 FR 41444), in accordance with section 181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), EPA made a determination that the Cleveland area attained the standard by its July 20, 2016 attainment date based upon three years of complete, quality-assured and certified data for the 2013–2015 time period. These data are summarized in Table 1, below.

and the anti-backsliding requirements that apply when the 1997 ozone NAAQS is revoked.

[2] The ozone season is defined by state in 40 CFR 58 appendix D. For the 2012–2014 and 2013–2015 time periods, the ozone season for Ohio was April–October. Beginning in 2016, the ozone season for Ohio is now March–October. See, 80 FR 65292, 65466–67 (October 26, 2015).

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AND 3-YEAR AVERAGES OF THE 4TH HIGH DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS FOR THE CLEVELAND AREA

County	Monitor	2013 4th high (ppm)	2014 4th high (ppm)	2015 4th high (ppm)	2013–2015 average (ppm)
Ashtabula	39–007–1001	70	69	70	69
Cuyahoga	39–035–0034	69	71	67	69
	39–035–0060	57	66	63	62
	39–035–0064	64	59	66	63
	39–035–5002	65	61	72	66
Geauga	39–055–0004	65	65	73	67
Lake	39–085–0003	70	75	74	73
	39–085–0007	68	62	70	66
Lorain	39–093–0018	60	67	62	63
Medina	39–103–0004	65	64	63	64
Portage	39–133–1001	58	61	64	61
Summit	39–153–0020	60	58	65	61

EPA will not take final action to approve the redesignation of this area if the design value of a monitoring site in the area exceeds the NAAQS after proposal but prior to final approval of the redesignation. Preliminary 2016 data indicate that this area continues to attain the 2008 ozone NAAQS. As discussed in section IV.D.3. below, Ohio EPA has committed to continue monitoring ozone in this area to verify maintenance of the ozone standard.

B. Has Ohio met all applicable requirements of section 110 and part D of the CAA for the Cleveland area, and does the Cleveland area have a fully approved SIP under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). EPA proposes to find that Ohio has a fully approved SIP under section 110(k) of the CAA. Additionally, EPA proposes to find that the Ohio SIP satisfies the criterion that it meets applicable SIP requirements, for purposes of redesignation, under section 110 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2008 ozone NAAQS). In making these proposed determinations, EPA ascertained which CAA requirements are applicable to the Cleveland area and the Ohio SIP and, if applicable, whether the required Ohio SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. *See also* the Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. Ohio Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Cleveland Area for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of CAA title I part C Prevention of Significant Deterioration (PSD) and part D nonattainment New Source Review (NSR) permit programs; (5) include criteria for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.,* Oxides of Nitrogen (NO_X) SIP call.[3] However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements,

[3] On October 27, 1992 (63 FR 57356), EPA issued a NO_X ''SIP call'' requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP call, Ohio developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers and turbines, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089) and June 27, 2005 (70 FR 36845), and as meeting Phase II of the NO_X SIP Call on February 4, 2008 (73 FR 6427).

where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we have determined these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 19, 2000), 68 FR 25418, 25426–27 (May 12, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2008 ozone NAAQS. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*e.g.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Ohio's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation. On October 16, 2014 (79 FR 62019), EPA approved elements of the SIP submitted by Ohio to meet the requirements of section 110 for the 2008 ozone standard. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 2008 ozone standard nonattainment status of the Cleveland area. Therefore, EPA concludes that these infrastructure requirements are not applicable requirements for purposes of review of the state's 2008 ozone standard redesignation request.

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Cleveland area was classified as marginal nonattainment under subpart 2 for the 2008 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176 and the subpart 2 requirements contained in section 182(a) (marginal nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Part D Subpart 1 Section 172 Requirements

As provided in subpart 2, for marginal ozone nonattainment areas such as the Cleveland area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9). 42 U.S.C. 7511a(a).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement is superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Ohio's NSR program on January 10, 2003 (68 FR 1366) and February 25, 2010 (75 FR 8496). However, EPA has determined that, since PSD NSR requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D nonattainment NSR. A more detailed rationale for this determination is described in the Nichols memorandum. Ohio has demonstrated that the Cleveland area will be able to maintain the standard without part D nonattainment NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D nonattainment NSR program prior to approval of the redesignation request. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Ohio's PSD NSR program will become effective in the Cleveland area upon redesignation to attainment.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we have determined the Ohio SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

ii. Part A Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements [4] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall* v. *EPA,* 265 F.3d

[4] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of Motor Vehicle Emission Budgets (MVEBs), such as control strategy SIPs and maintenance plans.

426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Ohio has an approved conformity SIP for the Cleveland area. *See* 80 FR 11133 (March 2, 2015).

iii. Part D Subpart 2 Section 182(a) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of volatile organic compounds (VOC) and NO_X emitted within the boundaries of the ozone nonattainment area. Ohio submitted a 2008 base year emissions inventory for the Cleveland area on July 18, 2014. EPA approved this emissions inventory as a revision to the Ohio SIP on March 10, 2016 (81 FR 12591).

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Cleveland area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2008 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and because Ohio complied with this requirement for the Cleveland area under the prior 1-hour ozone NAAQS. *See* 59 FR 23796 (May 9, 1994) and 60 FR 15235 (March 23, 1995).

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2008 ozone standard and the consideration of Ohio's redesignation request for this standard, the Cleveland area is not subject to the section 182(a)(2)(B) requirement because the Cleveland area was designated as nonattainment for the 2008 ozone standard after the enactment of the 1990 CAA amendments. However, the Cleveland area established an I/M program under the 1-hour ozone standard. EPA approved Ohio's enhanced I/M program (E-Check), on April 4, 1995 (60 FR 16989) and January 6, 1997 (62 FR 646). The E-Check program continues to be implemented in the Cleveland area.

Regarding the source permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), EPA approved Ohio's NSR program on January 22, 2003 (68 FR 2909) and February 25, 2010 (75 FR 8496). However, as discussed above, Ohio has demonstrated that the Cleveland area will be able to maintain the standard without part D nonattainment NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D nonattainment NSR program prior to approval of the redesignation request. The state's PSD NSR program will become effective in the Cleveland area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and NO_X emissions. As discussed below in section IV.D.4. of this proposed rule, Ohio will continue to update its emissions inventory at least once every three years. With regard to stationary source emission statements, EPA approved Ohio's emission statement rule on September 27, 2007 (72 FR 54844). On July 18, 2014, Ohio certified that this approved SIP regulation remains in place and remains enforceable for the 2008 ozone standard. EPA approved Ohio's certification on March 10, 2016 (81 FR 12591).

The Cleveland area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Cleveland Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

Ohio has adopted and submitted and EPA has approved at various times, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, EPA has fully approved the Ohio SIP for the Cleveland area under section 110(k) for all requirements applicable for purposes of redesignation under the 2008 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (*see* the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Cleveland area due to permanent and enforceable emission reductions?

To support the redesignation of an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA has determined that Ohio has demonstrated that that the observed ozone air quality improvement in the Cleveland area is due to permanent and enforceable reductions in VOC and NO_X emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the state has calculated the change in emissions between 2011 and 2014. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Cleveland area and upwind areas have implemented in recent years. In addition, Ohio EPA provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_X Controls

Clean Air Interstate Rule (CAIR)/Cross State Air Pollution Rule (CSAPR). CAIR created regional cap-and-trade programs to reduce sulfur dioxide (SO_2) and NO_X emissions in 27 eastern states, including Ohio, that contributed to downwind nonattainment and maintenance of the 1997 ozone NAAQS and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. *See* 70 FR 25162 (May 12, 2005). EPA approved Ohio's CAIR regulations into the Ohio SIP on February 1, 2008 (73 FR 6034), and September 25, 2009 (74 FR 48857). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North*

Carolina v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and thus to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS. CSAPR requires substantial reductions of SO_2 and NO_X emissions from electric generating units (EGUs) in 28 states in the Eastern United States.

The D.C. Circuit's initial vacatur of CSAPR [5] was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 NO_X ozone season emissions budgets for Ohio. This litigation ultimately delayed implementation of CSAPR for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. Thus, while the rule's Phase 2 budgets were originally promulgated to begin on January 1, 2014, they are now scheduled to begin on January 1, 2017. CSAPR will continue to operate under the existing emissions budgets until EPA addresses the D.C. Circuit's remand.

EPA is proposing to approve the redesignation of the Cleveland area without relying on the Ohio CSAPR Phase 2 ozone season NO_X emissions budget as an emission control measure having led to attainment of the 2008 ozone NAAQS or contributing to maintenance of that standard. In so doing, we are proposing to determine that the D.C. Circuit's invalidation of the Ohio CSAPR Phase 2 ozone season NO_X emissions budget does not bar today's proposed redesignation.

The improvement in ozone air quality in the Cleveland area from 2011 (a year when the design value for the area was above the NAAQS) to 2014 (a year when the design value was below the NAAQS) with respect to EGUs includes changes at several facilities which resulted in NO_X emissions reductions. The Cleveland Electric Illuminating Co., Eastlake Plant in Lake County permanently shut down in April of 2015. Prior to the shutdown, EGU NO_X emissions had dropped from 27.27 tons per summer day (TPSD) to 5.48 TPSD (2011 to 2014). The First Energy Generation, LLC Lake Shore facility in Cuyahoga County permanently shut down in April of 2015. Prior to the shutdown, EGU NO_X emissions had dropped in Cuyahoga County from 2.83 TPSD to 1.10 TPSD (2011 to 2014). The First Energy Generation, LLC Ashtabula Plant in Ashtabula County shut down coal fired boilers in April of 2015 and December of 2015. Prior to the shutdown, EGU NO_X emissions in Ashtabula County had dropped from 4.21 TPSD to 1.26 TPSD (2011 to 2014). Even greater reductions than predicted will be achieved in these areas due to the shutdown of these facilities.

b. Federal Emission Control Measures

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. On February 10, 2000(65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimates that, when fully implemented, this rule will cut emissions from light-duty vehicles and light-duty trucks by approximately 76 and 28% for NO_X and VOC, respectively. NO_X and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program are estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. In addition, EPA estimates that beginning in 2007, a reduction of 30,000 tons per year of NO_X will result from the benefits of sulfur control on heavy-duty gasoline vehicles. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule will be phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_X and for particulate matter. The VOC and NO_X tailpipe standards for light-duty vehicles represent approximately an 80% reduction from today's fleet average and a 70% reduction in per-vehicle PM standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and NO_X and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50% reduction from current standards and apply to all light-duty and on-road gasoline-powered heavy-duty vehicles. Finally, the rule lowers the sulfur content of gasoline to an annual average of 10 ppm by January 2017. While these reductions did not aid the area in attaining the standard, emission reductions will occur during the maintenance period.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-highway heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_X, VOC, and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 ppm by 2007, leading to additional reductions in combustion NO_X and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that 2015 NO_X and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. In 2030 EPA estimated that NO_X and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the Cleveland area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period as older vehicles are replaced with newer, compliant model years.

Non-road Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule

[5] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).

adopting emissions standards for non-road diesel engines and sulfur reductions in non-road diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards are phased in for 2008 through 2015 model years based on engine size. The SO_2 limits for non-road diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented, compliance with this rule will cut NO_X emissions from these non-road diesel engines by approximately 90%. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Non-road Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards are phased in from model year 2004 through 2012. When fully implemented, EPA estimates an overall 72% reduction in VOC emissions from these engines and an 80% reduction in NO_X emissions. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines. On March 3, 2010 (75 FR 9648) with amendments finalized on January 14, 2013 (78 FR 6674), EPA issued a rule to reduce hazardous air pollutants from existing diesel powered stationary reciprocating internal combustion engines, also known as compression ignition engines. EPA estimates that, as a result of this rule, NO_X and VOC emissions from these engines will be reduced by approximately 9,600 and 36,000 tons per year, respectively.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896) EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards apply beginning in 2011, and are expected to result in a 15 to 25% reduction in NO_X emissions from these engines. Final Tier 3 emission standards apply beginning in 2016 and are expected to result in approximately an 80% reduction in NO_X from these engines. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Oil and Natural Gas Industry Standards. On August 16, 2012 (77 FR 49490) EPA finalized several rules that apply to the oil and natural gas sector. These rules set standards for natural gas wells that are hydraulically fractured along with several other sources in the oil and natural gas sector. EPA estimates that, as a result of these rules, VOC emissions will be reduced in this source sector by 190,000 to 290,000 tons annually.

2. Emission Reductions

Ohio is using a 2011 inventory as the nonattainment base year. Area, non-road mobile, airport related emissions (AIR), and point source emissions (EGUs and non-EGUs) were collected from the Ozone NAAQS Implementation Modeling platform (2011v6.1). For 2011, this represents actual data Ohio reported to EPA for the 2011 National Emissions inventory (NEI). Because emissions from state inventory databases, the NEI, and the Ozone NAAQS Emissions Modeling platform are annual totals, tons per summer day were derived according to EPA's April 29, 2002 guidance document entitled ''Temporal Allocation of Annual Emissions Using EMCH Temporal Profiles'' using the temporal allocation references accompanying the 2011v6.1 modeling inventory files. On-road mobile source emissions were developed in conjunction with the Ohio EPA, the Ohio Department of Transportation, the Akron Metropolitan Area Transportation Study (AMATS), and the Northeast Ohio Areawide Coordinating Agency (NOACA) and were calculated from emission factors produced by EPA's Motor Vehicle Emission Simulator (MOVES) model and data extracted from the region's travel-demand model.

For the attainment inventory, Ohio is using 2014, one of the years the Cleveland area monitored attainment of the 2008 ozone standard. Because the 2014 NEI inventory was not available at the time Ohio EPA was compiling the redesignation request, the state was unable to use the 2014 NEI inventory directly. For area, non-road mobile, and AIR, 2014 emissions were derived by interpolating between 2011 and 2018 Ozone NAAQS Emissions Modeling platform inventories. The point source sector for the 2014 inventory was developed using actual 2014 point source emissions reported to the state database, which serve as the basis for the point source emissions reported to EPA for the NEI. Summer day inventories were derived for these sectors using the methodology described above. Finally, on-road mobile source emissions were developed using the same methodology described above for the 2011 inventory.

Using the inventories described above, Ohio's submittal documents changes in VOC and NO_X emissions from 2011 to 2014 for the Cleveland area. Emissions data are shown in Tables 2 through 6.

TABLE 2—CLEVELAND AREA NO_X EMISSIONS FOR NONATTAINMENT YEAR 2011 (TPSD)

County	Point	AIR	Non-road	Area	On-road	Total
Ashtabula	4.95	0.00	2.89	4.02	6.35	18.21
Cuyahoga	10.45	1.67	18.83	13.78	50.73	95.46
Geauga	0.02	0.00	1.66	0.87	7.46	10.01
Lake	29.21	0.01	4.83	4.25	11.97	50.27
Lorain	14.57	0.01	6.17	5.04	14.11	39.90
Medina	0.20	0.02	2.95	1.98	14.59	19.74
Portage	0.28	0.00	2.66	3.11	9.96	16.01
Summit	1.59	0.33	6.30	5.34	29.19	42.75
Area Totals	61.27	2.04	46.29	38.39	144.36	292.35

TABLE 3—CLEVELAND AREA VOC EMISSIONS FOR NONATTAINMENT YEAR 2011 (TPSD)

County	Point	AIR	Non-road	Area	On-road	Total
Ashtabula	7.10	0.00	7.35	3.81	2.88	21.14
Cuyahoga	2.81	0.41	24.86	33.36	27.04	88.48
Geauga	0.04	0.00	3.34	4.14	4.76	12.28
Lake	1.05	0.01	8.22	6.41	5.94	21.63
Lorain	2.60	0.02	8.96	7.54	7.80	26.92
Medina	0.64	0.04	3.60	5.23	5.41	14.92
Portage	0.91	0.00	4.90	5.92	4.48	16.21
Summit	1.22	0.09	7.33	14.44	13.61	36.69
Area Totals	16.37	0.57	68.56	80.85	71.92	238.27

TABLE 4—CLEVELAND AREA NO_X EMISSIONS FOR ATTAINMENT YEAR 2014 (TPSD)

County	Point	AIR	Non-road	Area	On-road	Total
Ashtabula	2.00	0.00	5.95	3.82	4.22	15.99
Cuyahoga	8.50	1.80	21.03	13.60	31.72	76.65
Geauga	0.02	0.00	2.89	0.90	3.73	7.54
Lake	7.29	0.01	6.66	4.12	8.05	26.13
Lorain	12.14	0.01	7.40	4.83	10.29	34.67
Medina	0.21	0.02	3.07	1.93	10.33	15.56
Portage	0.32	0.00	4.14	2.98	6.77	14.21
Summit	1.33	0.36	6.25	5.28	19.45	32.67
Area Totals	31.81	2.20	57.39	37.01	94.56	222.97

TABLE 5—CLEVELAND AREA VOC EMISSIONS FOR ATTAINMENT YEAR 2014 (TPSD)

County	Point	AIR	Non-road	Area	On-road	Total
Ashtabula	6.69	0.00	2.51	3.75	2.09	15.04
Cuyahoga	2.74	0.43	15.42	32.55	17.84	68.98
Geauga	0.08	0.00	1.32	4.05	2.03	7.48
Lake	1.06	0.01	4.14	6.30	4.30	15.81
Lorain	2.05	0.02	5.13	7.37	5.69	20.26
Medina	0.52	0.04	2.33	5.14	3.95	11.98
Portage	1.12	0.00	2.12	5.82	3.38	12.44
Summit	1.04	0.10	4.90	14.19	10.07	30.30
Area Totals	15.30	0.60	37.87	79.17	49.35	182.29

TABLE 6—CHANGE IN NO_X AND VOC EMISSIONS IN THE CLEVELAND AREA BETWEEN 2011 AND 2014 (TPSD)

	NO_X			VOC		
	2011	2014	Net change (2011–2014)	2011	2014	Net change (2011–2014)
Point	61.27	31.81	−29.46	16.37	15.30	−1.07
AIR	2.04	2.20	0.16	0.57	0.60	0.03
Non-road	46.29	57.39	11.10	68.56	37.87	−30.69
Area	38.39	37.01	−1.38	80.85	79.17	−1.68
On-road	144.36	94.56	−49.80	71.92	49.35	−22.57
Total	292.35	222.97	−69.38	238.27	182.29	−55.98

As shown in Table 6, the Cleveland area reduced NO_X and VOC emissions by 69.38 TPSD and 55.98 TPSD, respectively, between 2011 and 2014.

3. Meteorology

Ohio EPA performed an analysis to further support Ohio's demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved is due to permanent and enforceable emission reductions and not unusually favorable meteorology. Ohio EPA analyzed the maximum 4th high 8-hour average ozone values for May, June, July, August, and September for years 2000 to 2015. First, the maximum 8-hour average ozone concentration at each monitor in the Cleveland area was compared to the number of days where the maximum temperature was greater than or equal to 80 °F. While there is a clear trend in decreasing ozone concentrations at all monitors, there is no such trend in the temperature data.

Ohio EPA also examined the relationship between the average summer temperature for each year of the 2000–2015 period and the 4th

maximum 8-hour average ozone concentration. While there is some correlation between average summer temperatures and ozone concentrations, this correlation does not exist over the study period. The linear regression lines for each data set demonstrate that the average summer temperatures have increased, while ozone concentrations have decreased. Because the correlation between temperature and ozone formation is well established, these data suggest that reductions in precursors are responsible for the reductions in ozone concentrations in the Cleveland area and not unusually favorable summer temperatures.

Finally, Ohio EPA analyzed the relationship between average summertime relative humidity and average 4th maximum 8-hour average ozone concentrations. The data did not show a correlation between relative humidity and ozone concentrations.

Ohio EPA's analyses of meteorological variables associated with ozone formation further support Ohio's demonstration that the improvement in air quality in the Cleveland area between the year violations occurred and the year attainment was achieved is due to permanent and enforceable emission reductions and not on unusually favorable meteorology.

D. Does Ohio have a fully approvable ozone maintenance plan for the Cleveland area?

As one of the criteria for redesignation to attainment, section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Cleveland area to attainment for the 2008 ozone standard, Ohio submitted a SIP revision to provide for the maintenance of the 2008 ozone standard through 2030, more than 10 years after the expected effective date of the redesignation to attainment. As discussed more fully below, EPA proposes to find that Ohio's ozone maintenance plan includes the necessary components, and EPA is proposing to approve the maintenance plan as a revision of the Ohio SIP.

1. Attainment Inventory

EPA has determined that the Cleveland area attained the 2008 ozone NAAQS based on monitoring data for the period of 2013–2015 (81 FR 41444). Ohio selected 2014 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_X. The attainment emissions inventory identifies the levels of emissions in the Cleveland area that are sufficient to attain the 2008 ozone NAAQS. The derivation of the attainment year emissions was discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in tables 4 and 5 above.

2. Has the state documented maintenance of the ozone standard in the Cleveland area?

Ohio has demonstrated maintenance of the 2008 ozone standard through 2030 by assuring that current and future emissions of VOC and NO_X for the Cleveland area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio is using emissions inventories for the years 2020 and 2030 to demonstrate maintenance. 2030 is more than 10 years after the expected effective date of the redesignation to attainment and 2020 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

To develop the 2020 and 2030 inventories, the state collected data from the Ozone NAAQS Emissions Modeling platform (2011v6.1) inventories for years 2011, 2018 and 2025. 2020 emissions for area, non-road mobile, AIR, and point source sectors were derived by interpolating between 2018 and 2025. 2030 emissions for area, non-road mobile, AIR, and point source sectors were derived using the TREND function in Excel. If the trend function resulted in a negative value the emissions were assumed not to change. Summer day inventories were derived for these sectors using the methodology described in section IV.C.2. above. Finally, on-road mobile source emissions were developed using the same methodology described in section IV.C.2. above for the 2011 inventory. Emissions data are shown in Tables 7 through 11 below.

TABLE 7—CLEVELAND AREA PROJECTED NO_X EMISSIONS FOR INTERIM MAINTENANCE YEAR 2020 (TPSD)

County	Point	AIR	Non-road	Area	On-road	Total
Ashtabula	1.03	0.00	1.95	3.40	2.28	8.66
Cuyahoga	6.46	2.10	11.00	13.10	17.65	50.31
Geauga	0.03	0.00	0.90	0.94	2.20	4.07
Lake	4.93	0.01	3.20	3.82	4.71	16.67
Lorain	1.95	0.01	3.70	4.35	5.76	15.77
Medina	0.21	0.02	1.50	1.82	5.85	9.40
Portage	0.29	0.00	1.39	2.69	3.93	8.30
Summit	0.75	0.44	3.13	5.08	11.15	20.55
Area Totals	15.65	2.58	26.77	35.20	53.53	133.73

TABLE 8—CLEVELAND AREA PROJECTED VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2020 (TPSD)

County	Point	AIR	Non-road	Area	On-road	Total
Ashtabula	7.07	0.00	4.01	3.66	1.38	16.12
Cuyahoga	2.57	0.49	16.66	31.56	12.18	63.46
Geauga	0.04	0.00	2.37	3.94	1.45	7.80
Lake	0.66	0.01	4.56	6.15	2.85	14.23
Lorain	2.50	0.02	5.36	7.14	3.79	18.81
Medina	0.62	0.04	2.45	5.03	2.78	10.92
Portage	0.91	0.00	3.18	5.69	2.39	12.17
Summit	1.14	0.11	5.09	13.87	6.96	27.17
Area Totals	15.51	0.67	43.68	77.04	33.78	170.68

TABLE 9—CLEVELAND AREA PROJECTED NO_X EMISSIONS FOR MAINTENANCE YEAR 2030 (TPSD)

County	Point	AIR	Non-road	Area	On-road	Total
Ashtabula	1.42	0.00	1.36	2.67	1.56	7.01
Cuyahoga	6.06	2.68	7.66	12.03	12.01	40.44
Geauga	0.03	0.00	0.61	0.95	1.59	3.18
Lake	4.95	0.01	2.36	3.24	3.25	13.81
Lorain	1.96	0.01	2.40	3.49	3.86	11.72
Medina	0.28	0.02	0.79	1.58	4.30	6.97
Portage	0.29	0.00	0.79	2.15	2.90	6.13
Summit	0.77	0.58	1.86	4.66	8.62	16.49
Area Totals	15.76	3.30	17.83	30.77	38.09	105.75

TABLE 10—CLEVELAND AREA PROJECTED VOC EMISSIONS FOR MAINTENANCE YEAR 2030 (TPSD)

County	Point	AIR	Non-road	Area	On-road	Total
Ashtabula	7.15	0.01	2.18	3.58	1.06	13.98
Cuyahoga	2.49	0.60	14.86	30.93	9.37	58.25
Geauga	0.04	0.00	2.13	3.87	1.11	7.15
Lake	0.65	0.01	2.77	6.06	2.15	11.64
Lorain	2.50	0.03	3.78	6.95	2.86	16.10
Medina	0.63	0.04	2.11	4.97	2.22	9.97
Portage	0.89	0.00	2.52	5.61	2.00	11.02
Summit	1.10	0.13	4.80	13.62	6.01	25.68
Area Totals	15.47	0.82	35.15	75.59	26.78	153.81

TABLE 11—PROJECTED CHANGE IN NO_X AND VOC EMISSIONS IN THE CLEVELAND AREA BETWEEN 2014 AND 2030 (TPSD)

	NO_X				VOC			
	2014	2020	2030	Net change (2014–2030)	2014	2020	2030	Net change (2014–2030)
Point	31.81	15.65	15.76	−16.05	15.30	15.51	15.47	0.17
AIR	2.20	2.58	3.30	1.10	0.60	0.67	0.82	0.22
Non-road	57.39	26.77	17.83	−39.56	37.87	43.68	35.15	−2.72
Area	37.01	35.20	30.77	−6.24	79.17	77.04	75.59	−3.58
Onroad	94.56	53.53	38.09	−56.47	49.35	33.78	26.78	−22.57
Total	222.97	133.73	105.75	−117.22	182.29	170.68	153.81	−28.48

In summary, the maintenance demonstration for the Cleveland area shows maintenance of the 2008 ozone standard by providing emissions information to support the demonstration that future emissions of NO_X and VOC will remain at or below 2014 emission levels when taking into account both future source growth and implementation of future controls. In the Cleveland area, NO_X and VOC emissions are projected to decrease by 117.22 TPSD and 28.48 TPSD, respectively, between 2014 and 2030.

3. Continued Air Quality Monitoring

Ohio has committed to continue to operate the ozone monitors listed in Table 1 above. Ohio has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. Ohio remains

obligated to meet monitoring requirements and to continue to perform quality assurance of monitoring data in accordance with 40 CFR part 58 and to enter all data into the AQS in accordance with Federal guidelines.

4. Verification of Continued Attainment

The State of Ohio has certified that it has the legal authority to enforce and implement the requirements of the maintenance plan for the Cleveland area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. Ohio will continue to operate the current ozone monitors located in the Cleveland area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by the EPA.

In addition, to track future levels of emissions, Ohio will continue to develop and submit to EPA updated emission inventories for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.102. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Air Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Ohio was compiled for 2014. Point source facilities covered by Ohio's emission statement rule, Ohio Administrative Code, Chapter 3745–24, will continue to submit VOC and NO_X emissions on an annual basis.

5. What is the maintenance plan for the Cleveland area?

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and, a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a maintenance plan for the Cleveland area including contingency measures to address possible future ozone air quality problems. The specific indicators adopted by Ohio to be used to determine when the contingency measures need to be considered have two levels of response, a warning level response and an action level response.

In Ohio's plan, a warning level response will be triggered when an annual 4th high 8-hour average ozone monitored value of 0.079 ppm or higher is monitored within the maintenance area. A warning level response will consist of Ohio EPA conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 10 months from the conclusion of the most recent ozone season.

In Ohio's plan, an action level response is triggered when a two-year average of the annual 4th high 8-hour average ozone concentrations is 0.076 ppm or greater is monitored within the maintenance area. A violation of the standard within the maintenance area also triggers an action level response. When an action level response is triggered, Ohio EPA, in conjunction with the metropolitan planning organization or regional council of governments, will determine what additional control measures are needed to assure future attainment of the ozone standard. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Ohio EPA may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Ohio EPA included the following list of potential contingency measures in its maintenance plan:

1. Tighten VOC RACT on existing sources covered by EPA Control Technique Guidelines issued after the 1990 CAA.

2. Apply VOC RACT to smaller existing sources.

3. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area-wide VOC emissions. Transportation measures will be selected from the following, based upon the factors listed above, after consultation with affected local governments:

a. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area wide rideshare programs, work schedule changes, and telecommuting;

b. traffic flow and transit improvements; and

c. other new or innovative transportation measures, not yet in widespread use, that affected local governments deem appropriate.

4. Alternative fuel and diesel retrofit programs for fleet vehicle operations.

5. Require VOC or NO_X emission offsets for new and modified major sources.

6. Increase the ratio of emission offsets required for new sources.

7. Require VOC or NO_X controls on new minor sources (less than 100 tons).

8. Adopt additional NO_X RACT for existing combustion sources.

EPA finds that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency measures. In addition, as required by section 175A(b) of the CAA, Ohio has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Cleveland area to cover an additional ten years beyond the initial 10 year maintenance period. Thus, EPA proposes to find that the maintenance plan SIP revision submitted by Ohio for the Cleveland area meets the requirements of section 175A of the CAA.

V. Has the state adopted approvable Motor Vehicle Emission Budgets (MVBEs)?

A. MVEBs

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or

support, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth criteria and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP requirements for the 2008 ozone standard in EPA's March 6, 2015 implementation rule (80 FR 12264). These control strategy SIPs (including RFP plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_X for ozone) to address pollution from on-road transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. *See* 40 CFR 93.101.

Under 40 CFR part 93, an MVEB for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

B. What is the status of EPA's adequacy determination for the proposed VOC and NO_X MVEBs for the Cleveland area?

When reviewing submitted control strategy SIPs or maintenance plans containing MVEBs, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule titled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed above, Ohio's maintenance plan includes NO_X and VOC MVEBs for the Cleveland area for 2030 and 2020, the last year of the maintenance period and the interim year, respectively. EPA reviewed the VOC and NO_X MVEBs through the adequacy process. Ohio's April 21, 2016, maintenance plan SIP submission, including the Cleveland area VOC and NO_X MVEBs was open for public comment on EPA's adequacy Web site on July 22, 2016, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2020 and 2030 MVEBs for the Cleveland area closed on August 22, 2016. No comments on the submittal were received during the adequacy comment period. The submitted maintenance plan, which included the MVEBs, was endorsed by the Director of the Ohio EPA and was subject to a state public hearing held on June 27, 2016, in Cleveland, Ohio. Ohio EPA received no comments during this public hearing. The MVEBS were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2008 ozone standard.

TABLE 12—MVEBS FOR THE CLEVELAND AREA, TPSD

	Attainment year 2014 on-road emissions	2020 Estimated on-road emissions	2020 Mobile safety margin allocation	2020 MVEBs	2030 Estimated on-road emissions	2030 Mobile safety margin allocation	2030 MVEBs
VOC	49.35	33.78	5.07	38.85	26.78	4.02	30.80
NO_X	94.56	53.53	8.03	61.56	38.10	5.72	43.82

As shown in Table 12, the 2020 and 2030 MVEBs exceed the estimated 2020 and 2030 on-road sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, Ohio EPA allocated a portion of the safety margin (described further below) to the mobile sector. Ohio has demonstrated that the Cleveland area can maintain the 2008 ozone NAAQS with mobile source emissions in the area of 38.85 TPSD and 30.80 TPSD of VOC and 61.56 TPSD and 43.82 TPSD of NO_X in 2020 and 2030, respectively, since despite partial allocation of the safety margin, emissions will remain under attainment year emission levels. EPA, has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Cleveland area, because EPA has determined that the area can maintain attainment of the 2008 ozone NAAQS

for the relevant maintenance period with mobile source emissions at the levels of the MVEBs.

C. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 11, the emissions in the Cleveland area are projected to have safety margins of 117.22 TPSD for NO_X and 28.48 TPSD for VOC in 2030 (the total net change between the attainment year, 2014, emissions and the projected 2030 emissions for all sources in the Cleveland area). Similarly, there is a safety margin of 89.24 TPSD for NO_X and 11.61 TPSD for VOC in 2020. Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 12 above, Ohio is allocating a portion of that safety margin to the mobile source sector. Specifically, in 2020, Ohio is allocating 5.07 TPSD and 8.03 TPSD of the VOC and NO_X safety margins, respectively. In 2030, Ohio is allocating 4.02 TPSD and 5.72 TPSD of the VOC and NO_X safety margins, respectively. Ohio EPA is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the MVEBs represents only a small portion of the 2020 and 2030 safety margins. Therefore, even though the State is requesting MVEBs that exceed the projected on-road mobile source emissions for 2020 and 2030 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

VI. Proposed Actions

EPA is proposing to determine that the Cleveland area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Ohio's request to change the legal designation of the Cleveland area from nonattainment to attainment for the 2008 ozone standard. EPA is also proposing to approve, as a revision to the Ohio SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Cleveland area in attainment of the 2008 ozone NAAQS through 2030. Finally, EPA finds adequate and is proposing to approve the newly-established 2020 and 2030 MVEBs for the Cleveland area.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone NAAQS in tribal lands.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: October 5, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–24914 Filed 10–14–16; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2016–0072; 4500030115]

Endangered and Threatened Wildlife and Plants; Review of Foreign Species That Are Candidates for Listing as Endangered or Threatened; Annual Notification of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of review.

SUMMARY: In this Candidate Notice of Review of Foreign Species (CNOR–FS), we present an updated list of plant and animal species foreign to the United States that we regard as candidates for addition to the Lists of Endangered and

Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist conservation planning efforts by providing advance notice of potential listings and awareness of species' status. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting measures to alleviate threats to the species.

DATES: We will accept information on any of the species in this Candidate Notice of Review of Foreign Species at any time.

ADDRESSES: *Document availability:* This CNOR–FS and supporting documentation, including more detailed information on these candidate species and the references cited, is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2016–0072. Please submit any new information, materials, comments, or questions on this CNOR–FS and the supporting documentation to the Falls Church, VA, address listed in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041–3808; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This CNOR–FS summarizes the status and threats that we evaluated in order to determine that species qualify as candidates, to assign a listing priority number (LPN) to each species, and to determine whether a species should be removed from candidate status. Additional material that we relied on for each candidate species is available in supporting documentation on the Internet at *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2016–0072

Twenty foreign species are current candidates for listing. This document includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants (Lists) during the period April 25, 2013, through April 7, 2016. Based on our review, we find that 19 species continue to warrant listing, but their listing remains precluded by higher-priority proposals to determine whether other species are an endangered species or a threatened species. We are removing one candidate from the list due to recovery, and we are adding a species that was originally considered to be one taxon but has recently been determined to be two full species. Additionally, in this CNOR–FS, we have assigned a listing priority number (LPN) to the new candidate species and have changed the LPNs for three candidate species.

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we identify species of wildlife and plants that are endangered or threatened based on the best available scientific and commercial information. As defined in section 3 of the Act, an endangered species is any species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Through the Federal rulemaking process, we add species that meet these definitions to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12 (List). Candidate taxa are those taxa for which we have sufficient information on file relating to biological vulnerability and threats to support a proposal to list the taxa as endangered or threatened, but for which preparation and publication of a proposed rule is precluded by higher-priority proposals to determine whether any species is an endangered species or a threatened species. We may identify a species as a candidate for listing after we have conducted an evaluation of its status—either on our own initiative, or in response to a petition we have received.

Under section 4(b)(3)(A) of the Act, when we receive a petition to add a species or to remove a species from the List we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (90-day finding). Section 4(b)(3)(B) requires that, within 12 months after receiving any petition that contains substantial scientific or commercial information indicating that listing an animal or plant species may be warranted, we make one of the following findings (12-month finding): (1) Not warranted; (2) warranted; or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species (warranted but precluded), and expeditious progress is being made to add or remove qualified species from the List (See Preclusion and Expeditious Progress below).

In accordance with section 4(b)(3)(C)(i) of the Act, when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding annually until we publish a proposed rule to list the species or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as ''resubmitted'' petition findings. This CNOR–FS contains our resubmitted petition findings for foreign species previously described in the Annual Notice of Review published April 25, 2013 (78 FR 24604).

We maintain this list of candidates for a variety of reasons:

(1) To notify the public that these species are facing threats to their survival;

(2) to provide advance knowledge of potential listings;

(3) to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary;

(4) to request input from interested parties to help us identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and

(5) to request necessary information for setting priorities for preparing listing proposals. We strongly encourage collaborative conservation efforts for candidate species. For additional information regarding such assistance, see **FOR FURTHER INFORMATION CONTACT**.

On September 21, 1983, we published guidance for assigning a listing priority number (LPN) for each candidate species (48 FR 43098). Guidelines for such a priority-ranking guidance system are required under section 4(h)(3) of the Act (15 U.S.C. 1533(h)(3)). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, immediacy of threats, and taxonomic status; the lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). As explained below, we first categorize based on the magnitude of the threat(s), then by the immediacy of the threat(s), and finally by taxonomic status.

Under this priority-ranking system, magnitude of threat can be either ''high'' or ''moderate to low.'' This criterion helps ensure that the species facing the greatest threats to their continued

existence receive the highest listing priority. It is important to recognize that all candidate species face threats to their continued existence, so the magnitude of threats is in relative terms. When evaluating the magnitude of the threat(s) facing the species, we consider information such as: the number of populations and/or extent of range of the species affected by the threat(s); the biological significance of the affected population(s), the life-history characteristics of the species and its current abundance and distribution; and whether the threats affect the species in only a portion of its range.

As used in our priority ranking system, immediacy of threat is categorized as either ''imminent'' or ''nonimminent.'' It is not a measure of how quickly the species is likely to become extinct if the threats are not addressed; rather, immediacy is based on when the threats will begin. If a threat is currently occurring or likely to occur in the very near future, we classify the threat as imminent. Determining the immediacy of threats helps ensure that species facing actual, identifiable threats are given priority for listing proposals over those for which threats are only potential or species that are intrinsically vulnerable to certain types of threats, but are not known to be presently facing such threats.

Our priority-ranking system has three categories for taxonomic status: Species that are the sole members of a genus; full species (in genera that have more than one species); and subspecies and distinct population segments of vertebrate species (DPSs). The result of the ranking system is that we assign each candidate a listing priority number of 1 to 12. For example, if the threats are of high magnitude, with immediacy classified as imminent, the listable entity is assigned an LPN of 1, 2, or 3 based on its taxonomic status (*i.e.,* a species that is the only member of its genus would be assigned to the LPN 1 category, a full species to LPN 2, and a subspecies or DPS would be assigned to LPN 3). In summary, the LPN ranking system provides a basis for making decisions about the relative priority for preparing a proposed rule to list a given species. Each species included in this CNOR–FS is one for which we have sufficient information to prepare a proposed rule to list, because it is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

For more information on the process and standards used in assigning LPNs, a copy of the guidance is available at: *http://www.fws.gov/endangered/esa-library/pdf/1983_LPN_Policy_FR_pub.pdf.* A rationale for the determination of the magnitude and imminence of threat(s) and assignment of the LPN is presented in this CNOR–FS. For more information on the LPN assigned to a particular species, see the supporting documentation at *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2016–0072.

Request for Information

With this CNOR–FS, we request additional information for the 20 taxa whose listings are warranted but precluded by higher-priority proposals to determine whether any species is an endangered or threatened species. We will consider this information in preparing listing documents or future resubmitted petition findings for these 20 taxa. This information will also help us to monitor the status of the taxa and conserve them. We request the submission of any further information on the species in this CNOR–FS as soon as possible, or whenever it becomes available. We especially seek information:

(1) Indicating that we should remove a taxon from consideration for listing;

(2) Documenting threats to any of the included taxa;

(3) Describing the immediacy or magnitude of threats facing these taxa;

(4) Identifying taxonomic or nomenclatural changes for any of the taxa; or

(5) Noting any mistakes, such as errors in the indicated historical ranges.

You may submit your information concerning this CNOR–FS in general or for any of the species included in this CNOR–FS as described in **ADDRESSES**.

Previous Publications

We called our previous reviews of foreign species an ''Annual Notice of Review,'' or ''ANOR.'' In this review, we use the term ''Candidate Notice of Review of Foreign Species (CNOR–FS)'' to better align with terminology and processes used for our Candidate Notice of Review of native species—meaning those species native to the United States.

Nineteen of the species discussed in this CNOR–FS are the result of three separate petitions submitted to the U.S. Fish and Wildlife Service (Service) to list a number of foreign bird and butterfly species as endangered or threatened under the Act. We received petitions to list the 13 foreign bird species included in this CNOR–FS on November 24, 1980, and May 6, 1991. We found the petitions presented substantial scientific or commercial information indicating that listing these 13 species may be warranted on May 12, 1981 and December 16, 1991, respectively (46 FR 26464 and 56 FR 65207), and first identified them as candidates on May 21, 2004 (69 FR 2935). On January 10, 1994, we received a petition to list seven butterfly species as endangered or threatened, and we found the petition presented substantial scientific or commercial information indicating that listing these species may be warranted on May 10, 1994 (59 FR 24117). On December 7, 2004, we identified five of the seven butterflies as candidates and two were determined to be ''not warranted'' (69 FR 70580). Our most recent ANOR was published on April 25, 2013 (78 FR 24604). Our current revised CNOR–FS supersedes all previous ANORs/Notices.

Status Assessment of Foreign Candidate Species and Findings on Resubmitted Petitions

Since the publication of our previous ANOR on April 25, 2013 (78 FR 24604), we reviewed the available information on candidate species to determine whether listing remains warranted for each species and, if so, reevaluated the relative LPN assigned to each species. We also evaluated the need to emergency list any of these species, particularly species with high listing priority numbers (*i.e.,* species with LPNs of 1, 2, or 3). This review ensures that we focus conservation efforts on those species at greatest risk first. In addition to reviewing foreign candidate species since publication of the last ANOR, we have worked on numerous findings in response to petitions to list species and on proposed and final determinations for rules to list, delist, or downlist species under the Act. Some of these findings and determinations have been completed and published in the **Federal Register**, while work on others is still under way (see Preclusion and Expeditious Progress section, below, for details).

The current number of foreign species that are candidates for listing is 20. Based on our current review, we find that one species (the Codfish Island fernbird) has recovered and no longer warrants listing; therefore, we removed this species from the candidate list. We also find that the southern helmeted curassow is actually two species, the southern helmeted or horned curassow endemic to Bolivia (*Pauxi unicornis*) and the Sira curassow endemic to Peru (*Pauxi koepckeae*). Thus, we find that 20 species continue to warrant listing, but their listing remains precluded by higher-priority proposals to determine whether any species is an endangered species or a threatened species. Lastly,

we have assigned an LPN of 2 for the Sira curassow and have changed the LPNs for the Brasilia tapaculo, the Harris' mimic swallowtail butterfly, and the fluminense swallowtail butterfly.

This CNOR–FS summarizes the current status of, and threats to, the 20 species we previously determined qualified as candidates (78 FR 24604; April 25, 2013). It also serves to reevaluate the assigned listing priority number given any changes in taxonomy or threats, and includes our findings on resubmitted petitions for 20 foreign species. We have considered all of the new information that we have obtained since the previous finding, and we have reviewed in accordance with our Listing Priority Guidance the LPN of each taxon for which proposed listing continues to be warranted but precluded. Based on our review of the best available scientific and commercial information, with this CNOR–FS, we are removing one species from the candidate list due to recovery and we are adding an additional species to the list, the Sira curassow (*Pauxi koepckeae*), which was determined to be a separate species from the petitioned southern helmeted curassow (*Pauxi unicornis*).

We emphasize that we are not proposing these species for listing, but we do anticipate developing and publishing proposed listing rules for these species in the future, with the objective of making expeditious progress in addressing all 20 of these foreign species within a reasonable timeframe.

Table 1 provides a summary of all updated determinations of the 20 taxa in our review. The column labeled ''Priority'' indicates the LPN. Following the scientific name of each taxon (third column) is the family designation (fourth column) and the common name, if one exists (fifth column). The sixth column provides the known historical range for the taxon. The avian species in table 1 are listed taxonomically.

TABLE 1—SPECIES IN 2016 CANDIDATE NOTICE OF REVIEW OF FOREIGN SPECIES

[C = Candidate (listing is warranted but precluded); Rc = Removing candidate from the list (listing is no longer warranted]

Status		Scientific name	Family	Common name	Historical range
Category	Priority				
Birds					
C	2	*Pauxi unicornis*	Cracidae	southern helmeted curassow.	Bolivia.
C	2	*Pauxi koepckeae*	Cracidae	Sira curassow	Peru.
C	2	*Rallus semiplumbeus*	Rallidae	Bogotá rail	Colombia.
C	8	*Porphyrio hochstetteri*	Rallidae	takahe	New Zealand.
C	8	*Haematopus chathamensis*	Haematopodidae	Chatham oystercatcher	Chatham Islands, New Zealand.
C	8	*Cyanoramphus malherbi*	Psittacidae	orange-fronted parakeet	New Zealand.
C	8	*Eunymphicus uvaeensis*	Psittacidae	Uvea parakeet	Uvea, New Caledonia.
C	8	*Dryocopus galeatus*	Picidae	helmeted woodpecker	Argentina, Brazil, Paraguay.
C	2	*Dendrocopos noguchii*	Picidae	Okinawa woodpecker	Okinawa Island, Japan.
C	2	*Aulacorhynchus huallagae*	Ramphastidae	yellow-browed toucanet	Peru.
C	8	*Scytalopus novacapitalis*	Rhinocryptidae	Brasilia tapaculo	Brazil.
Rc		*Bowdleria punctata wilsoni*	Sylviidae	Codfish Island fernbird	Codfish Island, New Zealand.
C	2	*Zosterops luteirostris*	Zosteropidae	Ghizo white-eye	Solomon Islands.
C	8	*Tangara peruviana*	Thraupidae	black-backed tanager	Brazil.
C	6	*Strepera graculina crissalis*	Cracticidae	Lord Howe Island pied currawong.	Lord Howe Island, New South Wales.
Invertebrates (Butterflies)					
C	3	*Mimoides (= Eurytides* or *Graphium) lysithous harrisianus.*	Papilionidae	Harris' mimic swallowtail	Brazil.
C	2	*Protographium (= Eurytides* or *Graphium* or *Neographium* or *Protesilaus) marcellinus.*	Papilionidae	Jamaican kite swallowtail	Jamaica.
C	2	*Parides ascanius*	Papilionidae	Fluminense swallowtail	Brazil.
C	2	*Parides hahneli*	Papilionidae	Hahnel's Amazonian swallowtail.	Brazil.
C	8	*Teinopalpus imperialis*	Papilionidae	Kaiser-i-Hind swallowtail	Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, Vietnam.
Mollusc					
C	2	*Mulinia coloradoensis*	Mactridae	Colorado delta clam	Mexico.

We will continue to monitor the status of these species as new information becomes available (see Monitoring, below). Our review of new information will determine if a change in status is warranted, including the need to emergency list any species or change the LPN of any of the species. In the following sections, we describe our findings for the individual species. The summaries are based on information

contained in our files, including any petitions we received.

New Candidates

Sira curassow (*Pauxi koepckeae)*—We added the Sira curassow as a new candidate species. In previous ANORs, we evaluated two bird subspecies under the genus *Pauxi,* the southern helmeted curassow or horned curassow (*P. unicornis unicornis*) from Bolivia and the Sira curassow *(P. unicornis koepckeae)* from Peru. The ranges of the two curassows are separated by approximately 2,000 kilometers (km) (1,243 miles (mi)). In 2014, BirdLife International's (BLI) Taxonomic Working Group evaluated all non-passerines (non-perching birds), including the southern helmeted curassow, applying quantitative criteria for species delimitation, using a scoring system to examine differences in morphology, vocalizations, ecology, and geographical relationships—the results of which elevated both of these subspecies to species: *P. unicornis and P. koepckeae.* Although BLI and International Union for the Conservation of Nature (IUCN) now recognize these as full species, the Integrated Taxonomic Information System (ITIS) continues to recognize *P. unicornis* as a full species with *P. unicornis unicornis* and *P. unicornis koepckeae* as subspecies. Based upon review of the available information, we consider these two curassows (*P. unicornis* and *P. koepckeae*) as valid, full species. Therefore, we have expanded our review to include the Sira curassow (*P. koepckeae),* and have added the Sira curassow to table 1. More information on Sira curassow is provided below and in the supporting documents for this CNOR–FS.

The Sira curassow is a game bird that is known only from the Cerros del Sira region of Peru. Size and coloration are similar to the southern helmeted curassow, but the Sira curassow has a shorter and rounder pale-blue casque (a horn-like bony appendage above the bill) that is flattened against the head. The Sira curassow inhabits cloud-forest habitat (a type of rainforest that occurs on high mountains in the tropics) at elevations from 1,100 to 1,450 meters (m) (3,609–4,757 feet (ft)) and above.

Although historical population data are lacking, the population is currently estimated at fewer than 250 mature individuals and is declining. The primarily cause of the decline is ongoing hunting by local communities. Additionally, the Sira curassow's habitat is being degraded by subsistence agriculture, forest clearing, road building, and associated rural development. Although the Sira curassow is legally protected in a large portion of its range in El Sira Communal Reserve, illegal hunting still occurs there. The species is classified as critically endangered on the IUCN Red List. It is not threatened by international trade, and it is not listed in any appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In the previous ANOR, both the southern helmeted curassow and the Sira curassow had an LPN of 2. Now that the Sira curassow, *Pauxi koepckeae,* is a valid, distinct species, we have reevaluated the species and conclude that an LPN of 2 continues to be accurate. The Sira curassow does not represent a monotypic genus. It faces threats that are high in magnitude based on its small estimated population and limited range. The few locations where it is believed to exist continue to face pressure from hunting and habitat loss. The best scientific information available indicates that the population decline will continue in the future. Because the species is experiencing significant population declines and ongoing habitat loss and degradation, we have assigned an LPN of 2 to reflect imminent threats of high magnitude.

Listing Priority Changes in Candidates

We reviewed the LPNs for all candidate species and are changing the LPNs for the following three species discussed below. More information on these species may be found in the supporting documents for this CNOR–FS.

Birds

Brasilia tapaculo (*Scytalopus novacapitalis*)—The Brasilia tapaculo is a small, secretive ground-dwelling bird with limited flight ability. The tapaculo is found in gallery-forest habitat that is a smaller component of the wider tropical savanna or ''Cerrado'' of the Central Goiás Plateau of Brazil. Gallery forests are narrow fringes of thick streamside vegetation that occur on the edges of rivers and streams at elevations of approximately 800–1,000 m (2,625–3,281 ft). The Brasilia tapaculo is described as ''rare,'' but the population size is unknown. Despite a lack of data on population trends, declines are suspected to be occurring, owing to habitat loss and degradation in the Cerrado. It is known to occur in six protected areas and has been found on private land next to protected areas. Protected areas are limited in extent and size. Only 1.2 percent of the Cerrado is in protected areas and those protected areas are not distributed evenly across the region. Additionally, there are few protected areas of more than 25,000 hectares (61,776 acres).

The primary threat to the species is loss and degradation of its habitat. The Cerrado is the largest, most diverse, and possibly most threatened tropical savanna in the world. Land in the Cerrado is currently being converted to soybean and rice plantations. At current rates, the remaining natural habitat in the Cerrado is predicted to be converted to other uses by 2030. The tapaculo's gallery-forest habitat has been less affected by clearing for agriculture than the surrounding Cerrado. However, larger impacts to the Cerrado are certain to affect gallery forests; erosion and deterioration of streams is increasing, and wetland drainage and the diversion of water for irrigation and annual burning of adjacent grasslands is expected to limit the availability and extent of suitable habitat for the Brasilia tapaculo.

The Brazilian national authority on wildlife, Instituto Chico Mendes de Conservação da Biodiversidade (ICMBio), categorizes Brasilia tapaculo as endangered based on severe fragmentation of populations and continued decline in habitat. The IUCN Red List categorizes the species as ''Near Threatened.'' It is not threatened by international trade and is not listed in any appendices of CITES.

In the previous ANOR, we assigned the Brasilia tapaculo an LPN of 11. After reevaluating the available information, we find that a change to an LPN of 8 is appropriate. The Brasilia tapaculo does not represent a monotypic genus. The threat to the species is of moderate magnitude and is imminent. The species has a fairly wide geographic range but is endemic to the Cerrado and strongly associated with gallery forests, a very small component of the Cerrado. The drastic conversion of the Cerrado is ongoing. The populations currently appear to be found only in or next to a handful of protected areas and most of these areas are small. The species is reported as rare, even in protected areas. Thus, based on review of the best available scientific and commercial information, the LPN has been changed from 11 to 8 to reflect imminent threats of moderate magnitude.

Invertebrates (Butterflies)

Harris' mimic swallowtail (*Mimoides lysithous harrisianus*)—The Harris' mimic swallowtail is a subspecies that inhabits the restinga (sand forest) habitats of the coastal Atlantic Forest of Brazil. It historically occurred in southern Espirito Santo State and along the coast of the State of Rio de Janeiro,

Brazil. More recent records are from three locations in the State of Rio de Janeiro, but we could not find recent population information for the subspecies.

Habitat destruction has been the main threat and is ongoing. Based on a number of estimates, 88 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as the result of human activities. In addition to the overall loss and degradation of its habitat, the remaining tracts of its habitat are severely fragmented. Habitat loss due to sea-level rise may also affect this coastal subspecies, and losses may be compounded by an increased demand by humans to use remaining land for housing and infrastructure.

Another factor affecting this butterfly is collection. In previous ANORs we suspected that collection may be a stressor for this species but have now noted sale of the subspecies on the internet. The Harris' mimic swallowtail is on the list of Brazilian fauna threatened with extinction, and collection and trade of the subspecies is prohibited. However, we recently found three online advertisements for the Harris' mimic swallowtail at prices ranging from 990 to 1,950 Euros each (approximately 1,118 to 2,182 U.S. dollars (USD)) indicating that illegal collection and trade may be occurring and demand for this butterfly is high. Harris' mimic swallowtail is not currently on the IUCN Red list, although it was identified as a ''Threatened and Extinct Subspecies'' in the family Papilionidae in the 1994 IUCN Red List. The subspecies has not been formally considered for listing in the appendices to CITES. It is also not regulated on the annexes to European Union Wildlife Trade Regulations.

In the previous ANOR, the Harris' mimic swallowtail was assigned an LPN of 6. After reevaluating the threats to this species, we have determined that a change to an LPN of 3 is appropriate. Harris' mimic swallowtail is a subspecies that is not within a monotypic genus. Although the best-studied colony has maintained a stable and viable size for nearly two decades, there is limited recent information on status. Threats are high in magnitude due to the existence of only a few, small fragmented colonies, and the potential for catastrophic events such as severe tropical storms, fire or introduction of a new disease or predator. Additionally, although the subspecies is protected by Brazilian law and the colonies are located within protected areas, the high price advertised online for specimens indicates that there is demand for the subspecies, likely from illegal collection. Because the population is very small and limited to only three known colonies, removal of individuals from the remaining small, fragmented colonies could, in combination with other stressors, contribute to local extirpations. We find these threats are of high magnitude and based on the best available information, we have changed the LPN from 6 to 3 to reflect imminent threats of high magnitude for this subspecies.

Fluminense swallowtail (*Parides ascanius*)—The fluminense swallowtail (*Parides ascanius*) also inhabits the restinga (sand forest) habitats of the coastal Atlantic Forest of Brazil within the State of Rio de Janeiro. The overall number of populations reported for the species has declined from ''fewer than 20 colonies'' in 1994 to 8 in 2015. Genetic analysis of the eight remaining populations is consistent with metapopulation dynamics (a group of separate populations that has some level of mixing) with low genetic diversity and trending towards increased isolation of these populations from urban development. Habitat loss, degradation, and fragmentation are the principal threats to this species. The species occupies highly specialized habitat and requires large areas to maintain a viable colony. Only one of the eight known populations is presently found within a large protected area (Poço das Antas Biological Reserve), and the majority of the remaining populations are on smaller, fragmented parcels with limited or no protections. Collection and commercial exploitation (see Harris' mimic swallowtail above) were also identified as possible factors affecting the fluminense swallowtail. The species is located near urban areas and is easy to capture. The impact of illegal collection to the fluminense swallowtail is difficult to assess, but removal of individuals from the remaining small, fragmented populations could, in combination with other stressors, contribute to local extirpations.

The fluminense swallowtail butterfly was the first invertebrate to be officially noted on the list of Brazilian animals threatened with extinction in 1973. It has been classified as ''Vulnerable'' by the IUCN Red List since 1983, although it is now marked as ''Needs Updating.'' The species is currently categorized by Brazil as ''Imperiled.'' It has not been formally considered for listing in the appendices to CITES. However, it is listed on annex B of the European Union Trade Regulation.

In the previous ANOR, the fluminense swallowtail was assigned an LPN of 5. After reevaluating the factors affecting the fluminense swallowtail and its population decline, we have determined that a change in the listing priority number to 2 is appropriate. The fluminense swallowtail does not represent a monotypic genus. The overall number of populations recorded for the species has declined and most of the remaining populations are small and fragmented. The species is currently affected by habitat destruction, which is high in magnitude and imminence. Despite the conservation measures in place, some of the remaining small populations may be impacted by illegal collection. On the basis of this new information, we have changed the LPN for the fluminense swallowtail from 5 to 2.

Candidate Removals

Codfish Island fernbird (*Bowdleria punctata wilsoni*)—We have evaluated the threats to the Codfish Island fernbird (*Bowdleria punctata wilsoni*) and considered factors that, individually and in combination, currently or potentially could pose a risk to the species and its habitat. After a review of the best available scientific and commercial data, we conclude that listing this species under the Act is not warranted because it is not likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, we no longer consider the Codfish Island fernbird to be a candidate species for listing. We will continue to monitor the status of this species and to accept additional information and comments concerning this finding. We will reconsider our determination in the event that we gather new information that indicates that the threats are of a considerably greater magnitude or imminence than identified through assessments of information contained in our files, as summarized below. More information on this species may be found in the supporting documents for this CNOR–FS.

The Codfish Island fernbird is a small, insect-eating songbird native to Codfish Island, New Zealand. Codfish Island is a nature reserve, located 3 km (1.8 mi) off the northwest coast of Stewart Island. The subspecies was also successfully introduced to Putauhinu Island, approximately 40 km south of Codfish Island, in the late 1990s. The Codfish Island fernbird is secretive, and its main habitat is the pakihi, which consists of dense vegetation 0.9 to 2.1 m (3 to 7 ft) high. Fernbirds will also

occupy forest habitats as long as rat populations are absent. Fernbirds are poor fliers that typically scramble through vegetation, though they occasionally fly short distances.

At its lowest point, in the early 1970s, the population was estimated to be less than 100 individuals. Although there is no current estimate of the size of the Codfish Island fernbird population, the population on Codfish Island as of 2007 was believed to be ''several hundred,'' with an additional 200–300 birds on Putauhinu Island, based on incidental encounter rates in the various habitats. Populations on both islands appear to have expanded into all available habitats and appear to be stable and secure. Historically, Codfish Island fernbird populations were greatly reduced in number due to predation by Polynesian rats and weka (*Gallirallus australis*), a flightless woodhen that is endemic to New Zealand. Codfish Island's native vegetation was also modified by the introduced Australian brush-tailed possum (*Trichosurus vulpecula*). These threats have now been eliminated through intensive eradication efforts. The Codfish Island fernbird population has rebounded strongly with the removal of nonnative predators in the 1980s and 1990s. Additionally, forest habitat is now regenerating, and the fernbird has successfully recolonized and expanded its range on Codfish Island. With the introduction of the fernbird to a second island that is free of nonnative predators, the primary threats to the species have been eliminated.

Neither the IUCN nor BLI have assessed the status of this subspecies. The New Zealand Department of Conservation (NZDOC) categorizes the Codfish Island fernbird as a range-restricted island endemic that is ''naturally uncommon.'' It is not listed in any appendices of CITES.

In the previous ANOR, the Codfish Island fernbird was assigned an LPN of 12. After reevaluating the available information, we find that this subspecies no longer warrants listing. Although it is an island endemic that is restricted in range, the primary threat to the species—nonnative predators—has been removed, and the population has responded and expanded throughout its known historical range on Codfish Island, occupying all available habitats. In addition, conservation efforts by NZDOC have resulted in the establishment of a second population on Putauhinu island that is free of nonnative predators, and that population has expanded and appears to be secure. Finally, the two islands occupied by the Codfish Island fernbird have restricted access, such that reestablishment of nonnative predators is extremely unlikely. In the unlikely event of nonnative predators reappearing on either island, NZDOC has a proven track-record of success in eradicating mammalian predators from these islands. Therefore, we have determined that this subspecies no longer warrants listing and are removing it from the candidate list.

Findings for Petitioned Candidate Species

Birds

Southern helmeted curassow (*Pauxi unicornis*)—Like the Sira curassow (see above), the Southern helmeted curassow is a game bird with a distinctive pale-blue horn-like appendage, or casque, above its bill. The southern helmeted curassow is known only from central Bolivia on the eastern slope of the Andes, where large portions of its habitat are in National Parks. The species inhabits dense, humid, foothill and lower montane forest and adjacent evergreen forest at altitudes between 450 and 1,500 m (1,476 to 4,921 ft).

The total population of southern helmeted curassow is estimated to be between 1,500 and 7,500 individuals and is declining. Hunting is believed to be the primary threat to the species, followed by habitat loss and degradation. Although the National Parks have been important for the preservation of the species, financial and human resources needed to protect park resources are limited. Within the Parks, there are human settlements and ongoing encroachment, including illegal logging operations and forest clearing for farming. Rural development and road building limit the species' ability to disperse. Range reductions due to climate change are also predicted for the southern helmeted curassow, when warming temperatures may cause the species to shift its distribution upslope and outside of protected National Parks.

The southern helmeted curassow is classified as critically endangered on the IUCN Red List. Trade has not been noted internationally, and the species is not listed in any appendices of CITES. The species is listed in annex D of the European Union Trade Regulations.

In the previous ANOR, the southern helmeted curassow was assigned an LPN of 2. After reevaluating the threats to the species, we have determined that no change in the LPN is warranted. The southern helmeted curassow does not represent a monotypic genus. It faces threats that are high in magnitude based on its small, limited range. The few locations where it is believed to exist continue to face pressure from hunting and habitat loss and destruction, and population decline will likely continue. Because the species is experiencing ongoing significant population declines and habitat loss, we have made no change to the LPN of 2, which reflects imminent threats of high magnitude.

Bogotá rail (*Rallus semiplumbeus*)—The Bogotá rail is found in the East Andes of Colombia, South America. It is a medium-sized nonmigratory rail largely restricted to areas at elevations from 2,500–4,000 m (8,202–13,123 ft) in and surrounding Bogotá, Columbia, on the Ubaté-Bogotá Plateau. This region formerly supported vast marshes and swamps, but few lakes with suitable habitat for the rail remain. The species is secretive, and wetland habitats most frequently used by rail are fringed by dense vegetation-rich shallows. The current population size of the Bogotá rail is estimated between 1,000 and 2,499 mature individuals and is thought to be declining. The primary threat to the rail is habitat loss and degradation. Approximately 8 million people live in the City of Bogotá and 11 million in the larger metro area. The wetlands have experienced a 97-percent loss in historical extent with few suitably vegetated marshes remaining. Additionally, road building may result in further colonization and human interference, including introduction of nonnative species in previously stable wetland environments. The Bogotá rail is listed as endangered at the global and national level by IUCN. Trade does not appear to be of concern at the international level, and the species is not listed in any appendices of CITES.

In the previous ANOR, the Bogotá rail was assigned an LPN of 2. After reevaluating the threats to this species, we have determined that no change in the LPN for the species is needed. The Bogotá rail does not represent a monotypic genus. It faces threats that are high in magnitude due to the pressures on the species' habitat. Its range is very small and is rapidly contracting because of widespread habitat loss and degradation. Although portions of the Bogotá rail's range occur in protected areas, most of the savanna wetlands are unprotected. The population is small and is believed to be rapidly declining. The factors affecting the species are ongoing, and are, therefore, imminent. Thus, the LPN remains at 2 to reflect imminent threats of high magnitude.

Takahe (*Porphyrio hochstetteri*)—The takahe is a large flightless bird in the rail family. The takahe was once widespread in the forest and grassland ecosystems of New Zealand. It was

thought to be extinct until it was rediscovered in the Murchison Mountains on the South Island of New Zealand in 1948. In addition to its native range on the mainland, the takahe has been introduced to offshore islands and mainland sanctuaries.

When rediscovered in 1948, it was estimated that the takahe population consisted of 100 to 300 birds; in 2013, the population was estimated at 227 adult birds. Several factors have historically led to the species' decline, including hunting, competition from introduced herbivores (animals that feed on plants), and predators such as weasels and the weka, a flightless woodhen that is endemic to New Zealand. Currently, weasel predation appears to be the most significant of these threats. Weasel trapping is an effective tool at slowly increasing survival and reproductive output of takahe; however, control efforts do not completely eliminate the threat. Takahe is a long-lived bird, potentially living between 14 and 20 years, and has a low reproductive rate, with clutches consisting of one to three eggs. Severe weather in the Murchison Mountains (cold winters and high snowfall) may also be a limiting factor to the takahe. The population of takahe remains very small and has low genetic diversity relative to other species. The NZDOC is currently attempting to manage further loss of genetic diversity through translocations. Additionally, NZDOC has implemented a captive-breeding and release program to supplement the mainland population and has established several reserve populations on islands and fenced mainland sites; these actions are having a positive effect on population growth. The takahe is listed as endangered on the IUCN Red List, and New Zealand considers it to be a nationally critical species. It is not listed in any appendices of CITES as international trade is not a concern.

In the previous ANOR, the takahe was assigned an LPN of 8. After reevaluating the threats to the takahe, we have determined that no change in the classification of the magnitude and imminence of threats to the species is warranted at this time. The takahe does not represent a monotypic genus. Although it has a small population, limited suitable habitat, and may experience inbreeding depression, because the NZDOC is actively involved in measures to aid the recovery of the species, we find the threats are moderate in magnitude. Despite conservation efforts, the threats are ongoing and, therefore, imminent. Lack of suitable habitat and predation, combined with the takahe's small population size and naturally low reproductive rate, are threats to this species that are moderate in magnitude. Thus, the LPN remains at 8 to reflect imminent threats of moderate magnitude.

Chatham oystercatcher (*Haematopus chathamensis*)—The Chatham oystercatcher is native to the Chatham Island group located 860 km (534 mi) east of mainland New Zealand. The species breeds along the coastline of four islands in the chain: Chatham, Pitt, Rangatira, and Mangere. The Chatham oystercatcher is found mainly along rocky shores, including wide volcanic rock platforms and occasionally on sandy or gravelly beaches.

The Chatham oystercatcher is the rarest oystercatcher in the world, with a recent population estimate of 309 birds. The species has experienced a three-fold increase in its population since the first reliable census was conducted in 1987. Most of this increase occurred during a period of intensive management, especially predator control, from 1998 through 2004. The Chatham oystercatcher is listed as nationally critical by the NZDOC. It is classified as ''Endangered'' on the IUCN Red List and is not listed in any appendices of CITES.

Predation of eggs and chicks, and to a lesser extent of adults, is thought to be the main impediment to the Chatham oystercatcher population. Although Mangere and Rangatira nature reserves are free of all mammalian predators, nonnative mammalian predators inhabit Chatham and Pitt Islands. Feral cats are the most common predator on eggs. Other documented predators include gulls (*Larus* spp.), the native brown skua (*Catharacta antarctica*), weka, and domestic dogs. Nest destruction and disturbance by humans and livestock are also noted threats. Habitat loss and degradation has occurred from introductions of nonnative Marram grass (*Ammophila arenaria*) in the early 1900s to re-vegetate destabilized dunes. The dense marram grass is unsuitable for Chatham oystercatcher nesting. Consequently, the Chatham oystercatcher is forced to nest closer to shore, where nests are vulnerable to tides and storm surges; up to 50 percent of eggs are lost in some years. Rising sea levels associated with climate change will likely affect future nesting success.

In the previous ANOR, the Chatham oystercatcher was assigned an LPN of 8. After reevaluating the threats to this species, we have determined that no change in the classification of the magnitude and imminence of threats to the species is warranted. The Chatham oystercatcher does not represent a monotypic genus. The current population estimate is very small, and the species has a limited range, but NZDOC has taken measures to recover the species and the population is slowly growing. However, threats (predation, trampling, low population numbers, and loss of eggs due to storm surges) are ongoing and, thus, are imminent. The LPN remains an 8 to reflect imminent threats of moderate magnitude.

Orange-fronted parakeet (*Cyanoramphus malherbi*)—The orange-fronted parakeet was once well distributed on the South Island of mainland New Zealand and a few offshore islands. It is now considered the rarest parakeet in New Zealand. Remaining naturally occurring populations are restricted to limited range (30 km (18.6 mi)) of four areas of subalpine mature beech forests (*Nothofagus* spp.), on the South Island. Orange-fronted parakeets have also been released onto four predator-free islands where breeding has been confirmed.

The species' range contracted when its population was severely reduced in the late 1800s and early 1900s for unknown reasons. Information on current population status is mixed, but optimistic. The population experienced another crash in 1990–2000 following rat invasions. The population is still small and has declined over the last decade with estimates between 290 and 690 individuals in early 2013. The 2013 estimates indicated further declines on the mainland and, during a 14-year period (approximately three generations), a reduction in the number of mature birds. More recently, the global population is reported as increasing due to successful translocations to predator-free islands and control of predators in its range on the South Island.

The most prominent factors affecting the species on the mainland are predation by nonnative mammals such as weasels and rats (*Rattus* spp.), as well as habitat destruction. Habitat loss and degradation has affected large areas of native forest on the mainland. In addition, silviculture (care and cultivation) of beech forests in the past had removed mature trees with nest cavities needed by the parakeet. The species' habitat is also degraded by introduced herbivores that alter forest structure in a way that reduces the available feeding habitat for the parakeet. Lastly, Beak and Feather Disease Virus (BFDV) is a potential threat to this species. The disease was discovered in wild native birds in New Zealand in 2008 (*e.g.,* the red-fronted parakeet, *Cyanoramphus novaezelandiae*) though it has not been documented in the orange-fronted

parakeet. Infected birds either develop immunity, die within a couple of weeks, or become chronically infected. Chronic infections result in feather loss and deformities of beak and feathers.

In the previous ANOR, the orange-fronted parakeet was assigned an LPN of 8. After reevaluating the factors affecting the species, we have determined that no change in the classification of the magnitude of threats to the species is warranted because NZDOC is actively managing the species. The orange-fronted parakeet does not represent a monotypic genus. Although the species' available suitable nesting habitat in beech forests is extremely limited, translocations have taken place and seem to be successful. However, the population is still small and vulnerable to several threats despite management efforts that may have stabilized the population (albeit at small numbers). Small populations may also be vulnerable to stochastic events, including disease outbreaks such as BFDV. We find that the threats to this species are still imminent; thus, the LPN remains at 8 to reflect imminent threats of moderate magnitude.

Uvea parakeet (*Eunymphicus uvaeensis*)—The Uvea parakeet is a relatively large, green parakeet found on the small atoll of Uvea, located approximately 1,500 km (932 mi) east of Australia in the Loyalty Archipelago, New Caledonia (a territory of France). The entire island of Uvea is considered an Important Bird Area by BirdLife International which works with communities to combine conservation with sustainable livelihoods. To date, however, we are unaware of any designated reserves or provincial parks. Uvea parakeets were introduced to the adjacent island of Lifou (to establish a second population) in 1925 and 1963, but these introductions failed. The species occupies both the north and south end of Uvea Island. The species primarily uses older (old-growth) forest habitats and nests in the cavities of living *Syzygium* and *Mimusops* trees. Their exclusive use of tree cavities for nesting may be a limiting factor. In 1977, the Uvea parakeet population was estimated to be between 500 to 800 individuals. More recent analyses provided two population estimates of approximately 1,730 birds with varying confidence intervals.

Historically, the primary threat to this species was the capture of juveniles for the pet trade, which involved cutting open nesting cavities to extract nestlings; this practice renders the holes unsuitable for future nesting. Since restrictions have been put into place and the species has been more closely monitored, it appears that nest poaching is no longer occurring such that it significantly affects this species, and the population has increased. Other identified threats to the species include: Habitat degradation and conversion, loss of nesting cavities to bees, loss of habitat through climate change, and the potential for introduction of nonnative predators. Artificial nests are being installed to increase available nesting sites; however, Uvea parakeets have not yet used the artificial nests provided. Uvea is a low-elevation and relatively flat island. Climate change (and associated sea-level rise) will likely result in loss of forest habitat or important food species and is considered a substantial threat to the persistence of Uvea parakeets. The limited occupied range of the species (only 34 km^2 (13 mi^2)) in a few fragmented patches on Uvea, amplifies this threat. Uvea parakeet is listed as ''Endangered'' on the IUCN Red List. It is listed in appendix I of CITES and annex A of the European Union Trade Regulations.

In the previous ANOR, the Uvea parakeet was assigned an LPN of 8. After reevaluating the threats to this species, we have determined that no change in the classification of the magnitude and imminence of threats to the species is warranted. The Uvea parakeet does not represent a monotypic genus. The Uvea parakeet has a limited distribution on a single small island with limited remaining old-growth forest on which the bird depends for nesting cavities. The population has increased in size due to conservation, education, a ban on commercial trade, and a reduction in poaching; however, several threats (including habitat loss, loss of nesting cavities and effects from climate change) are still present and ongoing and, therefore, imminent. The LPN remains an 8 to reflect imminent threats of moderate magnitude.

Helmeted woodpecker (*Dryocopus galeatus*)—The helmeted woodpecker is a fairly small woodpecker native to regions of southern Brazil, eastern Paraguay, and northeastern Argentina. Its characteristic habitat is expansive, well-preserved southern Atlantic Forest in both lowland and montane areas from sea level up to elevations of 1,000 m (3,280 ft). It is believed to prefer mature (old-growth) trees in tropical and subtropical semi-deciduous forests as well as in mixed deciduous-coniferous forests.

The helmeted woodpecker's population is believed to have declined sharply between 1945 and 2000 in conjunction with the clearing of mature forest habitat and is currently estimated at 400–8,900 individuals. Although forest clearing has recently slowed, and the species occurs in at least 17 protected areas throughout its range, habitat degradation continues and the population is still believed to be declining. The principal threat to the helmeted woodpecker is loss, degradation, and fragmentation of its Atlantic forest habitat. Competition for nest cavities is also likely a limiting factor. The helmeted woodpecker is one of the rarest woodpecker in the Americas. It is listed as endangered in Brazil and as vulnerable by the IUCN. It is not listed in any appendices of CITES.

In the previous ANOR, the helmeted woodpecker was assigned an LPN of 8. After reevaluating the available information, we find that no change in the LPN for the helmeted woodpecker is warranted. The helmeted woodpecker does not represent a monotypic genus. The magnitude of threats to the species is moderate because the species' range is fairly large. The threats are imminent because the forest habitat upon which the species depends is still being altered and degraded. An LPN of 8 continues to be accurate for this species.

Okinawa woodpecker (*Dendrocopos noguchii* syn. *Sapheopipo noguchii*)—The Okinawa woodpecker is a relatively large woodpecker found on Okinawa Island, Japan. The species prefers undisturbed, mature, subtropical evergreen broadleaf forests. It currently occurs within the forested areas in the northern part of the island, generally in the Yambaru forest, and in some undisturbed forested in coastal areas. Most of the older forests that support the species are within the Jungle Warfare Training Center (formerly, the Northern Training Area), part of the United States Marine Corps installation on Okinawa Island.

The Okinawa woodpecker is considered one of the world's rarest woodpecker species. Current population estimates are between 100 and 390 individuals and declining.

Habitat destruction and fragmentation was a significant threat. As of 2001, only 40 km^2 (15 mi^2) of suitable habitat was available for this species. While most of the habitat loss appears to have ceased, the Okinawa woodpecker still suffers from limited suitable habitat and a small population size. This situation makes it vulnerable to extinction from disease and natural disasters such as typhoons. In addition, the species is vulnerable to introduced predators such as feral dogs and cats, Javan mongoose (*Herpestes javanicus*), and weasels (*Mustela itatsi*). The species is listed as critically endangered on the IUCN Red List. It is

legally protected in Japan. It is not listed in any appendices of CITES.

In the previous ANOR, the Okinawa woodpecker was assigned an LPN of 2. After reevaluating the available information, we find that no change in the LPN is warranted. The Okinawa woodpecker does not represent a monotypic genus. Threats to the species are of high magnitude due to the scarcity of old-growth habitat, upon which the species is dependent. Its population is very small and is believed to still be declining, and species with fragmented habitat in combination with small population sizes may be at greater risk of extinction due to synergistic effects. The threats to the species are ongoing and imminent and high in magnitude due to its restricted population size, past habitat loss, and endemism. The LPN for this species remains a 2 to reflect imminent threats of high magnitude.

Yellow-browed toucanet (*Aulacorhynchus huallagae*)—The yellow-browed toucanet has a small range on the east slope of the Andes of north-central Peru at elevations of 2,000–2,600 m (6,562–8,530 ft). The toucanet occurs in humid montane forests. The population status is not well known because of the inaccessibility of its habitat, but is estimated at 600–1,500 mature individuals. Habitat loss and destruction from deforestation for agriculture has been widespread in the region and is suspected to be the main threat, although deforestation appears to have occurred mainly below the altitudinal range of this toucanet. Gold mining and manufacturing also are common in the region. The yellow-browed toucanet is described as scarce wherever found, and ongoing population declines resulting from habitat loss are assumed. It is classified as endangered on the IUCN Red List and is not listed in any CITES appendices.

In the previous ANOR, the yellow-browed toucanet was assigned an LPN of 2. After reevaluating the available information, we find that no change in the classification of the magnitude and imminence of threats to the species is warranted at this time. The yellow-browed toucanet does not represent a monotypic genus. The estimated population is small with a restricted range. The magnitude of threats to the habitat remains high, and its population is likely declining. The LPN remains a 2 to reflect imminent threats of high magnitude.

Ghizo white-eye (*Zosterops luteirostris*)—The Ghizo white-eye is a small passerine (perching) bird. It is endemic to the small island of Ghizo in the Solomon Islands in the South Pacific Ocean, east of Papua New Guinea. The total range of the Ghizo white-eye is estimated to be less than 35 km^2 (13.5 mi^2), of which less than 1 km^2 (0.39 mi^2) is the old-growth forest that the species apparently prefers.

Little information is available about this species and its habitat. It is locally common in old-growth forest patches and less common elsewhere. The species has been observed in a variety of habitats on the island, but it is unknown whether sustainable populations can exist outside of forested habitats. The population is estimated to be between 250 and 999 mature individuals and is suspected to be declining due to habitat degradation, particularly since a tsunami hit the island in 2007. Habitat loss appears to be the main threat. As of 2012, the human population on the island was 7,177 and growing rapidly, and there has been prolific growth in informal human settlements and temporary housing on Ghizo, which may be adversely affecting the Ghizo white-eye and its habitat. Areas around Ghizo Town, which previously supported the species, have been further degraded since the town was devastated by the 2007 tsunami, and habitat was found less likely able to support the species in 2012. The species is also affected by conversion of forested areas to agricultural uses. The old-growth forest on Ghizo is still under pressure from clearance for local use as timber, firewood, and gardens, as are the areas of secondary growth, which are already suspected to be suboptimal habitat for this species.

The population of this species is believed to be declining and, given its fragmented habitat in combination with small population sizes, may be at greater risk of extinction due to synergistic effects. The IUCN Red List classifies this species as endangered. It is not listed in any appendices of CITES, and this species is not in international trade.

In the previous ANOR, the Ghizo white-eye was assigned an LPN of 2. After reevaluating the available information, we find that no change in the LPN for this species is warranted. The Ghizo white-eye does not represent a monotypic genus. It faces threats that are high in magnitude due to declining suitable habitat and its small, declining population size. The best available information indicates that forest clearing is occurring at a pace that is rapidly denuding the habitat; secondary-growth forest continues to be converted to agricultural purposes. Further, the human population on the small island is likely contributing to the reduction in old-growth forest for local uses such as gardens and timber. These threats to the species are ongoing, of high magnitude, and imminent. Thus, based on the best available scientific and commercial information, the LPN remains a 2 for this species.

Black-backed tanager (*Tangara peruviana*)—The black-backed tanager is endemic to the coastal Atlantic Forest region of southeastern Brazil. It has been found in the coastal states of Espirito Santo, Rio de Janeiro, São Paulo, Paranà, Santa Catarina, and Rio Grande do Sul. The species is generally restricted to the sand-forest ''restinga'' habitat, which is a coastal component habitat of the greater Atlantic Forest complex. Restingas are herbaceous, shrubby coastal sand-dune habitats. The black-backed tanager is primarily found in undisturbed habitat but has also been observed in secondary (or second-growth) forests. It has also been observed visiting gardens and orchards of houses close to forested areas. Within suitable habitat, the black-backed tanager is generally not considered rare. The population estimate is between 2,500 to 10,000 mature individuals. Populations currently appear small and fragmented and are believed to be declining.

The primary factor affecting this species is the rapid and widespread loss of habitat, mainly to urban expansion and beachfront development. Its habitat is under pressure from the intense development that occurs in coastal areas, particularly south of Rio de Janeiro. In addition to the overall loss and degradation of its habitat, the remaining tracts of its habitat are severely fragmented. The black-backed tanager's remaining suitable habitat in the areas of Rio de Janeiro and Paraná have largely been destroyed, and habitat loss and degradation will likely increase in the future. Additionally, although small portions of this species' range occur in six protected areas, protections appear limited. Sea-level rise may also affect this species, which inhabits coastal areas. Habitat loss due to sea-level rise may be compounded by an increased demand by humans to use remaining land for housing and infrastructure. These factors affecting the black-backed tanager's remaining habitat are ongoing due to the challenges that Brazil faces to balance its competing development and environmental priorities. The black-backed tanager is classified as vulnerable by the IUCN. It is not listed in any appendices of CITES. It is listed as vulnerable in Brazil.

In the previous ANOR, the black-backed tanager was assigned an LPN of

8. After reevaluating the available information, we have determined that no change in the LPN for this species is warranted at this time. The black-backed tanager does not represent a monotypic genus. This species is protected under Brazil's National Environmental Policy Act (Law 6.938 of 1981), and several other laws implementing protection for fauna. Despite these laws, its habitat continues to diminish. We find that threats (primarily habitat loss) to the species are moderate in magnitude due to the species' fairly large range, its existence in protected areas, and apparent flexibility in diet and habitat suitability. Threats are imminent because the species is at risk due to ongoing and widespread loss of habitat due to beachfront and related development. Therefore, an LPN of 8 remains valid for this species.

Lord Howe Island pied currawong (*Strepera graculina crissalis*)—The Lord Howe Island pied currawong is a fairly large crow-like bird, endemic to Lord Howe Island, New South Wales, Australia. Lord Howe Island is a small island northeast of Sydney, Australia, with 28 smaller islets and rocks. The Lord Howe pied currawong occurs throughout the island but is most numerous in the mountainous areas on the southern end. It has also been recorded to a limited extent on the Admiralty Islands, located 1 km (0.6 mi) north of Lord Howe Island. Approximately 75 percent of Lord Howe Island, plus all outlying islets and rocks within the Lord Howe Island group, are protected under the Permanent Park Preserve, which has similar status to that of a national park. The Lord Howe Island pied currawong breeds in rainforests and palm forests, particularly along streams.

The best current population estimate in 2005 and 2006 indicated that there were approximately 200 individuals. The Lord Howe Island pied currawong exists as a small isolated population, which makes it vulnerable to stochastic events. The potential for an introduction of other exotic predators to this island ecosystem has also been identified as an issue for this species. In addition to its small population size, direct persecution (via shootings) by humans in retaliation for predation on domestic and endemic birds has been documented. The incidence of shootings has declined since the 1970s, when conservation efforts on Lord Howe Island began, but occasional shootings were still occurring as of 2007.

Because the Lord Howe pied currawong often preys on small rodents, it may be subject to nontarget poisoning during ongoing rat-baiting programs. Experimental efforts to develop techniques to house the birds in aviaries while rat-baiting programs take place show promise for protecting the species during these eradication efforts. The subspecies' status is not addressed by IUCN. It is not listed in any appendices of CITES as trade is not an issue for this taxon. The New South Wales Threatened Species Conservation Act of 1995 lists the Lord Howe pied currawong as ''Vulnerable'' due to its extremely limited range and its small population size.

In the previous ANOR, the Lord Howe pied currawong was assigned an LPN of 6. After reevaluating the threats to the Lord Howe pied currawong, we have determined that no change in the LPN representing the magnitude and imminence of threats to the subspecies is warranted. The Lord Howe pied currawong does not represent a monotypic genus. It faces threats that are high in magnitude due to a combination of factors including its extremely small population size, and nontarget poisoning. Despite conservation efforts, the population of the Lord Howe pied currawong has remained small. Species with small population sizes such as these may be at greater risk of extinction due to synergistic effects of factors affecting this species. However, because conservation efforts for the species have been implemented, and the species is being closely managed and monitored, we find that the threats are nonimminent. Thus, based on the best available information, the LPN remains at 6 to reflect nonimminent threats of high magnitude.

Invertebrates (Butterflies)

Jamaican kite swallowtail (*Protographium marcellinus,* syn. *Eurytides*)—The Jamaican kite swallowtail is a small blue-green and black butterfly endemic to Jamaica. The species occurs in limestone forest containing its only known larval host plant, *Oxandra lanceolata.* There is no known estimate of population size. The Jamaican kite swallowtail was historically locally abundant. Presently it maintains low population levels with occasional strong flight seasons with higher numbers. There is only one known breeding site in the eastern coast town of Rozelle, in St. Thomas Parish, near Kingston (Jamaica's capital). However, researchers now believe that there are likely other breeding sites—one potential site being Jamaica's Cockpit Country, a remote and rugged forested region in the west-central portion of the island.

Habitat loss, degradation, and fragmentation are considered to be the primary factors affecting the Jamaican kite swallowtail. Additionally, the species is vulnerable due to its small population size and limited distribution on the island. After centuries of a high rate of deforestation, the island lost much of its original forest. Eight percent of the total land area of Jamaica is natural forest with minimal human disturbance. In Rozelle, habitat modification for agricultural and industrial purposes such as mining has diminished this species' habitat. Most of the damage took place decades ago, but small farming still occurs there. The rugged terrain of the Cockpit Country has hindered large-scale exploitation of resources in the interior, but the periphery and surrounding plains are badly degraded. Major threats identified for the Cockpit Country include: Mining, forest conversion, nonnative invasive species, solid-waste disposal, incompatible agricultural practices, and collecting. Additionally, bauxite mining for aluminum production is an important economic activity for Jamaica and is a large contributor to deforestation. Jamaica's location in the hurricane belt increases its vulnerability to natural environmental events. Although the Jamaican Wildlife Protection Act of 1994 carries steep fines and penalties, illegal collection (see Harris' mimic swallowtail above) is a potential threat for the Jamaican kite swallowtail. The butterfly has been noted for sale on the internet as recently as 2015 for 150 Euros (164 USD). The species is classified as vulnerable on the IUCN Red List and IUCN indicates that this assessment needs updating. It is not is not listed in any appendices of CITES nor is it listed on annex B of the European Union Trade Regulations.

In the previous ANOR, the Jamaican kite swallowtail was assigned an LPN of 2. After reevaluating the factors affecting the Jamaican kite swallowtail, we have determined that no change in LPN is warranted. The Jamaican kite swallowtail does not represent a monotypic genus. Although alternate breeding sites are likely, the only documented site and the presumed core population for this species is in one location that is vulnerable to stochastic environmental events such as hurricanes. Although Jamaica has taken regulatory steps to preserve native swallowtail habitat, plans for conservation of two vital areas for the butterfly (Rozelle and the Cockpit Country) have not been implemented. Based on our reevaluation of the threats to this species, the LPN remains a 2 to

reflect imminent threats of high magnitude.

Hahnel's Amazonian swallowtail (*Parides hahneli*)—Hahnel's Amazonian swallowtail is a large black and yellow butterfly endemic to Brazil. It is known from three locations along the tributaries of the middle and lower Amazon River basin in the states of Amazonas and Pará. Its preferred habitat is old sand strips (stranded beaches) that are overgrown with dense scrub vegetation or forest found close to the major rivers. Hahnel's Amazonian swallowtail is described as very scarce and extremely localized in association with its specialized habitat and its larval host plant. Population size and trends are not known for this species. However, habitat alteration (*e.g.,* for dam construction and waterway crop transport) and destruction (*e.g.,* clearing for agriculture and cattle grazing) are ongoing in Pará and Amazonas where this species is found. Researchers are concerned that potential harmful impacts from habitat alterations are taking place before the butterfly can be better studied and its ecological needs can be understood.

Collection (see Harris' mimic swallowtail above) is also a potential threat for Hahnel's Amazonian swallowtail. The species has been collected for commercial trade and may also be reared for trade. Locations in the wild have been kept secret given the high value of this butterfly to collectors. Two specimens of Hahnel's Amazonian swallowtail were recently noted in online sales from locations in the United States (500 USD) and Germany (approximately 166 USD). Hahnel's Amazonian swallowtail is described as data deficient by the IUCN Red List. The species is listed as endangered on the State of Pará's list of threatened species, but it is not listed by the State of Amazonas or by Brazil. Hahnel's Amazonian swallowtail is not listed in any appendices of CITES. However, it is listed on annex B of the European Union Trade Regulations.

In our previous ANOR, the Hahnel's Amazonian swallowtail was assigned an LPN of 2. After reevaluating the threats to the Hahnel's Amazonian swallowtail, we have determined that no change in the LPN is warranted. This swallowtail does not represent a monotypic genus. It faces threats that are high in magnitude and imminence due to its small endemic population, and limited and decreasing availability of its highly specialized habitat. Habitat alteration and destruction (*e.g.,* dam construction, waterway crop transport, clearing for agriculture, and cattle grazing) are ongoing in Pará and Amazonas where the butterfly is found. These threats are high in magnitude due to the species' highly localized and specialized habitat requirements. Potential impacts from collection are unknown but could, in combination with other stressors, contribute to local extirpations. Based on a reevaluation of the threats, the LPN remains a 2 to reflect imminent threats of high magnitude.

Kaiser-i-Hind swallowtail (*Teinopalpus imperialis*)—The Kaiser-i-Hind swallowtail is native to Himalayan regions of Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, and Vietnam. Although it has a relatively large range, it is restricted to higher elevations and occurs only locally within this range. This species occurs at altitudes of 1,500 to 3,050 m (4,921 to 10,000 ft) above sea level, in undisturbed (primary) broad-leaved-evergreen forests or montane deciduous forests. Adults fly up to open hilltops above the forests to mate, where males will often defend mating territories. Larval host-plants are limited to *Magnolia* and *Daphne* spp., and in some regions the Kaiser-i-Hind swallowtail is strictly monophagous, only using a single species of *Magnolia* as a host plant. Despite the species' widespread distribution, populations are described as being very local and never abundant. Even early accounts of the species described it as being a very rare occurrence. Habitat destruction is believed to negatively affect this species, which prefers undisturbed high-altitude forests. In China and India, the Kaiser-i-Hind swallowtail populations are affected by habitat modification and destruction due to commercial and illegal logging. In Nepal, the species is affected by habitat disturbance and destruction resulting from mining, wood collection for use as fuel, deforestation, collection of fodders and fiber plants, forest fires, invasion of bamboo species into the oak forests, agriculture, and grazing animals. In Vietnam, the forest habitat is reportedly declining. The Forest Ministry in Nepal considers habitat destruction to be a critical threat to all biodiversity, including the Kaiser-i-Hind swallowtail. Comprehensive information on the rate of degradation of Himalayan forests containing the Kaiser-i-Hind butterfly is not available, but habitat loss is consistently reported as one of the primary ongoing threats to the species there.

Collection for commercial trade is also regarded as a threat to the species. The Kaiser-i-Hind swallowtail is highly valued and has been collected and traded despite various prohibitions. Although it is difficult to assess the potential impacts from collection, it is possible that collection in combination with other stressors could contribute to local extirpations of small populations.

Since 1996, the Kaiser-i-Hind swallowtail has been categorized on the IUCN Red List as ''Lower Risk/near threatened,'' but IUCN indicates that this assessment needs updating. The Kaiser-i-Hind swallowtail has been listed in CITES appendix II since 1987. Additionally, the Kaiser-i-Hind swallowtail is listed on annex B of the European Union Trade Regulations.

After reevaluating the threats to this species, we have determined that no change in its LPN of 8 is appropriate. The Kaiser-i-Hind swallowtail does not represent a monotypic genus. The current factors, habitat destruction and illegal collection, are moderate in magnitude due to the species' wide distribution and to various protections in place within each country. We find that the threats are imminent due to ongoing habitat destruction and high market value for specimens. Based on our reassessment of the threats, we have retained an LPN of 8 to reflect imminent threats of moderate magnitude.

Findings for Non-Petitioned Candidate Species

Molluscs

Colorado delta clam (*Mulinia coloradoensis*)—The Colorado Delta clam is a relatively large, approximately 30 mm (1.2 in) average length, estuarine bivalve, once abundant at the head of the Gulf of California in the Colorado River estuary in Mexico prior to the construction of dams on the Colorado River. Live individuals of the clam were not observed anywhere in the wild between 1968 and 1998, despite extensive studies of bottom-dwelling fauna in the region. In 1998, a small relict population was discovered at Isla Montague, Mexico, at the mouth of the Colorado River Delta, and this population represents the extent of the species' currently known range. The clam is found in low intertidal mud at depths of about 7 cm (2.75 in) beneath the sediment and is a suspension-feeder. Freshwater inflow is critical to the species' survival because brackish water (a mix of salt and fresh water) is an important component of its habitat and life history. We are unaware of precise estimates of the population size for the Colorado Delta clam, but a 90-percent decline since dam construction has been suggested.

Habitat loss and degradation are considered to be the primary factors affecting the Colorado Delta clam. Additionally, the species is now

vulnerable due to its small population size and limited distribution. Dams and diversions along the Colorado River have greatly affected the estuarine environment, decreasing freshwater, nutrient and sediment inflow. The Colorado Delta clam may have experienced a greater than 90-percent reduction in its occupied range caused by the decrease in freshwater flow to the estuary.

Agricultural return flow from the Mexicali Valley, coupled with aquifer inflow, is a very important freshwater source ensuring the maintenance of the estuarine environment in the Delta and the continued survival of the clam. In 2009, the U.S. completed lining of the All-American Canal to prevent water loss via seepage. Prior to lining, water seepage from the All-American Canal was an important source of recharge to the Mexicali Valley aquifer. The All-American Canal lining is predicted to reduce total recharge to the Mexicali Valley aquifer, which will reduce the freshwater inflow into the Delta. Additionally, predicted increases in drought and warmer temperatures associated with climate change will contribute to deterioration of the clam's habitat by further curtailing freshwater inflow and favoring nonnative invasive aquatic species to the detriment of native species like the Colorado Delta clam. The species has not been assessed for the IUCN Red List. It is not threatened by international trade, and it is not listed in any appendices of CITES.

In the previous ANOR, the Colorado Delta clam was assigned an LPN of 2. After reevaluating the factors affecting the clam, we have determined that no change in LPN is warranted. The Colorado Delta clam does not represent a monotypic genus. The available evidence indicates that Colorado delta clam is now restricted to one relict population at Isla Montague at the mouth of the Colorado River delta. Its habitat is currently affected by the ongoing and continuing (*i.e.,* imminent) loss of freshwater input into the Delta. Furthermore, the available information indicates that loss of freshwater will likely worsen in the near- and long-term future. Since habitat containing the entire range of the species may be rendered unsuitable within the near future, we find that threats are of high magnitude. Therefore, we find the Colorado delta clam is subject to high-magnitude imminent threats, and we retain an LPN of 2 for this species.

Preclusion and Expeditious Progress

To make a finding that a particular action is warranted but precluded, the Service must make two determinations: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending listing proposals and (2) that expeditious progress is being made to add qualified species to either of the lists and to remove species from the lists (16 U.S.C. 1533(b)(3)(B)(iii)). A listing proposal is precluded if the Service does not have sufficient resources available to complete the proposal, because there are competing demands for those resources, and the relative priority of those competing demands is higher. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether publication of such a proposal is precluded by higher-priority listing actions, including: (1) The amount of resources available for completing the listing function; (2) the estimated cost of completing the proposed listing; and (3) the Service's workload and prioritization of the proposed listing in relation to other actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior ''warranted-but-precluded'' petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Prior to FY 2012, there was no distinction in appropriations for listing domestic and foreign species. However, in an effort to balance foreign species listing commitments with other Listing Program responsibilities, effective FY 2012 and for each fiscal year since then, the Service's Listing Program budget has included a foreign species subcap providing that funding is not to exceed a specified amount for implementation of subsections (a), (b), (c), and (e) of section 4 of the Act for species that are not indigenous to the United States (see Conference Report 112–331, 112th Congress, 1st session, Dec. 15, 2011).

Thus, through the listing program cap and the foreign species subcap, Congress has determined the amount of money available for foreign species listing activities, including petition findings and listing determinations.

In FY 2016, the Service had $1,504,000 that could be used for listing actions for foreign species. This funding supports work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species.

In addition, available staff resources are also a factor in determining which high-priority species are provided with funding. The Branch of Foreign Species may, depending on available staff resources, work on species described within this CNOR–FS with an LPN of 2 or 3, and when appropriate, species with a lower priority if they overlap geographically or have the same threats as the species with the high priority.

Based on the prioritization factors mentioned above, we continue to find that proposals to list the candidate species included in this CNOR–FS are all precluded by higher-priority listing actions. Because the actions in table 2 below are either the subject of a court-approved settlement agreement or subject to an absolute statutory deadline and, thus, are higher priority than work on proposed listing determinations for the 20 species described above, publication of proposed rules for these 20 species is precluded.

TABLE 2—PENDING ESA FOREIGN SPECIES LISTING ACTIONS

Species	Action
Actions Subject to Court Order/Settlement Agreement	
All have been completed (See table 3 below for these specific actions).	
Actions With Statutory Deadlines	
Scarlet macaw	Final listing determination.
Virgin Islands coqui	12-month petition finding.
Hyacinth macaw	Final listing determination.
Peary, and Dolphin and Union caribou	12-month petition finding.
3 Aral Sea sturgeon species	12-month petition finding.
3 East Asian sturgeon species	12-month petition finding.
11 tarantula species	12-month petition finding.
4 Persian sturgeon species	12-month petition finding.
Ridgway's hawk eagle	12-month petition finding.
15 bat species	12-month petition finding.
Emperor penguin	12-month petition finding.
Flores hawk-eagle	12-month petition finding.
Three-toed pygmy sloth	12-month petition finding.
Egyptian tortoise	12-month petition finding.
Golden conure	12-month petition finding.
2 Australian parakeet species	Final listing determination.
Flat-tailed tortoise	12-month petition finding.
Spider tortoise	12-month petition finding.
7 pangolin species	12-month petition finding.
African elephant	12-month petition finding.
Long-tailed chinchilla	12-month petition finding.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists. As with our ''precluded'' finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. Our expeditious progress for foreign species since publication of our previous ANOR, published on April 25, 2013 (78 FR 24604), to October 17, 2016, includes preparing and publishing the following:

TABLE 3—ESA FOREIGN SPECIES LISTING ACTIONS PUBLISHED SINCE THE PREVIOUS ANOR WAS PUBLISHED ON APRIL 25, 2013

Publication date	Species	Action	FR pages
6/5/2013	Scimitar-horned oryx, dama gazelle, and addax	12-month petition findings; delisting not warranted.	78 FR 33790–33797
6/12/2013	Chimpanzee	12-month petition finding and proposed rule	78 FR 35201–35217
6/25/2013	Broad-snouted caiman	Final rule; threatened with special rule	78 FR 38162–38190
9/11/2013	Southern white rhino	Interim rule: Threatened due to similarity of appearance.	78 FR 55649–55656
9/24/2013	Ten sturgeon species	90-day finding; initiation of status review	78 FR 58507–58510
10/3/2013	Blue-throated macaw	Final rule: Endangered	78 FR 61208–61219
10/29/2013	Five birds from Columbia and Ecuador	Final rule; endangered	78 FR 64692–64733
11/19/2013	Vicuña in Argentina, Bolivia, Chile, Ecuador, and Peru.	Notice of initiation of 5-year review	78 FR 69436–69437
12/3/2013	Eleven tarantula species	90-day findings; initiation of status reviews	78 FR 72622–72625
12/5/2013	Straight-horned markhor	Proposed rule revision; Threatened with special rule.	78 FR 73173–73185
1/22/2014	Fifteen foreign bats, emperor penguin, Flores hawk-eagle, Ridgway's hawk, and Virgin Islands coquí.	90-day findings; initiation of status reviews	79 FR 3559–3562
5/20/2014	Southern white rhino	Affirmation of interim rule as final rule: Threatened due to similarity of appearance.	79 FR 28847–28849
6/9/2014	Flat-tailed tortoise, spider tortoise, and pygmy three-toed sloth.	90-day findings; initiation of status reviews	79 FR 32900–32903
6/24/2014	Philippine cockatoo and yellow-crested cockatoo	Final rule; endangered	79 FR 35870–35900
6/24/2014	White cockatoo	Final rule; threatened with special rule	79 FR 35870–35900

TABLE 3—ESA FOREIGN SPECIES LISTING ACTIONS PUBLISHED SINCE THE PREVIOUS ANOR WAS PUBLISHED ON APRIL 25, 2013—Continued

Publication date	Species	Action	FR pages
10/7/2014	Straight-horned markhor	Final rule: Threatened with special rule	79 FR 60365–60379
10/29/2014	African lion	Proposed rule: Threatened with special rule	79 FR 64472–64502
4/10/2015	Egyptian tortoise, golden conure, and long-tailed chinchilla.	90-day findings; initiation of status reviews	80 FR 19259–19263
6/16/2015	Chimpanzee	Final rule; endangered	80 FR 34500–34525
7/29/2015	Honduran emerald hummingbird	Final rule; endangered	80 FR 45086–45097
10/2/2015	Great green and military macaw	Final rule; endangered	80 FR 59976–60021
12/23/2015	Lion—*Panthera leo leo*	Final rule; endangered	80 FR 80000–80056
12/23/2015	Lion—*Panthera leo melanochaita*	Final rule; threatened with special rule	80 FR 80000–80056
1/21/2016	Scarlet-chested parakeet and turquoise parakeet	Reopening of the public comment period	81 FR 3373–3374
3/16/2016	African elephant, Chinese pangolin, giant ground pangolin, Indian pangolin, long-tailed pangolin, Philippine pangolin, Sunda pangolin, tree pangolin.	90-day findings; initiation of status reviews	81 FR 14058–14072
4/7/2016	Scarlet macaw	Revised proposed listing rule	81 FR 20302–20316

Our expeditious progress also includes work on pending listing actions described above in our ''precluded finding,'' but for which decisions had not been completed at the time of this publication. After taking into consideration the limited resources available for listing foreign species, the competing demands for those funds, and the completed work catalogued in the tables above, we find that we are making expeditious progress to add qualified species to the Lists in FY 2016.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by publishing related actions together.

Monitoring

Section 4(b)(3)(C)(iii) of the Act requires us to ''implement a system to monitor effectively the status of all species'' for which we have made a warranted-but-precluded 12-month finding, and to ''make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well-being of any such species.'' For foreign species, the Service's ability to gather information to monitor species is limited. The Service welcomes all information relevant to the status of these species, because we have no ability to gather data in foreign countries directly and cannot compel another country to provide information. Thus, this CNOR–FS plays a critical role in our monitoring efforts for foreign species.

With each CNOR–FS, we request information on the status of the species included in the CNOR–FS. Information and comments on the annual findings can be submitted at any time. We review all new information received through this process as well as any other new information we obtain using a variety of methods. We collect information directly from range countries by correspondence, from peer-reviewed scientific literature, unpublished literature, scientific meeting proceedings, and CITES documents (including species proposals and reports from scientific committees). We also obtain information through the permit-application processes under CITES, the Act, and the Wild Bird Conservation Act (16 U.S.C. 4901 *et seq.*). We also consult with the IUCN species specialist groups and staff members of the U.S. CITES Scientific and Management Authorities, and the Division of International Conservation; and we attend scientific meetings, when possible, to obtain current status information for relevant species. As previously stated, if we identify any species for which emergency listing is appropriate, we will make prompt use of the emergency listing authority under section 4(b)(7) of the Act.

References Cited

A list of the references used to develop this CNOR–FS is available at *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2016–0072.

Authors

This Candidate Notice of Review of Foreign Species was primarily authored by staff of the Branch of Foreign Species and Jesse D'Elia, Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

This Candidate Notice of Review of Foreign Species is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–24931 Filed 10–14–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160510416–6416–01]

RIN 0648–BG06

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Yellowtail Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council). If implemented, this proposed rule would revise the yellowtail snapper commercial and recreational fishing year and remove the requirement to use circle hooks for the commercial harvest of yellowtail snapper in the Gulf exclusive economic zone (EEZ) south of Cape Sable, Florida. The purpose of this

proposed rule is to increase the operational efficiency of the yellowtail snapper component of the commercial reef fish fishery, achieve optimum yield, and decrease the regulatory burden of compliance with differing regulations established by separate regulatory agencies across the adjacent Gulf and South Atlantic jurisdictions.

DATES: Written comments must be received by November 16, 2016.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2016–0058'' by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal Rulemaking Portal. Go to *www.regulations.gov,* click the ''Comment Now!'' icon, complete the required fields, and enter your attached comments.
- *Mail:* Submit all written comments to Cynthia Meyer, NMFS Southeast Regional Office (SERO), 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from *www.regulations.gov* or the SERO Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, NMFS SERO, telephone: 727–824–5305, email: *cynthia.meyer@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery includes yellowtail snapper and is managed 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).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems. To further attain this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

In the southeastern United States, yellowtail snapper are harvested by both commercial and recreational fishermen, with landings coming almost exclusively from waters adjacent to Florida. Yellowtail snapper are managed separately in the Gulf and South Atlantic but are a single genetic stock. The 2012 Southeast Data, Assessment, and Review (SEDAR 27) combined the two areas for stock assessment purposes and indicated that yellowtail snapper in the Gulf and South Atlantic were not overfished and not experiencing overfishing as of 2010, the last year of data used in SEDAR 27. Yellowtail snapper has one overfishing limit, and its acceptable biological catch (ABC) is further subdivided into two regional ABCs for management purposes. The South Atlantic is allocated 75 percent of the stock yellowtail snapper ABC, and the Gulf is allocated 25 percent of the stock ABC. The annual catch limits (ACLs) are equal to the ABCs. The ACL for South Atlantic yellowtail snapper is further divided between the commercial and recreational sectors, but the ACL for yellowtail snapper in the Gulf is not divided between sectors. On average, about 97 percent of yellowtail snapper landings in the Gulf occur from commercial harvest.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the fishing year for Gulf yellowtail snapper and the gear requirements for the yellowtail snapper commercial sector.

Yellowtail Snapper Fishing Year

Previously, the fishing year for both the commercial and recreational sectors for yellowtail snapper in the Gulf and the South Atlantic was January 1 through December 31. The South Atlantic Council recently changed the yellowtail snapper fishing year in the South Atlantic to begin on August 1, and end on July 31, for both the commercial and recreational sectors (81 FR 45245, July 13, 2016). The South Atlantic Council made this change to align any ACL closure that may be required more closely with the yellowtail snapper peak spawning period. This proposed rule would similarly revise the fishing year for Gulf yellowtail snapper for both the commercial and recreational sectors to be August 1 through July 31 each year. Although the harvest of yellowtail snapper in the Gulf has not exceeded the stock ACL since ACLs were implemented in 2011 (76 FR 82044, December 29, 2011), this proposed change would similarly more closely align any required ACL closure in the Gulf with the peak spawning season. In addition, having the same fishing year for both the Gulf and South Atlantic would benefit some commercial fishermen that harvest yellowtail snapper in both regions by decreasing the compliance burden of different regulations for the same species in adjacent management areas.

Yellowtail Snapper Gear Requirements

In the Gulf, a person harvesting reef fish, including yellowtail snapper, is required to use non-stainless steel circle hooks when fishing with natural bait (50 CFR 622.30(a)). This measure was put in place to reduce the post-release mortality of Gulf reef fish. This proposed rule would revise this requirement to also allow the use of other non-stainless steel hook types, such as J-hooks, when commercial fishing with natural bait for yellowtail snapper in the area south of a line extending due west from 25°09' N. lat. off the west coast of Monroe County, Florida, to the Gulf and South Atlantic Councils' boundary. The northern boundary of the area for this proposed gear exemption coincides with a management boundary already used by the Florida Fish and Wildlife Conservation Commission.

Landings of yellowtail snapper in the Gulf come almost exclusively from waters adjacent to Florida, with over 97 percent of these landings, on average, by the commercial sector. The Gulf Council determined that allowing other hook types for the commercial harvest of yellowtail snapper in Federal waters off south Florida was appropriate because of the specific fishing method used only by commercial fishermen that allow for quicker de-hooking when the fish are caught using J-hooks. These fishermen attract the fish to the surface using chum and then use small hooks with natural bait and cane poles (rods with approximately 15 ft (4.6 m) of

monofilament fishing line tied to the tip of the rod) or spinning reels to catch yellowtail snapper. The landed fish are then quickly de-hooked by pulling the fishing line across a horizontal bar, on which the hook catches, dropping the fish into a hold with ice. Allowing the use of J-hooks is expected to result in less handling of undersized fish that need to be discarded, thereby increasing efficiency and potentially decreasing post-release mortality. This change will also make the gear requirements for the commercial harvest of yellowtail snapper consistent between the Gulf and South Atlantic. In the South Atlantic, snapper-grouper Federal permit holders are not required to use circle hooks when fishing for any species within the snapper-grouper complex, south of 28°00′ N. lat.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework amendment, the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purposes of this proposed rule are to eliminate certain inconsistencies between the regulations established by the Gulf and South Atlantic Councils for the harvest of yellowtail snapper in Gulf waters, to increase the operational efficiency of the yellowtail snapper component of the commercial reef fish fishery, achieve optimum yield, and decrease the regulatory burden of compliance with differing regulations established by separate regulatory agencies across the adjacent Gulf and South Atlantic jurisdictions. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would remove the requirement to use circle hooks when commercial fishing with natural bait for yellowtail snapper and allow the use of other non-stainless steel hook types with natural baits in an area south of 25°09′ N. lat. off the west coast of Monroe County, Florida (Cape Sable) to the Gulf and South Atlantic Councils' jurisdictional boundary. In addition, this proposed rule would change the yellowtail snapper fishing year for the commercial and recreational sectors from January 1 through December 31 to August 1 through July 31.

As a result, this proposed rule would be expected to directly affect federally permitted commercial vessels that harvest yellowtail snapper in the Gulf. Over the period 2010–2014, based on Federal logbook data that include harvests from state waters, an average of 132 vessels per year recorded commercial yellowtail snapper harvests anywhere in the Gulf and an average of 70 vessels per year recorded commercial yellowtail snapper harvests in the Gulf waters off Monroe County (state and Federal waters). The maximum number of vessels with recorded commercial yellowtail snapper harvests during this period within both groups of vessels was 163 (all vessels Gulf-wide; 2014) and 73 (Monroe County area; 2010 and 2014), respectively. The proposed removal of the circle hook requirement would only be expected to directly affect federally permitted vessels that fish in the Monroe County area, whereas the proposed change in the fishing year could affect all commercial vessels that harvest yellowtail snapper in the Gulf. As a result, this proposed rule would be expected to apply to 70–163 commercial fishing vessels. The average annual gross revenue (2014 dollars) from all species harvested on all trips by the vessels identified with recorded yellowtail snapper harvests in logbook data over the period 2010–2014 within both groups of vessels was approximately $107,000 (all vessels Gulf-wide) and approximately $41,000 (Monroe County area).

No small entities associated with the recreational sector would be expected to be directly affected by the proposed change to the yellowtail snapper fishing year. Only recreational anglers are allowed to recreationally harvest yellowtail snapper in Gulf Federal waters and may be directly affected in changes to the fishing year. However, recreational anglers are not small entities under the RFA. Although for-hire businesses (charter vessels and headboats) operate in the recreational sector, these businesses only sell fishing services to recreational anglers and do not have harvest rights to the yellowtail snapper. For-hire vessels provide a platform for the opportunity to fish and not a guarantee to catch or harvest any species, though expectations of successful fishing, however defined, likely factor into the decision by anglers to purchase these services. Because the proposed change in the yellowtail snapper fishing year would not directly alter the basic service sold by for-hire vessels, this proposed action would not directly apply to or regulate their operations. Any change in vessel business would be a result of changes in angler demand for these fishing services that occurs as a result of the behavioral decision by anglers, *i.e.,* to fish or not, as influenced by the fishing year. Therefore, any effects on the associated for-hire vessels would be one step removed from the anglers' decision and an indirect effect of the proposed action. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule.

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 commercial fishing vessels expected to be directly affected by this proposed rule are believed to be small business entities.

The proposed removal of the requirement to use circle hooks when commercial fishing with natural bait for yellowtail snapper south of 25°09′ N. lat. off the west coast of Monroe County, Florida (Cape Sable) to the Gulf and South Atlantic Councils' jurisdictional boundary would be expected to afford more flexibility and improve the operational efficiency of commercial fishing vessels that harvest yellowtail snapper in this area. For example, J-hooks are more effective in the commercial harvest of yellowtail snapper, allow for quicker de-hooking and less handling of undersized fish that need to be discarded, and result in decreased post-release mortality. Using J-hooks with natural bait is also an allowable gear for the commercial harvest of yellowtail snapper in Federal waters off south Florida under the management jurisdiction of the South Atlantic Council. In south Florida, many fishermen fish in the jurisdiction of both Councils and allowing the use of a common hook type for yellowtail snapper would be expected to increase their operational efficiency and reduce gear expenses. Removal of the circle

hook requirement would also be expected to allow fishermen to choose the hook that is more effective for their fishing circumstances, which would be expected to increase their harvest of yellowtail snapper, as well as associated revenue and profit. Thus, this proposed action would be expected to result in increased economic benefits to any affected small entities.

Because some commercial fishing vessels often operate in both state and Federal waters, as well as in both the Gulf and South Atlantic, the proposed change in the fishing year would be expected to result in positive economic benefits associated with improved consistency of the yellowtail snapper fishing seasons in all of these areas. Consistent seasons, and other regulations, allow fishermen greater flexibility in choosing where and when to fish in general and for specific species. When fishing for yellowtail snapper, consistent seasons would allow fishermen to operate in areas that are most productive and without concern about which regulatory jurisdiction applies. Overall, the increased operational flexibility would be expected to result in increased profit to the directly affected small businesses. These economic benefits may be small, however, and limited to those benefits associated with operational flexibility.

Based on the discussion above, NMFS determines that this proposed rule, if implemented, would result in an increase in revenue and associated profits and would not have a significant adverse economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, South Atlantic, Yellowtail snapper.

Dated: October 11, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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 § 622.7, add paragraph (g) to read as follows:

§ 622.7 Fishing years.

* * * * *

(g) *Gulf of Mexico yellowtail snapper*—August 1 through July 31.

■ 3. In § 622.30, revise paragraph (a) to read as follows:

§ 622.30 Required fishing gear.

* * * * *

(a) *Non-stainless steel circle hooks.* Non-stainless steel circle hooks are required when fishing with natural baits, except that other non-stainless steel hook types may be used when commercial fishing for yellowtail snapper with natural baits in an area south of a line extending due west from 25°09′ N. lat. off the west coast of Monroe County, Florida, to the Gulf of Mexico and South Atlantic intercouncil boundary, specified in § 600.105(c).

* * * * *

[FR Doc. 2016–24998 Filed 10–14–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 200
Monday, October 17, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 or be sent via email to *OIRA_Submission@omb.eop.crov.*

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–XXXX.

Form Number: AID Form 309–1.

Title: Contract With an Individual for Personal Services.

Type of Submission: A Revised Information Collection.

Purpose: United States Agency for International Development must collect information for reporting purposes to Congress and Office of Acquisition and Assistance Contract Administration. This collection is to collect personal information on applicants for USAID personal services contracts and is used to award a personal services contract with required signatures.

Annual Reporting Burden:

Respondents: 550.

Total annual responses: 550.

Total annual hours requested: 137.50 hr.

Dated: October 1, 2016.

Lynn P. Winston,

Chief, Bureau for Management, Office of Management Services, Information and Records Division, U.S. Agency for International Development.

[FR Doc. 2016–24853 Filed 10–14–16; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Angeles National Forest, California, Cattle Canyon Improvements Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare draft environmental impact statement/environmental impact report and public scoping meeting.

SUMMARY: The Angeles National Forest (USFS–ANF) and the Watershed Conservation Authority WCA are lead agencies preparing a joint Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR), pursuant to the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), the Endangered Species Act, and other applicable laws, to evaluate the San Gabriel River Confluence with Cattle Canyon Improvements Project (Project). The USFS–ANF and the WCA have agreed to jointly prepare an EIS/EIR in order to optimize efficiency and avoid duplication. The EIS/EIR is intended to be sufficient in scope to address the federal, state, and local requirements and the environmental issues concerning the proposed activities and permit approvals. The Project was developed to better manage the recreation use and balance the needs for resource protection. The project site encompasses an approximate 2.5-mile reach of the East Fork of the San Gabriel River, running generally south until its confluence with Cattle Canyon Creek in Los Angeles County: T2N R8W Sections 19 and 30, T2N R9W Sections 24, 25, 26, T3N R8W Section 18. The entire project site is within the San Gabriel Mountains National Monument boundary and will continue to be managed by the USFS–ANF. The proposed actions are to develop new management strategies to protect and restore the multi-use areas for future public enjoyment. Proposed enhancements include establishment of parking spaces, development of new picnic areas, pedestrian trails, river access points and upgrades to existing facilities, improvements to paved and unpaved roadways, and restoration of riparian and upland vegetation communities.

DATES: Comments concerning the scope of the analysis must be received by December 1, 2016.

Two public scoping meetings are being held to provide you with an opportunity to learn more about the proposed action and to express comments on the proposed action and scope of the EIS/EIR. The scoping meetings will be held Wednesday, November 16, 2016, from 6:00 p.m. to 8:30 p.m., and Saturday, November 19, 2016, from 11:00 a.m. to 1:30 p.m.

ADDRESSES: Please send written scoping comments to: Cattle Canyon Improvements Project, 110 N. Wabash Ave., Glendora, CA 91741. Comments may also be sent via email to *comments-pacificsouthwest-angeles@fs.fed.us,* or via facsimile to (626) 574–5233. If applicable, responses should include the name of a contact person at your agency or organization.

The scoping meetings will be held at the following locations:

Wednesday, November 16, 2016, 6:00 p.m. to 8:30 p.m., Julia McNeill Senior Center—Celebration Hall, 4100 Baldwin Park Boulevard, Baldwin Park, California

Saturday, November 19, 2016, 11:00 a.m. to 1:30 p.m., Angeles National Forest Headquarters, 701 North Santa Anita Avenue, Arcadia, California

Additional information about public meetings is posted on: *http://www.fs.usda.gov/projects/angeles/landmanagement/projects* and *http://www.wca.ca.gov/cattle_canyon.*

FOR FURTHER INFORMATION CONTACT:

USDA Forest Service, Angeles National Forest, 110 N. Wabash Ave., Glendora, CA 91741, Contact: Jeremy Sugden, Phone: (626) 335–1251 x222, Email: *jmsugden@fs.fed.us*

Watershed Conservation Authority, 100 N. Old San Gabriel Canyon Road, Azusa, CA 91701, Contact: Rob Romanek, Phone: (626) 815–1019 x108, Email: *rromanek@wca.ca.gov*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Due to steep topography and dense chaparral, recreation is highly concentrated in areas that are relatively flat with roaded access in ANF. The heavy use combined with the lack of facilities has resulted in the degradation within the project site. Current conditions are not sustainable for long-term management. The San Gabriel River Confluence with the Cattle Canyon Improvement Project is being proposed to better manage the recreation use and balance the needs for resource protection. The future desired condition is to provide balanced, environmentally sustainable recreation opportunities to meet the needs of a growing urban and culturally diverse population, particularly for day use.

The purpose and need for the project is to provide recreation facilities and infrastructure that are high quality, well-maintained, safe, accessible and consistent with visitors' expectations; shift and concentrate recreational use to certain areas in order to minimize adverse effects over a broader area; promote stewardship of public land by providing quality and sustainable recreation opportunities that result in increased visitor satisfaction; allow for better management of the recreation resources on the Forest; and improve riparian habitat conditions in certain areas and make progress toward enhancing stream habitat conditions by restoring vegetation, minimizing invasive plants and noxious weed presence, and developing management strategies to regulate access.

Proposed Action

The full description of the proposed action/project is on the following Web sites:

http://www.fs.usda.gov/projects/angeles/landmanagement/projects
http://www.wca.ca.gov/cattle_canyon

Proposed actions/project include the following components:

River Access

To provide better public access to the river while protecting natural resources, a total of six locations for river access points are proposed throughout the project site. Each river access point would implement the Sustainable Site Access Model and include: Parking, infrastructure to provide for potential development of future shuttle services, litter disposal, restrooms, picnic tables and seating, East Fork Scenic Trail with interpretive elements, safe river access trails, and elimination of user-created trails and parking.

Riparian and Upland Habitat Restoration

Restoration would occur throughout the project site to reduce impacts from user generated trails, protect seeps/springs on east side of the road, preserve stream habitat in tributary behind oaks picnic area, and mitigate losses from trail construction. Restoration would include non-native vegetation removal and/or riparian plantings.

Parking

The project proposes a total of 270 new parking spaces designated for standard vehicles and three spaces for bus parking within the vicinity of the Oaks Picnic Area and Coyote Flat. Of the 270 parking spaces, 14 spaces would be designed and designated as accessible spaces. These spaces include angled and perpendicular bays with curbs, formal (marked) paved roadside parking, and a paved parking lot at the former fire station within the East Fork Scenic Overlook and Trailhead area. Parking would be available during day-use hours. Undesignated parking areas would be blocked by boulders and parking signage installed.

Right of Way Improvements

Improvements along the two-mile reach of the public right of way would include designated roadside parking, the addition of three loading area/shuttle stops, low barrier walls, signage, and a vehicle turnaround at the end of Camp Bonita Road.

Amenities

Proposed actions include development of the following amenities:

- *Recreational Trails:* Recreational trail improvements would include the following: The 2.5 mile East Fork Scenic Trail (comprising two miles of newly constructed road-adjacent scenic trail and .5 miles of improvements to existing trail/access road that runs between the East Fork Overlook area and Heaton Flat), Botanical Interpretive Trail (approximately 1.5 miles of existing non designated trail), Trail steps to Coyote Flat (approximately 350 feet), five trailheads, and a trailhead parking lot.
- *Interpretive Areas:* An interpretive area with site-specific signage and informational displays would be located at the Oaks, Confluence, Coyote Flat, and Heaton Flat Areas.
- *Scenic Overlooks:* The existing scenic overlook of the EFSGR in the Overlook Area would be improved with planters, Geology Hut, low masonry barrier walls, litter receptacles, and interpretive signs. A new scenic overlook in the Confluence Area would include an interpretive element of Eldoradoville, and an East Fork Scenic Trail interpretive sign.
- *Picnic Areas:* Six designated picnic areas would be located throughout the project area. Improvements are planned for the existing picnic areas at Oaks, Coyote Flat, and Heaton Flat.
- *Pedestrian Bridge:* A prefabricated pedestrian steel bridge may be constructed across the Cattle Canyon Creek, parallel to the existing L.A. County Camp Bonita Road Bridge (also known as Cattle Canyon Bridge).
- *USFS Visitor Kiosk:* Three USFS Visitor Kiosks would be strategically placed throughout the project site.
- *Restrooms and Refuse Disposal:* Nine restroom facilities are planned with three 2-toilet units and six 4-unit toilet facilities located near river access points, picnic areas and other popular destination sites. Small bear-proof trash receptacles would be located at all river access points, loading areas/shuttle stops, parking areas, along the East Fork Scenic trail, and all designated picnic sites.

Site Type Management

The project area is being proposed to be managed as a Day Use only area. Currently recreation sites located within the project area (Oaks Picnic Site and East Fork Trailhead Day Use Parking) are managed as Standard Amenity Recreation Fee Sites (SARF). With the development of the project new recreation sites will be eligible to be included into the SARF program. These new sites may be designated for fee collection after the project is constructed, in accordance with the Federal Lands Recreation Enhancement Act, including necessary approvals of the Recreation Advisory Committee established by that law.

Possible Alternatives

In order to address substantive issues identified during scoping, project alternatives may be considered and developed by lead agencies staff, following completion of the public scoping period. If necessary, the alternatives shall fulfill the identified purpose & need for action while addressing one or more significant issues related to the proposed project.

Preliminary Issues/Potential Environmental Effects

Potential environmental effects and impacts for the proposed project and the

alternatives will be explored during the scoping and during preparation of the EIS/EIR. The EIS/EIR will focus on issues for which potentially significant impacts are identified, including: Public recreation and impacts to user groups, biological resources, cultural resources, transportation and parking, water resources and water quality, and others. In addition, the EIS/EIR will analyze the full range of resource topics required by the lead agencies (*e.g.,* noise, land use) and cumulative impacts.

Permits or Licenses Required

Permits that may be required before implementation include: A National Pollutant Discharge Elimination System General Construction Permit issued by the Los Angeles Regional Water Quality Control Board, a Section 404 Permit and Section 401 Certification (per the Clean Water Act) issued by the U.S. Army Corps of Engineers, Biological Opinion/Incidental Take Statement issued by USFWS, Section 2081 Incidental Take Permit issued by the California Department of Fish and Wildlife, and a Streambed Alteration Agreement (Section 1602 permits of the California Fish and Game Code) issued by the California Department of Fish and Wildlife. Local traffic control and encroachment permits may be required from the Los Angeles County Department of Public Works or the California Department of Transportation.

Scoping Process

The ANF and the WCA are seeking public and agency comment on the proposed project to identify major issues. Comments received will help define the scope of the project and issues to be analyzed in depth. Comments should be as ''project specific'' as possible. It is important that reviewers provide their comments at such times and in such a manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the scoping comment period and should clearly articulate the reviewer's concerns and contentions in relation to the project. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 CFR 1503.3) in addressing these points.

The proposed project is consistent with the 2006 Angeles National Forest Land Management Plan, and is subject to project level, pre-decisional administrative review pursuant to 36 CFR 218, Subparts A and B. Comments received on this notice or in subsequent environmental reviews, including names and addresses of those who comment, will be considered as part of the public record on this proposed project, and are subject to the Freedom of Information Act (FOIA) and California Public Records Act (CPRA). Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to object to the subsequent decision.

Dated: October 7, 2016.

Rachel C. Smith,

Deputy Forest Supervisor, Angeles National Forest.

[FR Doc. 2016–25007 Filed 10–14–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Olympia, WA Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of the Washington State Department of Agriculture (Washington) to provide official services under the United States Grain Standards Act (USGSA), as amended.

DATES: Effective Date: January 1, 2015.

ADDRESSES: Sharon Lathrop, Compliance Officer, USDA, GIPSA, FGIS, QACD, 10383 North Ambassador Drive, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: Sharon Lathrop, 816–891–0415, *Sharon.L.Lathrop@usda.gov* or *FGIS.QACD@usda.gov.*

READ APPLICATIONS: All applications and comments are available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the August 26, 2014, **Federal Register** (79 FR 50886), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by Washington. Applications were due by September 25, 2014.

The current official agency, Washington, was the only applicant for designation to provide official services in these areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated the designation criteria in USGSA 7 U.S.C. 79(f), and determined that Washington is qualified to provide official services in the geographic areas specified in the **Federal Register** on August 26, 2014. This designation to provide official services in the specified areas of Idaho, Oregon, and Washington is effective January 1, 2015, to December 31, 2017.

Interested persons may obtain official services by contacting this agency at the following telephone number:

Official agency	Headquarters location	Telephone	Designation start	Designation end
Washington	Olympia, WA	360–902–1888	1/1/2015	12/31/2017

The USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services 7 U.S.C. 79(f).

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–25015 Filed 10–14–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting and Posting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is taking several actions to post stockyards under the Packers and Stockyards Act (P&S Act). Specifically, we are proposing that eight stockyards now operating subject to the P&S Act be posted. We are also posting 15 stockyards that were identified previously as operating subject to the P&S Act.

DATES: For the proposed posting of stockyards, we will consider comments

that we receive on or before November 1, 2016.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *Internet:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail, hand delivery, or courier:* R. Dexter Thomas, GIPSA, USDA, 1400 Independence Avenue SW., Room 2530–S, Washington, DC 20250–3604.

Instructions: All comments should refer to the date and page number of this issue of the **Federal Register**. The comments and other documents relating to this action will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Catherine M. Grasso, Program Analyst, Litigation and Economic Analysis Division at (202) 720–7201 or *Catherine.m.grasso@usda.gov.*

SUPPLEMENTARY INFORMATION: GIPSA administers and enforces the P&S Act of 1921, (7 U.S.C. 181 *et seq.*). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term ''stockyard'' as follows: ''. . . any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.''

Section 302 (b) of the P&S Act requires the Secretary of Agriculture to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. Once the Secretary provides notice to the stockyard owner and the public, the stockyard is subject to the provisions of Title III of the P&S Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposts the stockyard by public notice. To post a stockyard, we assign the stockyard a facility number, notify the stockyard owner, and send an official posting notice to the stockyard owner to display in a public area of the stockyard. This process is referred to as ''posting.'' The date of posting is the date that the posting notices are physically displayed at the stockyard. A facility that does not meet the definition of a stockyard is not subject to the P&S Act, and therefore cannot be posted. A posted stockyard can be deposted, which occurs when the facility is no longer used as a stockyard.

We are hereby notifying stockyard owners and the public that the following eight stockyards meet the definition of a stockyard, and that we propose to designate these stockyards as posted stockyards.

Proposed facility No.	Stockyard name and location
KY–189	Blue Grass Stockyards of Albany, LLC, Albany, Kentucky.
MS–181	Cattlemens Stockyard, LLC, West Point, Mississippi.
NC–182	Walton L. Standridge d/b/a Standridge Auction, Hamlet, North Carolina.
NC–183	Vale Enterprises, LLC d/b/a Cleveland County Agriculture & Livestock Exchange, Shelby, North Carolina.
ND–134	Bismarck Superior Livestock, LLP, Bismarck, North Dakota.
PA–164	Nicholson Livestock Market, Factoryville, Pennsylvania.
SD–173	Kramer's Auction, LLC, Colman, South Dakota.
TN–215	Alexandria Stockyard, Inc., Alexandria, Tennessee.

We are also notifying the public that the stockyards listed in the following table meet the P&S Act's definition of a stockyard and that we have posted the stockyards. On July 27, 2015, we published a notice in the **Federal Register** (79 FR 41255–41256) of our proposal to post these 15 stockyards. Since we received no comments to our proposal, we assigned the stockyards a facility number and notified the owner of the stockyard facilities. Posting notices were sent to the owner of the stockyard to display in public areas of the stockyard. The table below reflects the date of posting for each stockyard.

Facility No.	Stockyard name and location	Date of posting
AR–184	Mid-State Stockyards, LLC, Damascus, Arkansas.	10/23/2015
AZ–119	Arizona Livestock Auction, Buckeye, Arizona.	12/16/2015
GA–236	Trion Livestock Auction, LLC, Trion Georgia.	10/23/2015
GA–237	Deer Run Auction Co., Adel, Georgia.	10/16/2015
KY–188	Franklin Livestock Market, Inc., Franklin, Kentucky.	10/19/2015
MO–289	Archangel Outreach Ministries, Inc., d/b/a CRS & Highlandville Sales, Highlandville, Missouri.	12/14/2015
MS–179	Integrity Livestock Auction, LLC, Brookhaven, Mississippi.	10/19/2015
MS–180	Ramsey Livestock Sales, Inc., Vicksburg, Mississippi.	12/11/2015
NC–181	Flippin Chicken Auction & Sales, Beulaville, North Carolina.	10/17/2015
OK–218	JC Stockyards Auction, LLC, Meeker, Oklahoma.	10/19/2015
TN–212	WJ Auction Co., LLC, Telford, Tennessee.	12/01/2015
TN–213	Saddle Brook Stables, Jamestown, Tennessee.	10/26/2015
TN–214	Wiser Farms/Triple ''M'' Farms, Shelbyille, Tennessee.	10/19/2015
TX–358	Paris Livestock Auction, LLC, Paris, Texas.	10/16/2015
UT–119	Anderson Livestock Auction Co., Willard, Utah.	10/19/2015

Authority: 7 U.S.C. 202.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–25006 Filed 10–14–16; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Carolina Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the South Carolina Advisory Committee will hold a meeting on Wednesday, November 9, 2016, for the purpose of discussing potential projects.

DATES: The meeting will be held on Wednesday, November 9, 2016, 12:00 p.m. EST.

ADDRESSES: The meeting will be by teleconference. Toll-free call-in number: 888–397–0286, conference ID: 9589666.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–397–0286, conference ID: 9589666. Any interested member of the public may call this number and listen to the meeting. 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by October 30, 2016. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562–7005, or emailed to Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Southern Regional Office at (404) 562–7000.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Southern Regional Office at the above email or street address.

AGENDA:

Welcome and Call to Order
- Walter Caudle, South Carolina SAC Chairman
- Jeff Hinton, Regional Director

Regional Update—Jeff Hinton
- Open Comment—Walter Caudle, South Carolina SAC Chairman
- Staff/Advisory Committee

Public Participation

Adjournment

Dated: October 11, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–24939 Filed 10–14–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Tennessee Advisory Committee will hold a meeting on Wednesday, November 30, 2016, for the purpose of discussing potential projects.

DATES: The meeting will be held on Wednesday, November 30, 2016, 12:30 p.m. EST.

ADDRESSES: The meeting will be by teleconference. Toll-free call-in number: 888–539–3696, conference ID: 7236252.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–539–3696, conference ID: 7236252. Any interested member of the public may call this number and listen to the meeting. 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by November 24, 2016. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562–7005, or emailed to Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Southern Regional Office at (404) 562–7000.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Tennessee Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Southern Regional Office at the above email or street address.

AGENDA:

Welcome and Call to Order
- Diane DiIanni, Tennessee SAC Chairman
- Jeff Hinton, Regional Director

Regional Update—Jeff Hinton
- Open Comment—Diane DiIanni, Tennessee SAC Chairman
- Staff/Advisory Committee

Public Participation

Adjournment

Dated: October 11, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–24940 Filed 10–14–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kansas Advisory Committee to discuss completion of a Committee Study on Voting Rights, and To Discuss Other Civil Rights Issues in the State for Future Inquiry

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting on Tuesday, November 01, 2016, at 4:00 p.m. CDT. The meeting will include a discussion of completion and publication of the Committee's report regarding voting rights in the state, and a discussion of other current civil rights concerns in Kansas for future consideration.

DATES: The meeting will take place on Tuesday, October 04, 2016, at 4:00 p.m. CDT

ADDRESSES: Public call information: Dial: 877–718–5095, Conference ID: 3957006

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 877–718–5095, conference ID: 3957006. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=249*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Regional Programs Unit at the above email or street address.

AGENDA:

Welcome and Roll Call
Discussion of Committee Report: Voting Rights in Kansas
Civil Rights in Kansas: 2017 Project Concepts
Future Plans and Actions
Public Comment
Adjournment

Dated: October 11, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–24938 Filed 10–14–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: Application for NATO International Competitive Bidding.

Form Number(s): BIS–4023P.

OMB Control Number: 0694–0128.

Type of Request: Regular.

Burden Hours: 40 hours.

Number of Respondents: 40 respondents.

Average Hours per Response: 1 hour per response.

Needs and Uses: Opportunities to bid for contracts under the North Atlantic Treaty Organization (NATO) Security Investment Program (NSIP) are only open to firms of member NATO countries. NSIP procedures for international competitive bidding (AC/4–D/2261) require that each NATO country certify that their respective firms are eligible to bid on such contracts. This is done through the issuance of a ''Declaration of Eligibility.'' The U.S. Department of Commerce, Bureau of Industry and Security (BIS) is the executive agency responsible for certifying U.S. firms. The BIS–4023P is the application form used to collect information needed to ascertain the eligibility of a U.S. firm. BIS will review applications for completeness and accuracy, and determine a company's eligibility based on its financial viability, technical capability, and security clearances with the U.S. Department of Defense.

Affected Public: Businesses and other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, FAX number (202) 395–7285.

Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS Liaison, (202) 482–8093, *Mark.Crace@bis.doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, Office of Management and Budget (OMB), by email to *jseehra@omb.eop.gov,* or by fax to (202) 395–7285.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2016–24993 Filed 10–14–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 9, 2016, the Department of Commerce (the Department) published the final results of the administrative review of the antidumping duty order on small diameter graphite electrodes (SDGEs) from the People's Republic of China (the PRC). The period of review (POR) is February 1, 2014, through January 31, 2015. We are amending the final results of the administrative review to correct certain ministerial errors.

DATES: Effective October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Michael A. Romani, 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) 482–0665 or (202) 482–0198, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2016, the Department published the final results of the administrative review of the antidumping duty order on SDGEs from the PRC.[1] On September 12, 2016, and September 13, 2016, we received timely ministerial error allegations from SGL Carbon LLC and Superior Graphite Co. (the petitioners), and the Fangda Group,[2] respectively.[3] We also received rebuttal comments from the Fangda Group and Fushun Jinly Petrochemical Carbon Co., Ltd. (Fushun Jinly) (collectively, the respondents).[4]

Scope of the Order

The merchandise covered by the order includes all small diameter graphite electrodes with a nominal or actual diameter of 400 millimeters (16 inches) or less and graphite pin joining systems for small diameter graphite electrodes. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8545.11.0010, 3801.10, and 8545.11.0020. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. A full description of the scope of the order is contained in the Final Results Issues and Decision Memorandum.[5]

Ministerial Errors

Section 751(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' We analyzed the allegations submitted by the petitioners and the Fangda Group, and determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made ministerial errors in calculating the margin for the Fangda Group.[6]

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results.*[7] The revised weighted-average dumping margins are detailed below.

Amended Final Results of Review

We determine that the following weighted-average dumping margins exist for the period February 1, 2014, through January 31, 2015:

Company	Margin weighted average dumping margin (percent)
Fangda Group	0.69
Fushun Jinly Petrochemical Carbon Co., Ltd.[8]	0.00
Xuzhou Jianglong Carbon Products Co., Ltd.[9]	0.69

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. For entries of subject merchandise during the period of review produced by Fushun Jinly, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties because Fushun Jinly's weighted-average dumping margin in these amended final results remains *de minimis.*[10] For customers or importers of the Fangda Group for which we do not have entered values, we will calculate customer- (or importer-) specific per unit duty assessment rates based on the ratio of the total amount of dumping calculated for the customer's (or importer's) examined sales of subject merchandise to the total sales quantity associated with those sales, in accordance with 19 CFR 351.212(b)(1). For certain customers or importers of the Fangda Group for which we received entered-value information, we will calculate an antidumping duty assessment rate based on customer- or importer-specific *ad valorem* rates in accordance with 19 CFR 351.212(b)(1). For Xuzhou Jianglong, the assessment rate is equal to the weighted average dumping margin calculated for the Fangda Group, or 0.69 percent. For entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate of 159.64 percent.[11]

We intend to issue assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective

[1] *See Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 62474 (September 9, 2016) (*Final Results*), and the accompanying Issues and Decision Memorandum (Final Results Issues and Decision Memorandum).

[2] We refer to the Fangda Group as a single entity pursuant to 19 CFR 351.401(f)(1). *See Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part,* 73 FR 49408, 49411–12 (August 21, 2008) (where we collapsed the individual members of the Fangda Group: Beijing Fangda Carbon Tech Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., and Hefei Carbon Co., Ltd.), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes From the People's Republic of China,* 74 FR 2049 (January 14, 2009).

[3] *See* Letter from the petitioners to the Secretary of Commerce entitled, ''6th Administrative Review of Small Diameter Graphite Electrodes From the People's Republic of China—Petitioners' Ministerial Error Allegations,'' dated September 12, 2016 (Petitioners' Ministerial Error Allegations); and Letter from the Fangda Group to the Secretary of Commerce entitled, ''Small Diameter Graphite Electrodes From China; Ministerial Error Allegation,'' dated September 13, 2016.

[4] *See* Letter from the respondents to the Secretary of Commerce entitled, ''Small Diameter Graphite Electrodes From China; Reply to Petitioners' Ministerial Error Allegation,'' dated September 19, 2016.

[5] *See* Final Results Issues and Decision Memorandum at 2–3.

[6] *See* Memorandum from Senior Director James Maeder to Deputy Assistant Secretary Christian Marsh entitled, ''Small Diameter Graphite Electrodes From the People's Republic of China: Ministerial Error Allegations,'' dated concurrently with, and hereby adopted by, this notice.

[7] *Id.*

[8] This rate has not changed in these amended final results. *See* Petitioners' Ministerial Error Allegations.

[9] We assigned Xuzhou Jianglong Carbon Products Co., Ltd. (Xuzhou Jianglong), a company that was not individually examined and is eligible for a separate rate, the weighted-average dumping margin calculated for the Fangda Group (*i.e.,* 0.69 percent). *See also* Final Issues and Decision Memorandum at 3.

[10] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[11] *See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049, 2054–55.

retroactively on any entries made on or after September 9, 2016, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption as provided by section 751(a)(2)(C) of the Act: (1) No cash deposit will be required for subject merchandise exported by Fushun Jinly; (2) for subject merchandise exported by the Fangda Group and Xuzhou Jianglong, the cash deposit rate will be the rate established in the ''Amended Final Results of Review'' section; (3) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (4) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity, which is 159.64 percent; (5) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed for these amended final results to interested parties within five days after the public announcement of the amended final results in accordance with 19 CFR 351.224(b).

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These amended final results of review are issued and published in accordance with sections 751(h) and 19 CFR 351.224(e) of the Act.

Dated: October 11, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–25059 Filed 10–14–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 10, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain steel nails (nails) from the United Arab Emirates (UAE). The period of review (POR) is May 1, 2014, through April 30, 2015. The review covers five producers/exporters of the subject merchandise, Dubai Wire FZE (Dubai Wire), Oman Fasteners LLC (Oman Fasteners), Overseas Distribution Services Inc. (ODS), Overseas International Steel Industry LLC (OISI), and Precision Fasteners LLC (Precision). For these final results, we continue to find that subject merchandise has been sold in the United States at less than normal value.

DATES: Effective October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, 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) 482–3683, and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 2016, the Department published the preliminary results of the administrative review of the antidumping duty order on certain steel nails from the UAE.[1] We invited interested parties to comment on the *Preliminary Results.* We received case and rebuttal briefs from Mid Continent Steel and Wire, Inc., a domestic interested party, and ODS, the only mandatory respondent selected for individual examination in this review. The Department conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the *Order*[2] is nails from the UAE. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, 7317.00.75, 7806.00.80.00 and 7907.00.60.00.[3] While the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[4]

Analysis of the Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues is attached to this notice as an appendix. 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) and is available to registered users at *https://access.trade.gov.* The Issues and Decision Memorandum is also available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete

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[1] *See Certain Steel Nails From the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 37571 (June 10, 2016), and accompanying Preliminary Decision Memorandum (collectively, *Preliminary Results*).

[2] *See Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27421 (May 10, 2012) (*Order*).

[3] On April 16, 2012, the Department added classification numbers 7806.00.80.00 and 7907.00.60.00 to the customs case reference file pursuant to a request by U.S. Customs and Border Protection (CBP).

[4] For a full description of the scope of the order, *see* the memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado entitled, ''Certain Steel Nails from the United Arab Emirates: Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review; 2014–2015,'' dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance Web site at *http://enforcement.trade.gov/frn/index.html.*

Final Determination of No Shipments

The Department preliminarily found that Oman Fasteners LLC, Overseas International Steel Industry LLC, and Precision Fasteners LLC, did not have any reviewable entries of subject merchandise during the POR.[5] After the *Preliminary Results,* we received no comments or additional information with respect to these three companies. Therefore, for these final results, we continue to find that these three companies did not have any reviewable entries of subject merchandise during the POR. Consistent with our practice, we will issue appropriate instructions to CBP based on our final results.

Rate for Respondent Not Selected for Individual Examination

In these final results we calculated a weighted-average dumping margin above zero or *de minimis* for ODS, the sole respondent selected for individual examination.[6] Accordingly, for these final results, we will assign to Dubai Wire FZE (Dubai Wire), a company not selected for individual examination in this review, the weighted-average dumping margin calculated for ODS, consistent with section 735(c)(5)(A) of the Act.

Changes Since the Preliminary Results

Based on the Department's analysis of comments received and further examination of the record, we made revisions to our margin calculations for ODS. As a result, the margins for ODS and Dubai Wire have changed.

Final Results of the Review

As a result of this administrative review, we determine that the following estimated weighted-average dumping margins exist for the period May 1, 2014, through April 30, 2015:

Company	Margin (percent)
Overseas Distribution Services Inc	0.87
Dubai Wire FZE [7]	0.87

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the final results, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[8] Therefore, we will instruct CBP to apply *ad valorem* assessment rate of 0.87 percent, to all entries of subject merchandise during the POR which were produced and/or exported by ODS.

Consistent with our practice, because we continue to find that Oman Fasteners, OISI, and Precision had no shipments of subject merchandise to the United States in the final results of this review, we will instruct CBP to liquidate any existing entries of merchandise produced by Oman Fasteners, OISI, and Precision and exported by other parties at the all-others rate.[9]

For Dubai Wire, the respondent not selected for individual examination, we will instruct CBP to apply the rate assigned to ODS, to all entries of subject merchandise produced and/or exported by Dubai Wire.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of nails from the UAE entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for ODS and Dubai Wire will be the rates established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.30 percent, the all-others rate established in the *Order.*[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(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.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 11, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

Summary
Background
Scope of the Order
Discussion of the Issues
Comment 1: Selection of Financial Statements to Calculate Constructed Value Selling Expenses and Profit

[5] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 4.

[6] *Id.*

[7] Dubai Wire was not selected for individual examination in this review. Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not selected for individual review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based on total facts available. Accordingly, our usual practice has been to average the rates for the selected companies excluding zero, *de minimis,* and rates based entirely on facts available. In this review, we calculated a weighted-average dumping margin above zero or *de minimis* for the sole respondent selected for individual examination, ODS. Based on this, and analogous to the statutory provision concerning investigations, we assigned the rate calculated for ODS to Dubai Wire.

[8] *See* 19 CFR 351.212(b)(1).

[9] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[10] *See Order,* 77 FR 27421, 27422.

Comment 2: Errors in Calculation of Constructed Value Selling Expense and Profit Ratios
Comment 3: Appropriate Universe of Sales
Comment 4: Consideration of an Alternative Comparison Method
Comment 5: Differential Pricing Analysis Recommendation

[FR Doc. 2016–25057 Filed 10–14–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE965

Marine Fisheries Advisory Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined under **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be held November 1–3, 2016, from 9:00 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Ave, Silver Spring, MD 20910; 301–589–0800.

FOR FURTHER INFORMATION CONTACT: Jennifer Lukens, MAFAC Executive Director; (301) 427–8004; email: *Jennifer.Lukens@noaa.gov.*

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of a meeting of MAFAC. The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The complete charter and summaries of prior meetings are located online at *http://www.nmfs.noaa.gov/ocs/mafac/.*

Matters To Be Considered

This meeting time and agenda are subject to change.

The meeting is convened to hear presentations and updates and to discuss policies and guidance on the following topics: proposed Columbia Basin Partnership Task Force; aquaculture resilience benefits; regional vulnerability analyses; ecosystem based fisheries management; transition; Protected Resources program review and climate change guidance; climate science and regional action plans; recreational fisheries activities and socioeconomic science; and the budget outlook for FY2017–2018. MAFAC will discuss various administrative and organizational matters, and meetings of standing subcommittees and working groups will be convened.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heidi Lovett; 301–427–8034 by October 21, 2016.

Dated: October 11, 2016.

Jennifer Lukens,

Director for the Office of Policy, National Marine Fisheries Service.

[FR Doc. 2016–24972 Filed 10–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE961

Magnuson-Stevens Fishery Conservation and Management Act; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Regional Administrator, NMFS West Coast Region, has determined that an application for an exempted fishing permit (EFP) warrants further consideration and requests public comment on the application. The application requests 2-year exemptions from various prohibitions under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) to test the effects and efficacy of using deep-set buoy gear (DSBG) to fish for swordfish and other highly migratory species (HMS) off the U.S. West Coast. This notice also announces NMFS' intent to extend two current DSBG EFPs through 2018 and also requests public comment on these EFPs.

DATES: Comments must be submitted in writing by November 16, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0133, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0133,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. EFP applications will be available under Relevant Documents through the same link.
- *Mail:* Attn: Chris Fanning, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2016–0133'' in the comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Chris Fanning, NMFS, West Coast Region, 562–980–4198.

SUPPLEMENTARY INFORMATION: In August 2015 NMFS issued three EFPs for fishing vessels to use DSBG in the exclusive economic zone (EEZ) off the U.S. West Coast (DSBG is described as multiple hooks deployed relatively deep in the water column, using one or more weighted mainlines which are suspended with one or more buoys floating on the ocean surface) (80 FR 29662, May 22, 2015). DSBG fishing under two of these EFPs has been ongoing in 2015–2016, and the Pacific Fishery Management Council (Council) recommended these both be extended through the 2017–2018 fishing season (*http://www.pcouncil.org/wp-content/uploads/2016/03/0316decisions.pdf*).

In addition to the request for the two extensions, a new DSBG EFP application was submitted to the Council by Dave Stephens for two additional vessels to conduct DSBG fishing activities (herein referred to as the ''Stephens EFP'') (*http://www.pcouncil.org/wp-content/uploads/2016/07/0616decisions.pdf*). At its September 2016 meeting, the Council

recommended that NMFS issue the Stephens EFP (*http://www.pcouncil.org/wp-content/uploads/2016/09/0916decisions.pdf*).

If the two extensions and the Stephens EFP are approved, they would exempt a limited number of federally permitted commercial fishing vessels from requirements of the HMS FMP pertaining to non-authorized gear types. The EFPs would authorize up to 13 DSBG vessels to fish year-round in areas within the EEZ off the U.S. West Coast. Aside from the exemption described above, vessels fishing under an EFP would be subject to all other regulations implementing the HMS FMP, including measures to protect sea turtles, marine mammals, and seabirds. The three applicants requested EFP issuance for two fishing seasons or the 2017 and 2018 calendar years.

The Council suggested NMFS impose requirements on the Stephens EFP consistent with one of the existing EFPs, including, but not limited to:

(1) 30 percent observer coverage on each vessel's fishing trips;

(2) fishing only in federal waters; and

(3) the operator of the fishing vessel operating under a DSBG EFP must actively tend all gear at all times and maintain the gear within sight (typically within 2–4 nautical miles of the gear) of the EFP participant fishing vessel.

NMFS is seeking public comment on the extension of the two existing EFPs, as well as the Stephens EFP application and the Council's recommended conditions.

In accordance with NOAA Administrative Order 216–6, appropriate National Environmental Policy Act documents will be completed prior to the issuance of the EFPs. Additionally, NMFS will consider all applicable laws, including Section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), to determine if the proposed action is likely to jeopardize the continued existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 11, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24973 Filed 10–14–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2016–0041]

Notice of Roundtables and Request for Comments Related to Patent Subject Matter Eligibility

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of public roundtables and request for comments related to patent subject matter eligibility.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') seeks public input on patent subject matter eligibility in view of recent decisions by the Supreme Court and Court of Appeals for the Federal Circuit. The USPTO remains interested in feedback from members of the public to improve the USPTO's existing subject matter eligibility guidance and training examples. The USPTO is also interested in facilitating a discussion among members of the public regarding the legal contours of eligible subject matter in the U.S. patent system. The USPTO will be facilitating these discussions by hosting two roundtable events. The first roundtable will be directed to receiving feedback from members of the public to improve the USPTO's existing subject matter eligibility guidance and training examples. The second roundtable will be focused on receiving feedback regarding larger questions concerning the legal contours of eligible subject matter in the U.S. patent system. The roundtables will provide a forum for discussion of the topics identified in this notice.

DATES: The meeting dates are:

1. November 14, 2016, 1 p.m. to 5 p.m., Alexandria, VA.

Written comments will be accepted on an ongoing basis.

2. December 5, 2016, 8 a.m. to 5 p.m., Stanford, CA.

Written comments are due by January 18, 2017.

ADDRESSES: The meeting locations are:

1. United States Patent and Trademark Office, Madison Building, Madison Auditorium, 600 Dulany Street, Alexandria, Virginia 22314.

2. Paul Brest Hall, 555 Salvatierra Walk, Stanford University, Stanford, California 94305.

Submit written comments to: *2014_interim_guidance@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding registration and speaker presentations should be directed to the attention of Elizabeth Shaw, by telephone at 571–272–9300, or by email at *elizabeth.shaw2@uspto.gov.* Requests for additional information regarding the topics for written comments and discussion at Roundtable 1 should be directed to Carolyn Kosowski, by telephone at 571–272–7688, or by email at *carolyn.kosowski@uspto.gov.* Requests for additional information regarding the topics for written comments and discussion at Roundtable 2 should be directed to Amy Nelson, by telephone at 571–272–8978, or by email at *amy.nelson@uspto.gov.*

SUPPLEMENTARY INFORMATION:

Roundtable 1: USPTO Subject Matter Eligibility Guidelines

Instructions and Information on Roundtable 1: Roundtable 1 will be held on November 14, 2016, at the United States Patent and Trademark Office, Madison Building, Madison Auditorium, 600 Dulany Street, Alexandria, Virginia 22314. The roundtable will begin at 1:00 p.m., Eastern Standard Time (''EST'') and end at 5:00 p.m., EST. The roundtable will also be available via webcast enabling individuals who cannot attend in person to watch the roundtable via the Internet in real time. The agenda and webcast information will be available before the roundtable on the USPTO's Roundtable 1 Web page *www.uspto.gov/patent/notice-roundtables-and-request-comments-related-patent-subject-matter-eligibility.* On-line registration will be available from that Web page, and attendees may register at the door. Attendees are encouraged to register on-line before the roundtable.

Written Comments: The USPTO continues to accept comments on its subject matter eligibility guidance and training examples on an ongoing basis. Those comments, as well as any written comments on the topics for discussion in Roundtable 1, should be sent by electronic mail message via the Internet addressed to *2014_interim_guidance@uspto.gov.* Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

Roundtable 2: Exploring the Legal Contours of Patent Subject Matter Eligibility

Instructions and Information on Roundtable 2: Roundtable 2 will be held on December 5, 2016, at Paul Brest Hall, 555 Salvatierra Walk, Stanford University, Stanford, California 94305. The roundtable will begin at 8:00 a.m., Pacific Standard Time (''PST'') and end

at 5:00 p.m. PST. The roundtable will also be available via webcast enabling individuals who cannot attend in person to watch the roundtable via the Internet in real time. The agenda and webcast information will be available before the roundtable on the USPTO's Roundtable 2 Web page *www.uspto.gov/patent/laws-and-regulations/comments-public/notice-roundtables-and-request-comments-related-patent*. On-line registration will be available from that Web page, and attendees may register at the door. Attendees are encouraged to register on-line before the roundtable.

Written Comments: For those wishing to submit written comments on the topics to be addressed by Roundtable 2, the deadline for receipt of those comments for consideration by the USPTO is January 18, 2017. Written comments should be sent by electronic mail message via the Internet addressed to *101Roundtable2@uspto.gov.*

Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

1. Background

As the world's most innovative economy, the United States relies heavily on intellectual property to support economic growth and business development. The U.S. patent system is a critical piece of the nation's robust system of intellectual property rights. To obtain patent protection, the requirement of subject matter eligibility under 35 U.S.C. 101 must be satisfied. Over the past six years, the Supreme Court has issued a series of decisions—*Bilski,*[1] *Mayo,*[2] *Myriad,*[3] and *Alice*[4]—that have significantly impacted patent eligibility law and continue to generate substantial public debate. These cases are briefly summarized below.

Bilski, decided in 2010, involved a business method for hedging risk.[5] In analyzing patent eligibility, the Supreme Court recognized that section 101 specifies four independent categories of inventions or discoveries that are eligible for patent protection (processes, machines, manufactures, and compositions of matter), but judicial precedent provides three specific exceptions to patent eligibility for laws of nature, physical phenomena, and abstract ideas.[6] The Court rejected the view of the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') that the so-called ''machine or transformation test'' is the exclusive test for assessing patent eligibility of a process.[7] Under that test, a process claim is patent eligible provided it is (1) tied to a particular machine or apparatus, or (2) transforms a particular article into a different state or thing.[8] The Court explained that although the machine or transformation test ''is a useful and important clue,'' it is ''not the sole test for deciding whether an invention is a patent-eligible 'process.' '' [9] The Court held that the claims at issue were invalid because they were directed to the unpatentable abstract idea of hedging risk in the energy market and added only token post-solution components, namely, use of well-known random analysis techniques to establish inputs.[10] The Court observed that hedging is a long prevalent fundamental economic practice, and that allowing the patent claims ''would pre-empt use of [risk hedging] in all fields'' and ''effectively grant a monopoly over an abstract idea.'' [11] The Court, however, left open the possibility that at least some business methods are patent eligible.[12]

Following *Bilski,* the Supreme Court in *Mayo* addressed a method for optimizing drug dosages for treatment of autoimmune diseases in humans.[13] The inventors discovered the relationship between the concentration of a metabolite in the blood following administration of the drug and the likelihood that the administered dosage would be ineffective or produce harmful side effects.[14] The inventors obtained a patent claiming a method of determining whether a given dosage level is too low or too high based on the metabolite level.[15]

The Court held the claims to be patent ineligible.[16] In analyzing the claims, the Court introduced a two-step framework for distinguishing patent ineligible concepts from patent eligible applications of those concepts.[17] The first step is to consider whether the claims are directed to a judicially recognized exception to patentability, *i.e.,* abstract ideas, laws of nature, or natural phenomena.[18] If so, then the second question is ''whether the claims do significantly more than simply describe these natural relations,'' *i.e.,* whether additional elements considered separately or as an ordered combination ''transform the nature of the claim'' into ''a patent-eligible application'' of the judicial exception.[19] Applying the first step of this framework to the claims at issue, the Court found that the claims were directed to a law of nature: The relationship between the concentration of a particular metabolite in the blood and the likelihood that a dosage of a drug will be ineffective or harmful.[20] Assessing the second step, the Court determined that the claims did not do ''significantly more'' than describe this natural relationship, *i.e.,* the additional elements considered separately and as an ordered combination did not ''transform the nature of the claim'' into ''a patent-eligible application'' of the judicial exception.[21]

At issue in *Myriad* was the patent eligibility of claims to isolated DNA (genes) associated with an increased risk of breast cancer, and synthetic DNA created from RNA known as complementary DNA (cDNA).[22] The Supreme Court held that the isolated genes ''fell squarely within the law of nature exception.'' [23] The Court explained that discovering the location of the genes does not render the genes patent eligible, nor does the act of separating them from their surrounding genetic material.[24] While acknowledging that claims to a product ''with markedly different characteristics from any found in nature'' may be patent eligible,[25] the Court explained that Myriad's claims to isolated genes lacked such characteristics because they do not rely on any chemical changes resulting from isolation, and are not even expressed in terms of chemical composition.[26] The Court did, however, rule that the claimed cDNAs were patent eligible because they differed from naturally occurring DNA by the absence of intron regions (*i.e.,* non-coding nucleotide sequences).[27]

[1] *Bilski* v. *Kappos,* 561 U.S. 593 (2010).

[2] *Mayo Collaborative Servs.* v. *Prometheus Labs., Inc.,* __U.S.__, 132 S. Ct. 1289 (2012).

[3] *Ass'n for Molecular Pathology* v. *Myriad Genetics, Inc.,* __U.S.__, 133 S. Ct. 2107 (2013).

[4] *Alice Corp.* v. *CLS Bank Int'l,* __U.S.__, 134 S. Ct. 2347 (2014).

[5] *Bilski* v. *Kappos,* 561 U.S. 593, 599 (2010).

[6] *Id.* at 601.

[7] *Id.* at 604.

[8] *Id.* at 602.

[9] *Id.* at 604.

[10] *Id.* at 612.

[11] *Id.* at 611–12.

[12] *Id.* at 606–07.

[13] *Mayo,* 132 S. Ct. at 1294–95.

[14] *Id.* at 1294.

[15] *Id.*

[16] *Id.* at 1305.

[17] *Id.* at 1296–98; *see Alice,* 134 S. Ct. at 2355 (summarizing two-part test in *Mayo*).

[18] *Id.* at 1296–97, 1293; *see Alice* 134 S. Ct. at 2355.

[19] *Id.* at 1297–98; *see Alice* 134 S. Ct. at 2355.

[20] *Id.* at 1296.

[21] *Id.* at 1297–98.

[22] *Myriad,* 133 S. Ct. at 2112–13.

[23] *Id.* at 2117.

[24] *Id.* at 2117–18.

[25] *Id.* at 2117 (quoting *Diamond* v. *Chakrabarty,* 447 U.S. 303, 310 (1980)).

[26] *Id.* at 2118.

[27] *Id.* at 2119.

Finally, in *Alice,* the Court reaffirmed the *Mayo* two-step framework and applied it to claims reciting a computer-implemented process, computer system, and computer readable medium for mitigating settlement risk.[28] Under step one of the framework, the Court concluded that the claims were directed to the abstract idea of intermediated settlement.[29] In assessing step two, the Court considered whether the claim elements, individually or as an ordered combination, "'transform the nature of the claim' into a patent-eligible application."[30] The Court referred to the second step as "a search for an inventive concept—*i.e.,* an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself."[31] Looking at the claims at issue, the Court concluded that mere generic computer implementation does not transform the abstract idea into a patent-eligible invention.[32] Thus, the court held the process claims, as well as the claims to the computer system and computer-readable medium, to be patent ineligible.[33]

These cases continue to have a substantial effect on patent eligibility in the United States. On the one hand, they have overturned decades-old USPTO practice regarding patent eligibility of isolated genes, placing the United States at odds with the practices of major trading partners, including Europe.[34] On the other hand, the *Mayo* two-step test has generally raised the bar for patent eligibility in all fields of technology.

In the wake of these cases, the Federal Circuit has issued several decisions applying the Supreme Court test to a broad spectrum of subject matter, from the life sciences[35] to computer-related inventions (including business methods).[36] Although most of the Federal Circuit decisions have held claims to be patent ineligible, several of the decisions have held claims to be patent eligible.[37] In addition, the USPTO has issued and updated guidance documents to aid the public and patent examiners in understanding how these cases apply to the patent examination process. In light of the changing landscape regarding subject matter eligibility in the United States, the USPTO is interested in inviting public discussion on these issues to help refine, if necessary, its guidance and to obtain views on the legal contours of subject matter eligibility.

2. Topics for Public Comment and Discussion At Roundtable 1: USPTO Subject Matter Eligibility Guidelines

The USPTO has issued a series of guidance documents and training examples to instruct examiners on how to apply section 101 during examination, which incorporates previously received public input.[38] The most recent documents include the May 2016 Life Sciences examples and three memoranda to the Patent Examining Corps: The May 4, 2016 memorandum titled "Formulating a Subject Matter Eligibility Rejection and Evaluating the Applicant's Response to a Subject Matter Eligibility Rejection"; the May 19, 2016 memorandum titled "Recent Subject Matter Eligibility Decisions (*Enfish, LLC* v. *Microsoft Corp.* and *TLI Communications LLC* v. *A.V. Automotive, LLC*); and the July 14, 2016 memorandum titled "Recent Subject Matter Eligibility Rulings (*Rapid Litigation Management* v. *CellzDirect* and *Sequenom* v. *Ariosa*)." The USPTO remains interested in feedback from interested stakeholders or members of the public to improve the USPTO's subject matter eligibility guidance and training examples, and is already accepting comments on those documents.[39] For discussion at Roundtable 1, the Office is particularly seeking views and comments on the following:

1. Suggestions to how to improve the Office's subject matter eligibility guidance, particularly the three recent memoranda discussed above;
2. Comments on the May 2016 Life Sciences examples and their effect on prosecution of patent applications in the life sciences, and suggestions of additional examples, or technology areas in which examples would be helpful;
3. Suggestions on how best to make examiners aware of newly issued judicial decisions, and how best to incorporate recent decisions holding claims eligible, such as *Enfish, Bascom, Rapid Litigation Management,* and *McRO,* into the Office's subject matter eligibility guidance; and
4. Concerns on how the Office's subject matter eligibility guidance and training examples, or how court decisions, are being applied by examiners.

3. Topics for Public Comment and Discussion At Roundtable 2: Exploring the Legal Contours of Patent Subject Matter Eligibility

The public is invited to submit comments on any topics related to patent subject matter eligibility under 35 U.S.C. 101 that they deem relevant. This roundtable event is not seeking additional input on the examiner guidance and training examples referenced above. Instead, the USPTO is seeking to promote conversation on how the current section 101 jurisprudence is evolving; what the optimum legal contours for patent eligibility should be; and how best to achieve these goals. Specifically, the USPTO would like to facilitate discussion and create a public record with relevant information on the actual or perceived impact of existing law on particular technology areas, and the effects on investment in research and development, and innovation generally. The USPTO would appreciate comments on whether developments in patent-eligibility law should be left primarily to the courts or whether other administrative initiatives are desirable. In addition, the USPTO would appreciate comments on whether legislative changes are desirable and, if so, views on the elements of such changes.

[28] *Alice,* 134 S. Ct. at 2355, 2352.

[29] *Id.* at 2355–57.

[30] *Id.* at 2355 (quoting *Mayo,* 132 S. Ct. at 1294).

[31] *Id.* (internal quotation marks omitted).

[32] *Id.* at 2357–60.

[33] *Id.* at 1260.

[34] Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, 1998 O.J. (L 213) 18 (Art. 5(2) provides "[a]n element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element.").

[35] *See, e.g., In re Roslin Inst.(Edinburgh),* 750 F.3d 1333 (Fed. Cir. 2014); *Univ. of Utah Research Found.* v. *Ambry Genetics Corp.,* 774 F.3d 755 (Fed. Cir. 2014); *Ariosa Diagnostics, Inc.* v. *Sequenom, Inc.,* 788 F.3d 1371 (Fed. Cir. 2015); *Genetic Techs., Ltd.* v. *Merial LLC,* 818 F.3d 1369 (Fed. Cir. 2016); *Rapid Litigation Mgmt. Ltd.* v. *CellzDirect, Inc.,* 827 F.3d 1042 (Fed. Cir. 2016).

[36] *See, e.g., Ultramercial, Inc.* v. *Hulu, LLC,* 772 F.3d 709 (Fed. Cir. 2014); *DDR Holdings, LLC* v. *Hotels.com, L.P.,* 773 F.3d 1245 (Fed. Cir. 2014); *Versata Dev. Group, Inc.* v. *SAP Am., Inc.,* 793 F.3d 1306 (Fed. Cir. 2015); *Enfish, LLC* v. *Microsoft Corp.,* 822 F.3d 1327 (Fed. Cir. 2016); *Bascom Global Internet Servs., Inc.* v. *AT&T Mobility LLC,* 827 F.3d 1341 (Fed. Cir. 2016); *McRO, Inc. dba Planet Blue* v. *Bandai Namco Games Am. Inc.,* No. 2015–1080, 2016 WL 4896481 (Fed. Cir. September 13, 2016).

[37] *DDR Holdings,* 773 F.3d 1245; *Enfish,* 822 F.3d 1327; *Bascom,* 827 F.3d 1341; *Rapid Litigation,* 827 F.3d 1042; *McRO,* 2016 WL 4896481.

[38] *See, e.g.,* 2014 Interim Guidance on Patent Subject Matter Eligibility, 79 FR 74,618 (Dec. 16, 2014); July 2015 Update on subject Matter Eligibility, 80 FR 45,429 (July 30, 2015); May 2016 Subject Matter Eligibility Update, 81 FR 27,381 (May 6, 2016); *see also* additional guidance materials available at *http://www.uspto.gov/patent/laws-and-regulations/examination-policy/2014-interim-guidance-subject-matter-eligibility-0.*

[39] May 2016 Subject Matter Eligibility Update, 81 FR 27381 (May 6, 2016); *available at https://www.gpo.gov/fdsys/pkg/FR-2016-05-06/pdf/2016-10724.pdf.*

To facilitate the launch of this data-gathering exercise, the USPTO is particularly interested in receiving views and comments on questions presented below. However, the tenor of the questions should not be taken as an indication that the USPTO is predisposed to any particular views, positions, or actions. The USPTO also invites the public to share their views and insights on other aspects of patent subject matter eligibility that are not addressed in the questions.

Impact of Judicial Interpretation of Section 101

1. How has the Supreme Court's interpretation of 35 U.S.C. 101 in the past several years affected the enforcement of patents and the development of subject-matter-eligibility law? In your response please:

a. Identify the scope of the problem, including specific examples;

b. identify any legal and/or technical inaccuracies;

c. suggest possible changes and/or solutions to any problems with section 101; and

d. provide explanations and/or any legal, policy, or economic analyses supporting your comments.

Statutory Categories of Patentable Subject Matter

To be eligible for patent protection, an invention must comply with section 101 of the Patent Act, which limits entitlement to a patent to ''whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter.'' The four categories of invention enumerated in the statute—process, machine, manufacture, and composition of matter—exhaust the possible types of inventions for which a patent may be obtained.

2. Should the patent statute be amended to further define the statutory categories of invention, *i.e.,* process, machine, manufacture, and composition of matter? If so, please identify possible legislative changes, including which sections of title 35 should be amended, *e.g.,* sections 100 or 101.

Exceptions to Patentable Subject Matter

The Supreme Court has articulated three exceptions to patent eligibility under section 101: Laws of nature, natural phenomena, and abstract ideas.

3. Do you think there should be exceptions to patentable subject matter?

a. If no, how should section 101 or other patentability provisions operate to address subject matter currently considered to fall within judicial exceptions?

b. If yes, please explain whether the judicial exceptions are sufficient in scope and if not, please identify other exceptions that should be included in the determination of patent eligible subject matter.

4. Should the patent statute be amended to define the judicial exceptions? If so, please suggest possible legislative changes, including which sections of title 35 should be amended, *e.g.,* sections 100 or 101.

5. If you identified other exceptions in your response to 3(b), please suggest possible legislative changes, including which sections of title 35 should be amended, *e.g.,* sections 100 or 101.

6. Other jurisdictions, *e.g.,* Europe and Japan, provide examples of subject matter that does not qualify as an invention or discovery for purposes of patent eligibility. For example, in Europe, scientific theories, methods for performing mental acts, computer programs per se, and presentations of information are not regarded as inventions.

a. Do you think that title 35 should be amended to revise the definition for the term ''invention'' and/or provide a definition for the term ''discovery'' along with specific examples of subject matter that should not be treated as an invention and/or discovery?

b. If so, please suggest possible legislative changes, including which sections of title 35 should be amended, *e.g.,* sections 100 or 101.

7. Does the concept of preemption, either separately or in the context of the *Mayo* two-step framework, capture useful insight in guarding against the issuance of overly broad patents? If so, please suggest possible legislative changes to capture those insights.

Patentable Subject Matter in the Life Sciences

8. What does the term ''discovery'' in sections 100 and 101 mean, and to what extent should a ''discovery'' be eligible for a patent? Please provide specific examples.

9. What does the term ''invention'' in sections 100 and 101 mean, and to what extent should a non-naturally occurring product of human ingenuity qualify as an ''invention'' to be eligible for a patent? Please provide specific examples.

10. To what extent should products that have been isolated from their natural surroundings as a result of human ingenuity be eligible for a patent? Please provide specific examples as well as scientific explanations and/or legal analyses to support your response.

11. To what extent should a ''diagnostic method'' be eligible for a patent? Please provide specific examples.

12. Are there lines that can or should be drawn scientifically or legislatively between different types of compositions of matter for purposes of obtaining patent protection (*e.g.,* between human genes and genes of other species)?

13. What particular inventions or specific types of technologies that should be patent eligible are not patent eligible, or are likely to be challenged as patent ineligible, under *Mayo*/*Myriad*? Please provide specific examples and explain why you believe claim drafting strategies will not be sufficient to avoid patent eligibility problems.

Process Patents and the Machine or Transformation Test

14. Should patents be available for methods that do not involve a machine or a transformation? If so, please provide specific examples.

15. If you support some form of ''machine or transformation test,'' please identify the best expression of such a test.

a. Should incorporation of the use of a general purpose computer be enough to satisfy the ''machine'' part of the test? If not, what more should be required?

b. Should a transformation that occurs in the human body as a result of a claimed process be enough to satisfy the ''transformation'' part of the test? If not, what more should be required?

Patentability of Business Methods

16. To what extent should an invention that involves a business method be eligible for a patent? Please provide specific examples.

Patentability of Software/Computer-Related Inventions

17. To what extent should an invention that involves computer software be eligible for a patent? Please provide specific examples.

18. What mechanisms, other than the judicial exceptions, can be used to prevent issuance of overly broad software or computer-related patents that cover wide swaths of economic activity? Do you think that other provisions of title 35 (enablement, written description, definiteness, novelty, non-obviousness) could be used more effectively to achieve this goal? If not, please explain why.

Roundtable 1: USPTO Subject Matter Eligibility Guidelines

Requests to Speak: Individuals interested in speaking at Roundtable 1 must complete the on-line registration

no later than October 26, 2016, and include their name, contact information (telephone number and email address), the organization(s) the person represents, if any, the topics they wish to address, and the approximate length of the presentation. To ensure a balanced array of views, there is the possibility that not all persons who wish to make a presentation will be able to do so given time constraints; however, the USPTO will do its best to try to accommodate as many persons as possible. Selected speakers will be notified thereafter. However, all members of the public are encouraged to submit written comments by electronic mail message via the Internet addressed to *2014_interim_guidance@uspto.gov.*

The public is invited to speak at Roundtable 1 by appearing, in person, at the USPTO in Alexandria, Virginia or one of the following USPTO Regional Offices: the Midwest Regional Office, 300 River Place Drive, Suite 2900, Detroit, Michigan 48207; The Rocky Mountain Regional Office, 1961 Stout Street, Denver, Colorado 80294; the West Coast Regional Office, 26 S. Fourth Street, San Jose, California 95113; or the Texas Regional Office, 207 South Houston Street, Suite 159, Dallas, Texas 75202. Individuals requesting to speak at one of the aforementioned Regional Offices will be provided with the opportunity to speak at the roundtable and engage with USPTO representatives in Alexandria, Virginia in real time. If requesting to speak at this roundtable, please check the appropriate location when completing the on-line registration.

Public Availability of Transcripts and Public Comments: The transcript of Roundtable 1 and the written comments submitted on the USPTO's subject matter eligibility guidance and training examples will be made available for public inspection upon request at the Office of the Commissioner for Patents, located at 600 Dulany Street, Madison East Building, Tenth Floor, Alexandria, Virginia and via address: *http://www.uspto.gov.*

Roundtable 2: Exploring the Legal Contours of Patent Subject Matter Eligibility

Requests to Speak: Individuals interested in speaking at Roundtable 2 must complete the on-line registration no later than November 14, 2016, and include their name, contact information (telephone number and email address), the organization(s) the person represents, if any, the topics they wish to address, and the approximate length of the presentation. To ensure a balanced array of views, there is the possibility that not all persons who wish to make a presentation will be able to do so given time constraints; however, the USPTO will do its best to try to accommodate as many persons as possible. Selected speakers will be notified thereafter. However, all members of the public are encouraged to submit written comments by electronic mail message via the Internet addressed to *101Roundtable2@uspto.gov.*

The public is invited to speak at Roundtable 2 by appearing, in person, at Stanford University, Stanford, California or at one of the following USPTO Regional Offices: The Midwest Regional Office, 300 River Place Drive, Suite 2900, Detroit, Michigan 48207; the Rocky Mountain Regional Office, 1961 Stout Street, Denver, Colorado 80294; or the Texas Regional Office, 207 South Houston Street, Suite 159, Dallas, Texas 75202. Individuals requesting to speak at one of the aforementioned Regional Offices will be provided with the opportunity to speak at the roundtable and engage with USPTO representatives in Stanford, California in real time. If requesting to speak at this roundtable, please check the appropriate location when completing the on-line registration.

Public Availability of Transcripts and Public Comments: The transcript of Roundtable 2 and the written comments submitted will be made available for public inspection upon request at the Office of Policy and International Affairs in the Executive Library located at 600 Dulany Street, Madison West Building, Tenth Floor, Alexandria, Virginia, 22314, telephone number 571–272–9300 and via the Roundtable 2 Web page *www.uspto.gov/patent/laws-and-regulations/comments-public/notice-roundtables-and-request-comments-related-patent.*

Special Accommodations for Roundtables 1 and 2: The roundtables will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other ancillary aids, should communicate their needs to Elizabeth Shaw, by telephone at 571–272–9300, by email at *elizabeth.shaw2@uspto.gov,* or by postal mail addressed to: Mail Stop OPIA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, ATTN: Elizabeth Shaw, at least seven (7) business days prior to the roundtable.

Dated: October 11, 2016.

Michelle K. Lee,

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

[FR Doc. 2016–24888 Filed 10–14–16; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–0015]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Recreation Area and Visitor Center Visitor Comment Cards; OMB Control Number 0710–XXXX.

Type of Request: New.

Number of Respondents: 45,000.

Responses per Respondent: 1.

Annual Responses: 45,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 3,750.

Needs and Uses: The information collection requirement is necessary to understand and determine the satisfaction of recreation visitors to US Army Corps of Engineers managed recreation areas.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: October 12, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25024 Filed 10–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0034]

Proposed Collection; Comment Request

AGENCY: USA Installation Management Command (IMCOM), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the USA Installation Management Command (IMCOM) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 16, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the USA Installation Management Command (IMCOM) Headquarters, 2405 Gun Shed Road, Bldg 2261, Room 1400, ATTN: Israel S. Garcia, Fort Sam Houston, TX 78234–1223, or call IMCOM Headquarters G32 at 210–466–0286/0259.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Child Service Background Checks; IMCOM Form 23, IMCOM Form 24, IMCOM Form 25), IMCOM Form 30; OMB Control Number 0702–XXXX.

Needs and Uses: The information collection requirement is necessary for the Department of the Army's proposed new system of records used to access the suitability of persons; determine loyalty, eligibility and general trustworthiness of individuals working in childcare related positions; and provide child care youth programming and reports.

Affected Public: Individuals or households.

Annual Burden Hours: 22,000.

Number of Respondents: 44,000.

Responses per Respondent: 1.

Annual Responses: 44,000.

Average Burden per Response: 30 Minutes.

Frequency: Annually.

Respondents are IMCOM appropriated fund (APF) and non-appropriated fund (NAF) employees; members of the military (active and reserve); foreign national employees overseas; and APF and NAF contractors, including subcontractors, who have regular contact with children under age of 18, as well as applicants for those positions. This applies to all offices responsible for on-boarding and providing support for screening and background checks, including civilian and military personnel; Army Substance Abuse Programs (ASAP); Directorates of Family, Morale, Welfare, and Recreations (DFMWR); Directorates of Plans, Training Mobilization, and Security (DPTMS); Criminal Investigation Division (CID), and Installation Religious Services Offices (RSO).

Dated: October 12, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25036 Filed 10–14–16; 8:45 am]

BILLING CODE 50063710–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0100]

Proposed Collection; Comment Request

AGENCY: Defense Manpower Data Center (DMDC), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Manpower Data Center announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 16, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Manpower Data Center, Division Director, Personnel Security Assurance, ATTN: John Liu, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771, or call at (831) 583–2500.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Information System for Security (DISS); Standard Form 85, Standard Form 85p, Standard Form 86, Standard Form 86A, and Standard Form 86C; OMB Control Number 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to obtain information resulting in accesses determinations to sensitive/classified information and facilities.

Affected Public: Business or other for profit; Federal Government.

Annual Burden Hours: 333,333.

Number of Respondents: 500,000.

Responses per Respondent: 2.

Annual Responses: 1,000,000.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

DISS requires personal data collection to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees and contractors seeking such credentials. As a Personnel Security System it is the authoritative source for clearance information resulting in accesses determinations to sensitive/classified information and facilities. Specific uses include the facilitation for DoD Adjudicators and Security Managers to obtain accurate up-to-date eligibility and access information on all personnel (military, civilian and contractor personnel) adjudicated by the DoD. The DoD Adjudicators and Security Managers are also able to update eligibility and access levels of military, civilian and contractor personnel nominated for access to sensitive DoD information. By completing the OPM Shared Forms SF 86, SF 86A, SF 86C, SF 85, or SF 85P, individuals are consenting to the specific uses of their PII. Information contained in this system is derived from the appropriate DoD personnel systems; Case Adjudication Tracking System (CATS); records maintained by the DoD adjudicative agencies; and records maintained by security managers, special security officers, or other officials requesting and/or sponsoring the security eligibility determination for the individual.

Dated: October 12, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25019 Filed 10–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–HA–0101]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 16, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Joint Operational Medical Information Systems, 1501 Wilson Blvd., Suite 600, Arlington, VA 22209–2412.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Theater Medical Data Store (TMDS); OMB Control Number; 0720–XXXX.

Needs and Uses: The Theater Medical Data Store (TMDS) allows providers the ability to view, track, and disposition ill or injured patients as they move through the Theater echelons of care, the Sustaining Base, and those related systems and services shared with the Department of Veterans Affairs.

Affected Public: Individuals.

Annual Burden Hours: 23,214.

Number of Respondents: 69,642.

Responses per Respondent: 1.

Annual Responses: 69,642.

Average Burden per Response: 20 minutes.

Frequency: On Occasion.

The key capabilities of TMDS include but not limited to receiving medical data from AHLTA-Mobile, AHLTA-Theater, Composite Health Care System Caché (CHCS), SNAP Automated Medical System (SAMS), and Transportation Command Regulating Command arid Control Evacuation System (TRAC2ES). TMDS serves as the authoritative Theater database for service members, contractors, host nation, and foreign military medical information, allowing users to track patients' disposition and display their longitudinal medical record information. TMDS is also the authoritative data store for blood shipments and transfusion data in Theater. Capabilities include viewing all Theater clinical information, such as progress notes, laboratory history, drug history, and radiological history; viewing, tracking, and managing ill or injured patients as they move through the continuum of care; and accessing data on airlifted critically injured patients before arrival at their next point of care. Personally identifiable information (PII) and protected health information (PHI) that is collected by the system and includes: Name, social security number (SSN), Department of Defense ID (DODID), family member prefix (FMP), rank, service affiliation, birth date, race/ethnicity, gender, marital status, spouse information, emergency contact, sponsor name, and sponsor SSN.

Dated: October 12, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25042 Filed 10–14–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Upward Bound Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Upward Bound Program

Notice inviting applications for new awards for fiscal year (FY) 2017.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.047A.

DATES:

Applications Available: October 17, 2016.

Deadline for Transmittal of Applications: November 28, 2016.

Deadline for Intergovernmental Review: January 25, 2017.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Upward Bound (UB) Program is one of the seven programs known as the Federal TRIO Programs. The UB Program is a discretionary grant program that supports projects designed to provide students with the skills and motivation necessary to complete a program of secondary education and to enter into and succeed in a program of postsecondary education. There are three types of grants under the UB Program: UB; Veterans UB; and UB Math and Science grants. In this notice we invite applications for UB grants only. We will invite applications for Veterans UB grants and UB Math and Science grants in forthcoming notices. Required services under the UB Program are specified in sections 402C(b) and (c) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070a–13), and permissible services under the UB Program are specified in section 402C(d) of the HEA.

Background: The Federal TRIO programs, including the UB Program, represent a national commitment to education for all students regardless of race, ethnic background, disability status, or economic circumstances. The Department has a strong interest in ensuring that groups traditionally underrepresented in postsecondary education, such as low-income students, first-generation college students, students with limited English proficiency, students with disabilities, homeless students, students who are in foster care or aging out of foster care, and other disconnected students, receive services provided by the UB Program.

The Department views the UB Program as a critical component of its efforts to improve college access and completion for students who have been traditionally underrepresented in postsecondary education by focusing on improving college readiness. To more strategically align UB grants with broader reform strategies intended to improve postsecondary access and completion, this notice includes a competitive preference priority that encourages applicants to propose activities that are supported by moderate evidence of effectiveness (as defined in this notice). The Department is particularly interested in receiving applications that include plans to provide services for students, supported by evidence, that increase the likelihood that students will complete high school and enroll in and complete a program of postsecondary education. The Department is not specifying a particular service such as tutoring or mentoring that must be tied to evidence, but is providing an opportunity for the applicant to decide which statutorily authorized service the project will implement based on available evidence of effectiveness.

Additionally, this notice includes an invitational priority encouraging applicants to focus on increasing opportunities for students to accumulate postsecondary credits while in high school. Some of these opportunities for postsecondary coursework may be available through dual enrollment programs. Dual enrollment programs allow high school students to enroll in credit-bearing college courses while enrolled in high school. In various forms and under different names, dual enrollment programs exist in all 50 States.[1]

Recent research[2] suggests that participation in dual enrollment programs can lead to improved academic outcomes, especially for students from low-income households and first generation college students. Such participation can lead to better grades in high school, increased enrollment in college following high school, greater college credit accumulation, and higher rates of persistence in college.

Priorities: This notice contains one competitive preference priority and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority is from 34 CFR 75.226. Applicants must include in the one-page abstract submitted with the application a statement indicating if they addressed the competitive preference priority and/or the invitational priority.

Competitive Preference Priority: For FY 2017 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award three additional points to an application that meets this priority.

This priority is:

[1] Education Commission of the States, ''Individual State Profile,'' *http://ecs.force.com/mbdata/mbprofallRT?Rep=DE15A.*

[2] An, B.P. (2012). ''The Impact of Dual Enrollment on College Degree Attainment: Do Low-SES Students Benefit?'' Educational Evaluation and Policy Analysis, 35, 57–75.

Moderate Evidence of Effectiveness (3 points).

Applications supported by evidence of effectiveness that meets the conditions set out in the definition of ''moderate evidence of effectiveness'' in 34 CFR 77.1(c).

Invitational Priority: For FY 2017 and any subsequent year in which we make awards from the list of unfunded applications for this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

The Secretary encourages applicants to propose projects designed to increase opportunities for participants to earn postsecondary credits in high school, such as through providing connections to dual enrollment programs.

Definitions: These definitions are from 34 CFR 77.1.

Moderate evidence of effectiveness means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the WWC Evidence Standards without reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the WWC), and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice.

(ii) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the WWC Evidence Standards with reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the WWC), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample.

Note: Multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph.

Multi-site sample means more than one site, where site can be defined as a local education agency, locality, or State.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

What Works Clearinghouse Evidence Standards means the standards set forth in the WWC Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Program Authority: 20 U.S.C. 1070a–11 and 1070a–13.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 645.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $900,000,000 for the Federal TRIO Program for FY 2017, of which we intend to use an estimated $273,000,000 for UB awards. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2018 from the list of unfunded applications from this competition.

Estimated Range of Awards: $257,500–$768,622.

Estimated Average Size of Awards: $335,890.

Maximum Award: We will reject any application that proposes a budget exceeding the applicable maximum amount listed here for a single budget period of 12 months. We will also reject any application for new applicants that proposes a budget to serve fewer than 60 participants or, for applicants that are current grantees, any application with a proposed budget to serve fewer than the number of participants the applicant was approved to serve in FY 2016.

- For an applicant that is not currently receiving a UB Program grant, the maximum award amount is $257,500, based upon a per-participant cost of no more than $4,292 and a minimum of 60 participants.
- For an applicant that is currently receiving a UB Program grant, the maximum award amount is an amount equal to the applicant's base award amount for FY 2016.

Estimated Number of Awards: 813.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education, public and private agencies, and organizations including community-based organizations with experience in serving disadvantaged youth, combinations of such institutions, agencies and organizations, and secondary schools.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* An applicant may submit more than one application for a UB Program grant so long as each application describes a project that serves a different target area or target school (34 CFR 645.20(a)). The Secretary is not designating any additional populations for which an applicant may submit a separate application under this competition (34 CFR 645.20(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* Ken Waters, U.S. Department of Education, 400 Maryland Avenue SW., Room 5E103, Washington, DC 20202. Telephone: (202) 453–6273 or by email: *Ken.Waters@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc)

by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative, which includes the budget narrative, to no more than 65 pages using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1″ margin.
- Each page on which there is text or graphics will be counted as one full page.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including charts, tables, figures, and graphs. Titles, headings, footnotes, quotations, references, and captions may be singled spaced.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance Face Sheet (SF 424); Part II, the Budget Information Summary form (ED Form 524); Part III, the UB Program Profile form; Part III, the one-page Project Abstract form; and Part IV, the Assurances and Certifications. The page limit also does not apply to a table of contents, which you should include in the application narrative. If you include any attachments or appendices, these items will be counted as part of Part III, the application narrative, for purpose of the page-limit requirement. You must include your complete response to the selection criteria in Part III, the application narrative.

Any application addressing the competitive preference priority may include up to four additional pages for the priority. These additional pages must be used to discuss how the application meets the competitive preference priority. Any application addressing the invitational priority may include up to two additional pages for the priority. These additional pages must be used to discuss how the application meets the invitational priority. The additional pages allotted to address the competitive preference priority and the invitational priority cannot be used for or transferred to the application narrative or any other section of the application.

We will reject your application if—

- You do not apply these standards; or
- You exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: October 17, 2016.

Deadline for Transmittal of Applications: November 28, 2016.

Applications for grants under this program must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: January 25, 2017.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 645.41. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the UB Program, CFDA number 84.047A, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the UB Program at *www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.047, not 84.047A).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this program to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department then will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your

application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through *Grants.gov* because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Gaby Watts, U.S. Department of Education, 400 Maryland Avenue SW., Room 5E119, Washington, DC 20202. Fax: (202) 260–7464.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.047A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260,

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education
Application Control Center
Attention: (CFDA Number 84.047A)
550 12th Street SW.,
Room 7039, Potomac Center Plaza
Washington, DC 20202–4260

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department— (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are in 34 CFR 645.31 and listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 645.31 and the competitive preference priority. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process. Additionally, in accordance with 34 CFR 645.32, the Secretary will award prior experience points to applicants that conducted a UB Program project during budget periods 2013–14, 2014–15, and 2015–16, based on their documented experience. Prior experience points, if any, will be added to the application's average reader score to determine the total score for each application.

If there are insufficient funds for all applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographic

areas and eligible populations that have been underserved by the UB Program.

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The success of the UB Program will be measured by the percentage of UB participants who enroll in and complete postsecondary education. The following performance measures have been developed to track progress toward achieving program success:

1. The percentage of UB students who took two years of mathematics beyond Algebra I by the 12th grade;

2. The percentage of UB students who graduated from secondary school with a regular secondary school diploma;

3. The percentage of UB students who enrolled in postsecondary education;

4. The percentage of UB students who enrolled in a program of postsecondary education by the fall term following graduation from high school and who in the first year of postsecondary education placed into college-level math and English without need for remediation;

5. The percentage of former UB students who enrolled in a program of postsecondary education and graduated on time—within four years for the bachelor's degree and within two years for the associate's degree;

6. The percentage of UB participants who enrolled in a program of postsecondary education and attained either an associate's degree within three years or a bachelor's degree within six years of enrollment;

7. The percentage of UB students expected to graduate high school in the reporting year who complete a Free Application for Federal Student Aid (FAFSA); and

8. The cost per successful participant.

Grant recipients must collect and report data on steps they have taken toward achieving these goals. Accordingly, we request that applicants include these performance measures in conceptualizing the design, implementation, and evaluation of their proposed projects.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance management requirements, the performance targets in the grantee's approved application.

In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Ken Waters, U.S. Department of Education, 400 Maryland Avenue SW., Room 5E103, Washington, DC 20202. Telephone: (202) 453–6273 or by email: *Ken.Waters@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at this 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 feature at this site, you can limit your search to documents published by the Department.

Dated: October 12, 2016.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Policy, Planning and Innovation, Delegated the Duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–25058 Filed 10–14–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0089]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Direct Loan Program Regulations for Forbearance and Loan Rehabilitation

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 16, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0089. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Direct Loan Program Regulations for Forbearance and Loan Rehabilitation.

OMB Control Number: 1845–0119.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 129,027.

Total Estimated Number of Annual Burden Hours: 35,094.

Abstract: This information collection for the Direct Loan (DL) Program is related to regulations for dealing with defaulted loans and forbearance in § 685.205 and reasonable and affordable loan rehabilitation in § 685.211. We are requesting an extension of the current burden calculated for this information collection. These regulations provide additional flexibilities for Direct Loan borrowers and permit oral requests for forbearance, as well as allow a borrower to object to the initially established reasonable and affordable loan repayment amount. In addition, if a borrower incurs changes to his or her financial circumstances, the borrower can provide supporting documentation to change the amount of the reasonable and affordable loan monthly repayment amount. There has been no change to the regulatory language.

Dated: October 12, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–25038 Filed 10–14–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3777–010]

Consolidated Hydro New Hampshire, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. Type of Filing: Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. Project No.: 3777–010.

c. *Date Filed:* August 31, 2016.

d. Submitted By: Consolidated Hydro New Hampshire, LLC.

e. *Name of Project:* Rollinsford Hydroelectric Project.

f. *Location:* On the Salmon Falls River, in Strafford County, New Hampshire and York County, Maine. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. Potential *Applicant Contact:* Kevin Webb, Enel Green Power North America, Inc., One Tech Drive, Suite 200, Andover, MA 01810; (978) 681–1900; email—*kevin.webb@enel.com.*

i. *FERC Contact:* Dr. Nicholas Palso at (202) 502–8854; or email at *nicholas.palso@ferc.gov.*

j. Consolidated Hydro New Hampshire, LLC filed its request to use the Traditional Licensing Process on August 31, 2016. Consolidated Hydro New Hampshire, LLC provided public notice of its request on August 24, 2016. In a letter issued on October 11, 2016, the Director of the Division of Hydropower Licensing approved Consolidated Hydro New Hampshire,

LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New Hampshire and Maine State Historic Preservation Officers, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Consolidated Hydro New Hampshire, LLC as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Consolidated Hydro New Hampshire, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 3777. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 2019.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 11, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25028 Filed 10–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13212–005]

Kenai Hydro, LLC; Notice of Technical Meeting

a. Project Name and Number: Grant Lake Hydroelectric Project No. 13212.

b. Date and Time of Meeting: November 1, 2016; 8:00 a.m.—12:00 p.m., AKDT.

c. Place: Teleconference.

d. *FERC Contact:* Kenneth Hogan, *Kenneth.Hogan@ferc.gov* .

e. Purpose of Meeting: Commission Staff is hosting a Technical Meeting(s) in an effort to seek resolution of conflicts between the proposed Grant Lake Hydroelectric Project and the Iditarod National Historic Trail.

f. A stenographer will record the technical meeting, and meeting transcripts will be placed into the Commission's public record for the proceeding.

g. All local, state, and federal agencies, Indian tribes, interested non-governmental organizations, and other interested parties are invited to participate.

h. Access to the teleconference will be provided upon an emailed request to the FERC Contact in Item d above.

Dated: October 11, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25029 Filed 10–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–501–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on September 15, 2016, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, TX 77056–5310, filed an application in Docket No. CP16–501–000 pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct its Marshall County Mine Panel 17W Project. Texas Eastern states its project is designed to ensure the safe and efficient operation of Texas Eastern's existing pipeline facilities during the longwall mining activities planned by Marshall County Coal Company in the area beneath Texas Eastern's pipelines in Marshall County, West Virginia. Texas Eastern proposes to excavate, elevate, and/or replace certain sections of four different pipelines and appurtenant facilities, all as more fully set forth in the application, which is on file with the Commission and open for public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Lisa A. Connolly, General Manager, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, TX 77251–1642, or by calling (713) 627–4102 (telephone), or (713) 627–5947 (fax), or by email at *laconnolly@spectraenergy.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. 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 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 commenters 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: October 20, 2016

Dated: September 29, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–25027 Filed 10–14–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–5–000.
Applicants: Rush Springs Wind Energy, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action of Rush Springs Wind Energy, LLC.
Filed Date: 10/7/16.
Accession Number: 20161007–5076.
Comments Due: 5 p.m. ET 10/28/16.

Docket Numbers: EC17–6–000.
Applicants: Ninnescah Wind Energy, LLC, Kingman Wind Energy I, LLC, Kingman Wind Energy II, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action of Ninnescah Wind Energy, LLC, et al.
Filed Date: 10/7/16.
Accession Number: 20161007–5167.
Comments Due: 5 p.m. ET 10/28/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG17–3–000.
Applicants: Clinton Battery Utility, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Clinton Battery Utility, LLC.
Filed Date: 10/7/16.
Accession Number: 20161007–5033.
Comments Due: 5 p.m. ET 10/28/16.

Docket Numbers: EG17–4–000.
Applicants: CXA Sundevil Power I, Inc.
Description: Notice of Self-Certification as an Exempt Wholesale Generator of CXA Sundevil Power I, Inc.
Filed Date: 10/7/16.
Accession Number: 20161007–5050.
Comments Due: 5 p.m. ET 10/28/16.

Docket Numbers: EG17–5–000.
Applicants: CXA Sundevil Power II, Inc.
Description: Notice of Self-Certification as an Exempt Wholesale Generator of CXA Sundevil Power II, Inc.
Filed Date: 10/7/16.
Accession Number: 20161007–5052.
Comments Due: 5 p.m. ET 10/28/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–39–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Balancing Account Update 2017 (TRBAA, RSBA, ECRBAA) to be effective 1/1/2017.
Filed Date: 10/6/16.
Accession Number: 20161006–5133.
Comments Due: 5 p.m. ET 10/27/16.

Docket Numbers: ER17–40–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2016–10–06 Removal of Flexible Ramping Constraint Tariff Amendment to be effective 11/1/2016.
Filed Date: 10/6/16.
Accession Number: 20161006–5138.
Comments Due: 5 p.m. ET 10/27/16.

Docket Numbers: ER17–41–000.
Applicants: MATL LLP.
Description: Compliance filing: MATL Attachment N Compliance Filing to be effective 10/14/2016.
Filed Date: 10/7/16.
Accession Number: 20161007–5032.
Comments Due: 5 p.m. ET 10/28/16.

Docket Numbers: ER17–42–000.
Applicants: Consumers Energy Company, CMS Energy Resource Management Company.
Description: Application for Waiver of Affiliate Restrictions of Consumers Energy Company, et al.
Filed Date: 10/6/16.
Accession Number: 20161006–5154.
Comments Due: 5 p.m. ET 10/27/16.

Docket Numbers: ER17–43–000.
Applicants: Portal Ridge Solar B, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 11/4/2016.
Filed Date: 10/7/16.
Accession Number: 20161007–5140.
Comments Due: 5 p.m. ET 10/28/16.

Docket Numbers: ER17–44–000.
Applicants: Portal Ridge Solar C, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 11/4/2016.
Filed Date: 10/7/16.
Accession Number: 20161007–5143.
Comments Due: 5 p.m. ET 10/28/16.

Docket Numbers: ER17–45–000.
Applicants: Midcontinent Independent System Operator, Inc. ALLETE, Inc.
Description: § 205(d) Rate Filing: 2016–10–07_SA 2958 Manibtoba Hydro-

Minnesota Power T–TIA (Dorsey-Iron Range) to be effective 12/31/9998.

Filed Date: 10/7/16.

Accession Number: 20161007–5145.

Comments Due: 5 p.m. ET 10/28/16.

Docket Numbers: ER17–46–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Queue Position AA2–085, Original Service Agreement Nos. 4538, 4539 to be effective 9/7/2016.

Filed Date: 10/7/16.

Accession Number: 20161007–5157.

Comments Due: 5 p.m. ET 10/28/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–24990 Filed 10–14–16; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10270 Williamsburg First National Bank, Kingstree, South Carolina

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10270 Williamsburg First National Bank, Kingstree, South Carolina (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Williamsburg First National Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective October 01, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: October 11, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–24959 Filed 10–14–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Wednesday, October 19, 2016, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Temporary Waiver of Appraisal Requirements for Certain Areas of Louisiana affected by Flooding.

Memorandum and resolution re: Review of Regulations Transferred from the Former Office of Thrift Supervision: Part 391, Subpart A—Security Procedures.

Memorandum and resolution re: Notice of Proposed Rulemaking to Implement Requirements of the Biggert-Waters Flood Insurance Reform Act of 2012.

Memorandum and resolution re: Final Rulemaking—Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Advance Notice of Proposed Rulemaking—Interagency Enhanced Cyber Risk Management Standards.

The meeting will be held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://fdic.windrosemedia.com* to view the event.

If you need any technical assistance, please visit our Video Help page at: *https://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: October 12, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–25110 Filed 10–13–16; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 1, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Paul Schams,* individually, La Crosse; and together with *Thomas Schams,* La Crosse; *Timothy Schams,* Coon Valley; *Deborah Korth,* La Crosse; *Tracy Servais,* La Crosse; and *Paula Hilby,* Onalaska, all in Wisconsin; as a group acting in concert to retain shares

of River Holding Company, Stoddard, Wisconsin, and thereby indirectly retain shares of River Bank, Stoddard, Wisconsin; and Wisconsin River Bank, Sauk City, Wisconsin.

Board of Governors of the Federal Reserve System, October 12, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–25022 Filed 10–14–16; 8:45 am]

BILLING CODE 6210–01–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 October 31, 2016.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Stephen S. Taylor, Jr.,* Los Angeles, California; to acquire 10 percent or more of the voting shares of Neighborhood Bancorp, National City, California, and thereby indirectly acquire voting shares of Neighborhood National Bank, San Diego, California.

Board of Governors of the Federal Reserve System, October 11, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–24936 Filed 10–14–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Treynor Bancshares, Inc.*, Treynor, Iowa; to acquire additional voting shares (for total ownership up to 34 percent) of TS Contrarian Bancshares, Inc., Treynor, Iowa, and thereby indirectly acquire additional voting shares of Bank of Tioga, Tioga, North Dakota.

2. *Treynor Bancshares, Inc. and TS Contrarian Bancshares, Inc.*, both in Treynor, Iowa; to acquire 100 percent of the voting shares of First National Bank and Trust Company, Clinton, Illinois.

Board of Governors of the Federal Reserve System, October 11, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–24937 Filed 10–14–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 11, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Big Muddy Bancorp, Inc.,* Dutton, Montana; to acquire 100 percent of S.B.T. Financial, Inc., and thereby indirectly acquire The State Bank of Townsend, both in Townsend, Montana.

Board of Governors of the Federal Reserve System, October 12, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–25023 Filed 10–14–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Senior Executive Performance Review Board Appointments

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Federal Retirement Thrift Investment Board. The purpose of the Performance Review Boards is to make written

recommendations on annual summary ratings and awards to the appointing authorities on the performance of senior executives.

DATES: This notice is effective October 12, 2016.

FOR FURTHER INFORMATION CONTACT: Kelly Powell, HR Specialist, at 202–942–1681.

SUPPLEMENTARY INFORMATION: Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before Board service commences. The following persons will serve on the Federal Retirement Thrift Investment Board's Performance Review Board which will review initial summary ratings to ensure the ratings are consistent with established performance requirements, reflect meaningful distinctions among senior executives based on their relative performance and organizational results and provide recommendations for ratings, awards, and pay adjustments in a fair and equitable manner: Jim Courtney, Tee Ramos, Kim Weaver, and Renee Wilder Guerin.

Dated: October 12, 2016.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2016–25008 Filed 10–14–16; 8:45 am]

BILLING CODE 6760–01–P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Proposed Collection; Comment Request for a Modified OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of request for agency and public comments.

SUMMARY: After this first round notice and public comment period, the Office of Government Ethics (OGE) intends to submit a modified OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995.

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received on or before December 16, 2016.

ADDRESSES: Comments may be submitted to OGE, by any of the following methods:

Email: usoge@oge.gov (Include reference to ''OGE Form 278e paperwork comment'' in the subject line of the message.)

Fax: 202–482–9237, *Attn:* Brandon Steele.

Mail, Hand Delivery/Courier: Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Attention: Brandon Steele, Assistant Counsel, Washington, DC 20005–3917.

Instructions: Comments may be posted on OGE's Web site, *www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Brandon Steele at the U.S. Office of Government Ethics; telephone: 202–482–9209; TTY: 800–877–8339; Fax: 202–482–9237; *Email: basteele@oge.gov.* An electronic copy of the OGE Form 278e is available in the Forms Library section of OGE's Web site at *http://www.oge.gov.* A paper copy may also be obtained, without charge, by contacting Mr. Steele.

SUPPLEMENTARY INFORMATION:

Title: Executive Branch Personnel Public Financial Disclosure Report.

Form Number: OGE Form 278e.

OMB Control Number: 3209–0001.

Type of Information Collection: Extension with modifications of a currently approved collection.

Type of Review Request: Regular.

Respondents: Private citizen Presidential nominees to executive branch positions subject to Senate confirmation; other private citizens who are potential (incoming) Federal employees whose positions are designated for public disclosure filing; those who file termination reports from such positions after their Government service ends; and Presidential and Vice-Presidential candidates.

Estimated Annual Number of Respondents: 4,884.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden: 14,652 hours.

Abstract: The OGE Form 278 collects information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The form is also completed by individuals who are nominated by the President for high-level executive branch positions requiring Senate confirmation and new entrants to other public reporting positions in the executive branch. The financial information collected relates to: Assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over $5,000 paid by a source—all subject to various reporting thresholds and exclusions. The information is collected in accordance with section 102 of the Ethics in Government Act, 5 U.S.C. app. section 102, as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112–105) (STOCK Act) and OGE's implementing financial disclosure regulations at 5 CFR part 2634.

In 2013, OGE sought and received approval for the OGE Form 278e, an electronic version of the Form 278, implemented pursuant to the e-filing system mandated under section 11(b) of the STOCK Act. The OGE Form 278e collects the same information as the OGE Form 278. It is a streamlined output report format that presents only the filer's inputs in given categories and does not report other categories not selected by the filer. In 2014, OGE sought and received approval to incorporate the OGE Form 278e into its new *Integrity* e-filing application. *Integrity* has been in use since January 1, 2015, and OGE now requires filers to use a version of the OGE Form 278e rather than the old OGE Form 278.

OGE is proposing to make minor modifications to the OGE Form 278e to update the Privacy Act statement, improve the instructions, and make the form more user-friendly. Specifically, OGE proposes to change the titles to Part 2 and Part 5 on all versions of the form. With respect to the *Integrity* version of the form, OGE proposes to remove the ''Owner'' column from Part 5 and Part 8. Finally, with respect to the Excel/PDF version of the form, OGE proposes clarifying the reporting requirements in the instructions to Part 4 and correcting several minor typographical errors.

Request for Comments: Agency and public comment is invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of OMB paperwork approval. The comments will also become a matter of public record.

Approved: October 12, 2016.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

[FR Doc. 2016–25053 Filed 10–14–16; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number CDC–2016–0093; NIOSH 248–F]

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP STAC or Advisory Committee), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 9:00 a.m.–5:00 p.m., November 3, 2016 (All times are Eastern Daylight Time).

Place: Jacob J. Javits Federal Building, 26 Federal Plaza, New York, New York 10278. This meeting is also available by telephone and Web conference. Audio will be available by telephone only; visuals will be available by Web conference. The USA toll-free, dial-in number is 1–888–810–4931, and when prompted enter passcode—8328289. To view the web conference, enter the following web address in your web browser: *https://odniosh.adobeconnect.com/wtchpstac/.*

Public Comment Time and Date: 10:45 a.m.–11:15 a.m. (Eastern Daylight Time), November 3, 2016.

Please note that the public comment period ends at the time indicated above or following the last call for comments, whichever is earlier. Members of the public who want to comment must sign up by providing their name by mail, email, or telephone, at the addresses provided below by October 31, 2016. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come—first served basis. Written comments will also be accepted from those unable to attend the public session.

Status: Open to the public, limited only by the number of telephone lines. The conference line will accommodate up to 50 callers. The room will accommodate approximately 100 persons.

Background: The Advisory Committee was established by Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347 (January 2, 2011), amended by Public Law 114–113 (Dec. 18, 2015), adding Title XXXIII to the Public Health Service Act (codified at 42 U.S.C. 300mm to 300mm–61).

Purpose: The purpose of the Advisory Committee is to review scientific and medical evidence and to make recommendations to the World Trade Center (WTC) Program Administrator regarding additional WTC Health Program eligibility criteria, potential additions to the list of covered WTC-related health conditions, and research regarding certain health conditions related to the September 11, 2001 terrorist attacks.

Title XXXIII of the PHS Act established the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001 or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors). Certain specific activities of the WTC Program Administrator are reserved to the Secretary, HHS, to delegate at her discretion; other WTC Program Administrator duties not explicitly reserved to the Secretary, HHS, are assigned to the Director, NIOSH. The administration of the Advisory Committee is left to the Director of NIOSH in his role as WTC Program Administrator. CDC and NIOSH provide funding, staffing, and administrative support services for the Advisory Committee. The charter was reissued on May 12, 2015, and will expire on May 12, 2017.

Matters for Discussion: The Advisory Committee will address the new responsibilities required under the reauthorization of the WTC Health Program in the PHS Act. Specifically, the enhanced role of the STAC to: (1) Make recommendations regarding the identification of individuals to conduct independent peer reviews of the evidence that would be the basis for issuing final rules to add a health condition to the List of WTC-Related Health Conditions; and (2) review and evaluate the policies and procedures in effect within the WTC Health Program that are used to determine whether sufficient evidence is available to support adding a non-cancer condition or type of cancer to the List of WTC-Related Health Conditions.

The two policies can be found at: http://www.cdc.gov/wtc/policies.html.

The agenda will include workgroup presentations on independent peer review and the policies and procedures the WTC Health Program uses to add health conditions to the list of covered conditions.

The agenda is subject to change as priorities dictate.

To view the notice, visit *http://www.regulations.gov* and enter CDC–2016–0093 in the search field and click ''Search.''

Public Comment Sign-up and Submissions to the Docket: To sign up to provide public comments or to submit comments to the docket, send information to the NIOSH Docket Office by one of the following means:

Mail: NIOSH Docket Office, Robert A. Taft Laboratories, MS C–34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226.

Email: nioshdocket@cdc.gov.

Telephone: (513) 533–8611.

In the event an individual cannot attend, written comments may be submitted. The comments should be limited to two pages and submitted through *http://www.regulations.gov* by October 31, 2016. Efforts will be made to provide the two-page written comments received by the deadline above to the committee members before the meeting. Comments in excess of two pages will be made publicly available at *http://www.regulations.gov.*

Policy on Redaction of Committee Meeting Transcripts (Public Comment): Transcripts will be prepared and posted to *http://www.regulations.gov* within 60 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include a statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted. If individuals in making a statement reveal personal information (*e.g.,* medical information) about themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations

in accordance with the Freedom of Information Act and, if deemed appropriate, will redact such information. Disclosures of information concerning third party medical information will be redacted.

Contact person for more information: Paul J. Middendorf, Ph.D., Designated Federal Officer, NIOSH, CDC, 2400 Century Parkway NE., Mail Stop E–20, Atlanta, Georgia 30345, telephone 1 (888) 982–4748; email: *wtc-stac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–25039 Filed 10–14–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–16PA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Study to Explore Early Development (SEED) Phase 3—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Autism spectrum disorders (ASD) are a group of neurodevelopmental disorders characterized by qualitative impairments in social interaction and communication and stereotyped behaviors and interests. Recent systematic population surveys and routine monitoring systems in the U.S. and other countries indicate the prevalence to be 1–2%. Apart from the identification of some rare genetic conditions that are commonly associated with autism, causal mechanisms for the disorder largely remain unknown.

The Children's Health Act of 2000 mandated CDC to establish autism surveillance and research programs to address the number, incidence, and causes of autism and related developmental disabilities. Under the provisions of this act, NCBDDD funded five Centers for Autism and Developmental Disabilities Research and Epidemiology (CADDRE) through program announcements in FY2001 and FY2002; CDC's NCBDDD served as the sixth CADDRE site.

For the first funding cycle (2001–2006), each CADDRE grantee had three core objectives: To develop a protocol for a multi-site collaborative epidemiologic study focused on autism (which was eventually named the Study to Explore Early Development [SEED]); to conduct surveillance of autism and other developmental disabilities; and to conduct site-specific investigator-initiated studies on autism. In FY 2006, through a second CADDRE funding cycle, five grantees were awarded. The CADDRE activities for the second funding cycle (2006–2011) were limited to implementation of the first phase of SEED (subsequently known as SEED 1). CDC served as the sixth CADDRE SEED 1 site during this period. A second phase of SEED (SEED 2) was funded under a third funding cycle (2011–2016). Five CADDRE grantees received the awards. Again, CDC served as the sixth SEED 2 site.

A third phase of SEED (SEED 3) was funded in July 2016. Five extramural sites were funded. Together with the CDC, they will implement the SEED 3 collaborative protocol. The SEED 3 protocol for identification of study participants, recruitment, and study data collection flow will be similar to the protocols for SEED 1 and 2.

However, while all SEED phases have the same research goals and the same basic study design, data collection has been greatly streamlined and revised between SEED 1, SEED 2, and SEED 3. Many study instruments and data collection components included in the SEED 1 protocol are not included in the SEED 3 protocol; two instruments included in the SEED 3 protocol were developed subsequent to SEED 1 to capture an abbreviated version of information that had been included on some of the discontinued SEED 1 forms and to capture some additional information overlooked in the SEED 1 protocol; and instruments included in all phases of SEED underwent review and minor revision subsequent to SEED 1 to address ambiguities and difficulties experienced during SEED 1 data collection. Implementing this phase of SEED will increase the total SEED pooled sample size for investigation of high priority hypotheses. Maintaining the same basic study design and general protocol integrity will ensure that data pooling can be achieved across SEED phases.

Families will be identified from each of the 3 groups: Autism Spectrum Disorder (ASD), other developmental delay or disorder comparison group (DD), and a second comparison group of children randomly drawn from the entire study cohort population (POP). It is expected that the 6 SEED 3 study sites will have a total of 2,106 children enroll and complete the study protocol. The data collection process will take approximately 9 hours 10 minutes (ASD group); 5 hours 30 minutes (POP group); 2 hours 45 minutes (DD group) to complete, which includes (1) maternal telephone interview with questions about maternal reproductive history and

pregnancy with the index child, (2) parent-completed questionnaires about parental and child health and child development, (3) in-person child developmental evaluation, (4) maternal and child anthropometry measurements, and (5) biosampling from biological parents and child.

There are no costs to participants other than their time. The total estimated annual burden hours are 7,118.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
Mother All potential participants sent mailing	Invitation Packet/Response Card	1,718	1	10/60
Mother Potentially eligible with contact by study staff	Invitation Call Script and Social Communication Questionnaire.	859	1	30/60
Mother Eligible, consented, and enrolled; assigned to the ASD workflow based on enrollment intake.	Enrollment Packet	469	1	20/60
Mother Completed this study step	Follow-up Phone Call Script and Pregnancy Reference Form.	422	1	15/60
	Maternal Interview Call	422	1	1
	Self-Administered Forms	375	1	105/60
	Follow-up Call 2	375	1	20/60
	Clinic/Home Visit—Developmental Assessment.	328	1	225/60
Father Completed this study step	Clinic/Home Visit—Saliva Collection (optional—on own).	164	1	15/60
Child Completed this study step	Clinic/Home Visit—Developmental Assessment.	328	1	135/60
Mother All potential participants sent mailing	Invitation Packet/Response Card	1,466	1	10/60
Mother Potentially eligible with contact by study staff	Invitation Call Script and Social Communication Questionnaire.	733	1	30/60
Mother Eligible, consented, and enrolled; assigned to the POP workflow based on enrollment intake.	Enrollment Packet	334	1	20/60
Mother Completed this study step	Follow-up Phone Call Script and Pregnancy Reference Form.	301	1	15/60
	Maternal Interview Call	301	1	1
	Self-Administered Forms	267	1	105/60
	Follow-up Call 2	267	1	20/60
	Clinic/Home Visit—Developmental Assessment.	234	1	50/60
Father Completed this study step	Clinic/Home Visit—Saliva Collection (optional—on own).	117	1	15/60
Child Completed this study step	Clinic/Home Visit—Developmental Assessment.	234	1	90/60
Mother All potential participants sent mailing	Invitation Packet/Response Card	641	1	10/60
Mother Potentially eligible with contact by study staff	Invitation Call Script and Social Communication Questionnaire.	321	1	30/60
Mother Eligible, consented, and enrolled; assigned to the DD workflow based on enrollment intake.	Enrollment Packet	175	1	20/60
Mother Completed this study step	Follow-up Phone Call Script and Pregnancy Reference Form.	158	1	15/60
	Maternal Interview Call	158	1	1
	Self-Administered Forms	140	1	55/60
	Follow-up Call 2	140	1	20/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–25061 Filed 10–14–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0037]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Drug User Fee Act Waivers and Reductions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the paperwork burden of requesting a waiver or reduction of fees under Animal Drug User Fee Act (ADUFA).

DATES: Submit either electronic or written comments on the collection of information by December 16, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–N–0037 for ''Animal Drug User Fee Act Waivers and Reductions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Animal Drug User Fees and Fee Waivers and Reductions

OMB Control Number 0910–0540—Extension

Enacted on November 18, 2003, the Animal Drug User Fee Act (Pub. L. 108–130) amended the Federal Food, Drug, and Cosmetic Act and requires FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. It also requires the Agency to grant a waiver from, or a reduction of those fees in certain circumstances. Thus, to implement this statutory provision of ADUFA, FDA developed a guidance entitled ''Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions.'' This document provides guidance on the types of fees FDA is authorized to collect under ADUFA, and how to request waivers and reductions from FDA's animal drug user fees. Further, this guidance also describes the types of fees and fee waivers and reductions; what information FDA recommends be submitted in support of a request for a fee waiver or reduction; how to submit such a request; and FDA's process for reviewing requests.

Respondents to this collection of information are new animal drug sponsors. Requests for waivers or reductions may be submitted by a person paying any of the animal drug user fees assessed, including application fees, product fees, establishment fees, or sponsor fees.

FDA estimates the burden for this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
740(d)(1)(A); significant barrier to innovation.	55	1 time for each application	55	2	110
740(d)(1)(B); fees exceed cost	8	3.75	30	0.5 (30 minutes)	15
740(d)(1)(C); free choice feeds	5	1 time for each application	5	2	10
740(d)(1)(D); minor use or minor species	69	1 time for each application	69	2	138
740(d)(1)(E); small business	1	1 time for each application	1	2	2
Request for reconsideration of a decision	1	1 time for each application	1	2	2
Request for review (user fee appeal officer).	0	1 time for each application	0	0	0
Total					277

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA's database system, from fiscal year (FY) 2014 to 2016 there were an estimated 177 sponsors subject to ADUFA. However, not all sponsors will have any submissions in a given year and some may have multiple submissions. The total number of waiver requests is based on the average number of submission types received by FDA in FY 2014 to 2016.

Dated: October 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25040 Filed 10–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0601]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice Regulations for Medicated Feeds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements for manufacturers of medicated animal feeds.

DATES: Submit either electronic or written comments on the collection of information by December 16, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–N–0601 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice Regulations for Medicated Feeds.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

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

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Current Good Manufacturing Practice Regulations for Medicated Feeds—21 CFR Part 225

OMB Control Number 0910–0152—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including medicated feeds. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease, or growth promotion and feed efficiency. Statutory requirements for cGMPs have been codified under part 225 (21 CFR part 225). Medicated feeds that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the FD&C Act. Under part 225, a manufacturer is required to establish, maintain, and retain records for a medicated feed, including records to document procedures required during the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (*i.e.* batch and stability testing), labels, and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of medicated feeds to investigate violative drug residues in products from treated animals and to investigate product defects when a drug is recalled. In addition, FDA will use the cGMP criteria in part 225 to determine whether or not the systems and procedures used by manufacturers of medicated feeds are adequate to assure that their feeds meet the requirements of the FD&C Act as to safety, and also that they meet their claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the FD&C Act.

A license is required when the manufacturer of a medicated feed involves the use of a drug or drugs that FDA has determined requires more control because of the need for a withdrawal period before slaughter or because of carcinogenic concerns. Conversely, a license is not required and the recordkeeping requirements are less demanding for those medicated feeds for which FDA has determined that the drugs used in their manufacture need less control. Respondents to this collection of information are commercial feed mills and mixer-feeders.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN

[Registered licensed commercial feed mills] [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
225.42(b)(5) through (b)(8)	877	260	228,020	1	228,020
225.28(c) and (d)	877	45	39,465	0.50 (30 minutes)	19,732.5
225.80(b)(2)	877	1,600	1,403,200	0.12 (7 minutes)	168,384
225.102(b)(1)	877	7,800	6,840,600	0.08 (5 minutes)	547,248
225.110(b)(1) and (b)(2)	877	7,800	6,840,600	0.02 (1 minute)	136,812
225.115(b)(1) and (b)(2)	877	5	4,385	0.12 (7 minutes)	526.2
Total					1,100,722.7

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

[Registered licensed mixer-feeders] [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
225.42(b) through (b)(8)	100	260	26,000	0.15 (9 minutes)	3,900
225.58(c) through (d)	100	36	3,600	0.50 (30 minutes)	1,800
225.80(b) (2)	100	48	4,800	0.12 (7 minutes)	576
225.102(b)(1) through (b)(5)	100	260	26,000	0.40 (24 minutes)	10,400
Total					16,676

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN

[Nonregistered unlicensed commercial feed mills] [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
225.142	4,186	4	16,744	1	16,744
225.158	4,186	1	4,186	4	16,744
225.180	4,186	96	401,856	0.12 (7 minutes)	48,223
225.202	4,186	260	1,088,360	0.65 (39 minutes)	707,434
Total					789,145

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN

[Nonregistered unlicensed mixer-feeders] [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
225.142	3,400	4	13,600	1	13,600
225.158	3,400	1	3,400	4	13,600
225.180	3,400	32	108,800	0.12 (7 minutes)	13,056
225.202	3,400	260	884,000	0.33 (20 minutes)	291,720
Total					331,976

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of time required for record preparation and maintenance is based on Agency communications with industry. Other information needed to finally calculate the total burden hours (*i.e.,* number of recordkeepers, number of medicated feeds being manufactured, etc.) is derived from Agency records and experience.

Dated: October 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25041 Filed 10–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Substitutability of Generic Drugs: Perceptions and Reality; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), in collaboration with the Johns Hopkins University Center of Excellence in Regulatory Science and Innovation, is announcing a public workshop entitled ''Substitutability of Generic Drugs: Perceptions and Reality.'' The objective of this workshop is to discuss FDA and industry practices related to postmarket surveillance of generic drugs, postmarket generic drug research activities, public perceptions of generic drug quality and effectiveness, and verification of therapeutic equivalence of generic drugs. This workshop will also give stakeholders, including scientists from government, academia, and industry, patient advocacy groups, clinicians, pharmacists, and the general public an opportunity to provide their insights on future research needs in postmarket surveillance of generic drugs.

DATES: The public workshop will be held on November 18, 2016, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine

security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

FOR FURTHER INFORMATION CONTACT: Audrey Thomas, Office of Regulatory Science and Innovation, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4220, Silver Spring, MD 20993–0002, 301–796–3520, *Audrey.Thomas@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this public workshop is to provide an opportunity for stakeholders, including scientists from government, academia, and industry, patient advocacy groups, clinicians, pharmacists, and the general public to discuss marketed generic drugs. Generic drugs account for 88 percent of prescriptions in the United States. In light of the significant contributions of generic drugs to public health, it is important that tools are developed to monitor marketed generic drugs to ensure that they have the same safety and effectiveness as their reference listed drug. Specifically, this workshop will include presentations on: (1) Current generic drug surveillance practices at FDA and in industry, (2) public perception of generic drug quality and effectiveness, (3) generic drug substitution studies in patients, and (4) development of methods and tools to conduct postmarket surveillance of generic drugs. The workshop will include four panel sessions for interaction and discussion among the speakers and attendees.

Agenda: The agenda is available at *http://www.fda.gov/scienceresearch/specialtopics/regulatoryscience/ucm521545.htm.*

Registration: There is no registration fee to attend this public workshop. Seats are limited and registration will be on a first-come, first-served basis. Advance registration is required and is online only at *http://www.fda.gov/scienceresearch/specialtopics/regulatoryscience/ucm521545.htm.* There will be no day-of, onsite registration.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. There is no registration fee for access to the workshop via the Webcast, but registration is still required. Information regarding registration and access to the Webcast link is available at *http://www.fda.gov/scienceresearch/specialtopics/regulatoryscience/ucm521545.htm.* 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 *http://www.adobe.com/go/connectpro_overview.* (FDA has verified these Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Accommodations: Attendees are responsible for their own hotel accommodations. If you need special accommodations while at FDA's White Oak Campus due to a disability, please contact Shari Solomon at *Shari.Solomon@fda.hhs.gov* at least 7 days in advance.

Dated: October 11, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25004 Filed 10–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0229]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of rare pediatric disease product applications that meet certain criteria. FDA has determined that EXONDYS 51 (eteplirsen), manufactured by Sarepta Therapeutics, meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Larry Bauer, Rare Diseases Program, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4842, FAX: 301–796–9858, email: *larry.bauer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will award priority review vouchers to sponsors of rare pediatric disease product applications that meet certain criteria. FDA has determined that EXONDYS 51 (eteplirsen), manufactured by Sarepta Therapeutics, meets the criteria for a priority review voucher. EXONDYS 51 (eteplirsen) is indicated for the treatment of Duchenne muscular dystrophy (DMD) in patients who have a confirmed mutation of the DMD gene that is amenable to exon 51 skipping.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *http://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about EXONDYS 51 (eteplirsen) go to the ''Drugs@FDA'' Web site at *http://www.accessdata.fda.gov/scripts/cder/drugsatfda/index.cfm.*

Dated: October 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–24947 Filed 10–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0901]

Abbreviated New Drug Application Submissions—Prior Approval Supplements Under Generic Drug User Fee Amendments; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''ANDA Submissions—Prior Approval Supplements Under GDUFA.'' The Generic Drug User Fee Amendments of 2012 (GDUFA) enables FDA to assess user fees to fund critical and measurable improvements to FDA's generic drugs program. This guidance is intended to assist applicants preparing to submit to FDA prior approval supplements (PASs) and amendments to PASs for abbreviated new drug applications (ANDAs). It describes FDA's performance metric goals for PASs and clarifies how FDA will handle a PAS

and amendments to a PAS for an ANDA subject to GDUFA performance metric goals. This guidance finalizes the draft guidance issued on July 11, 2014.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–D–0901 for ''ANDA Submissions—Prior Approval Supplements Under GDUFA.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Tamara R. Coley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 240–402–6903 or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''ANDA Submissions—Prior Approval Supplements Under GDUFA.'' On July 9, 2012, the President signed GDUFA (Pub. L. 112–144, Title III) into law. GDUFA is based on an agreement negotiated by FDA and representatives of the generic drug industry to address a growing number of regulatory challenges. GDUFA aims to ensure timely access to safe, high-quality, affordable generic drugs. GDUFA enables FDA to assess user fees to fund critical and measurable improvements to FDA's generic drugs program and to bring greater predictability and timeliness to the review of generic drug applications.

GDUFA requires that FDA and human generic drug manufacturers meet certain commitments. In the GDUFA Commitment Letter, FDA committed to review and act on a certain percentage of PASs within a specified period from the date of submission for receipts in fiscal years 2015 to 2017. The percentage of PASs that FDA has committed to review and act on increases with each fiscal year, and the deadlines for review depend on whether a PAS requires an inspection.

This guidance describes the performance metric goals to which FDA agreed in the Commitment Letter and clarifies how FDA will review a PAS and amendments to a PAS for an ANDA subject to the GDUFA performance metric goals. The GDUFA performance metrics described in this guidance only apply to ANDA applicants who electronically submit a PAS on or after October 1, 2014. These performance metrics do not apply to new drug applications (NDAs), biologics license applications (BLAs), supplements filed for NDAs or BLAs, or changes being effected supplements and annual report filings to NDAs, BLAs, or ANDAs.

This guidance finalizes the draft guidance that was issued under the same title on July 11, 2014 (79 FR 40112), and reflects FDA's consideration of public comments on the draft guidance. Generally, FDA revised the

draft guidance to provide clarifying and explanatory information that will assist human generic drug manufacturers with PAS submissions. Changes from the draft guidance include clarification on the point at which a PAS is deemed submitted to FDA and a description of the process through which applicants may request FDA reconsider its supplement reporting category determination. The draft guidance and related public comments are publicly available in Docket No. FDA–2014–D–0901.

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 ''ANDA Submissions—Prior Approval Supplements Under GDUFA.'' 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. 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 for supplements and amendments in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collection of information for manufacturer registration in 21 CFR part 207 has been approved under OMB control number 0910–0045. The collection of information for manufacturer compliance with current good manufacturing practices in 21 CFR part 211 has been approved under OMB control number 0910–0139.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryinformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: October 11, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25037 Filed 10–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0598]

Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice Regulations for Type A Medicated Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements for manufacturers of Type A medicated articles.

DATES: Submit either electronic or written comments on the collection of information by December 16, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

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Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. [FDA–2010–N–0598] for ''[Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice Regulations for Type A Medicated Articles].'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

regulatoryinformation/dockets/default.htm.

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

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Current Good Manufacturing Practice Regulations for Type A Medicated Articles—21 CFR Part 226 OMB Control Number 0910–0154—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including Type A medicated articles. A Type A medicated article is a feed product containing a concentrated drug diluted with a feed carrier substance. A Type A medicated article is intended solely for use in the manufacture of another Type A medicated article or a Type B or Type C medicated feed. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease or for growth promotion and feed efficiency.

Statutory requirements for cGMPs for Type A medicated articles have been codified in part 226 (21 CFR part 226). Type A medicated articles which are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B). Under part 226, a manufacturer is required to establish, maintain, and retain records for Type A medicated articles, including records to document procedures required under the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (*i.e.,* batch and stability testing), and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of Type A medicated articles. The information could also prove useful to FDA in investigating product defects when a drug is recalled. In addition, FDA will use the cGMP criteria in part 226 to determine whether or not the systems used by manufacturers of Type A medicated articles are adequate to assure that their medicated articles meet the requirements of the FD&C Act as to safety and also meet the article's claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the FD&C Act. The respondents for Type A medicated articles are pharmaceutical firms that manufacture both human and veterinary drugs, those firms that produce only veterinary drugs, and commercial feed mills.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
226.42	65	260	16,900	0.75 (45 minutes)	12,675
226.58	65	260	16,900	1.75 (1 hour, 45 minutes)	29,575
226.80	65	260	16,900	0.75 (45 minutes)	12,675
226.102	65	260	16,900	1.75 (1 hour, 45 minutes)	29,575
226.110	65	260	16,900	.025 (15 minutes)	4,225
226.115	65	10	650	.5 (30 minutes)	325
Total					89,050

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of time required for record preparation and maintenance is based on previous Agency communications with industry. Other information needed to calculate the total burden hours (*i.e.,* manufacturing sites, number of Type A medicated articles being manufactured, etc.) are derived from Agency records and experience.

Dated: October 11, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–25003 Filed 10–14–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council on Alzheimer's Research, Care, and Services provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. The theme of the October meeting will be on racial and ethnic disparities in research and care for dementia. Presentations will focus on general demographics, gaps and barriers that various groups face in obtaining services, and successful interventions to reduce these gaps. Additional presentations in the afternoon will include further discussion of the 2016 Update to the National Plan, updates on progress towards a Care and Services Summit, and federal workgroup updates.

DATES: The meeting will be held on October 31st, 2016 from 9:00 am to 5:00 pm EDT.

ADDRESSES: The meeting will be held in Room 800 in the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Comments: Time is allocated in the afternoon on the agenda to hear public comments. The time for oral comments will be limited to two (2) minutes per individual. In lieu of oral comments, formal written comments may be submitted for the record to Rohini Khillan, ASPE, 200 Independence Avenue SW., Room 424E, Washington, DC 20201. All comments should be submitted to *napa@hhs.gov* for the record and to share with the Advisory Council by October 25, 2016. Those submitting comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Rohini Khillan (202) 690–5932, *rohini.khillan@hhs.gov.* Note: Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''October 31 Meeting Attendance'' in the Subject line by Friday, October 21st, 2016 so that their names may be put on a list of expected attendees and forwarded to the security officers the Humphrey Building. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: The Advisory Council will hear from a number of CMS's HCIA awardees about their projects and their results. Additional presentations in the afternoon will include an overview of the 2016 Update to the National Plan, updates on progress towards a Care and Services Summit, and federal workgroup updates.

Procedure and Agenda: This meeting is open to the public. Please allow 45 minutes to go through security and walk to the meeting room. The meeting will also be webcast at *www.hhs.gov/live.*

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: September 30, 2016.

Kathryn E. Martin,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2016–24971 Filed 10–14–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Clinical Study Applications.

Date: October 19, 2016.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892, 301–451–4838, *mak2@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 12, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25069 Filed 10–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Clinical and Translational (R21) SEP 4.

Date: November 7, 2016.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W606, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Timothy C. Meeker, MD, Ph.D., Scientific Review Officer, Resources

and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20892–9750, 240–276–6464, *meekert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus SEP 2.

Date: November 14–15, 2016.

Time: 7:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Denise L. Stredrick, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W640, Rockville, MD 20892–9750, 240–276–5053, *stredrid@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Lasker Clinical Research Scholars Program.

Date: November 15, 2016.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W126, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Caron A. Lyman, Ph.D., Chief, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W126, Rockville, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Assay Validation for High Quality Markers.

Date: November 18, 2016.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 3W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W114, Rockville, MD 20892–9750, 240–276–6371, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee A—Cancer Centers.

Date: December 1, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shamala K. Srinivas, Ph.D., Associate Director, Office of Referral, Review, and Program Coordination, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W530, Rockville, MD 20892–9750, 240–276–6442 *ss537t@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Informatics Technology.

Date: December 15–16, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W260, Rockville, MD 20892–9750, 240–276–5856, *nadeem.khan@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project II (P01).

Date: January 31–February 1, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sanita Bharti, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W618, Rockville, MD 20892–9750, 240–276–5909, *sanitab@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 11, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24950 Filed 10–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; DIAN.

Date: November 7, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, Ph.D., National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 11, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24951 Filed 10–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; 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 Muscular Dystrophy Coordinating Committee (MDCC).

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Type of meeting: Open Meeting.

Date: November 29, 2016.

Time: 8:30 a.m. to 4:30 p.m. *Eastern Time*—Approximate end time.

Agenda: The purpose of this meeting is to bring together committee members, representing government agencies, patient advocacy groups, other voluntary health organizations, and patients and their families to update one another on progress relevant to the Action Plan for the Muscular Dystrophies and to coordinate activities and discuss gaps and opportunities leading to better understanding of the muscular dystrophies, advances in treatments, and improvements in patients' and their families' lives. Prior to the meeting, an agenda will be posted to the MDCC meeting registration Web site: *https://*

meetings.ninds.nih.gov/meetings/MDCC29November2016/.

Registration: To register, please go to: *https://meetings.ninds.nih.gov/meetings/MDCC29November2016/.*

Webcast Live: For those not able to attend in person, this meeting will be webcast at: *http://videocast.nih.gov/.*

Place: Neuroscience Center, Conference Room C/D, 6001 Executive Boulevard, Rockville, Maryland 20852.

Contact Person: Glen H. Nuckolls, Ph.D., Executive Secretary, Muscular Dystrophy Coordinating Committee, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Boulevard, NSC 2203, Bethesda, MD 20892, (301) 496–5745, *glen.nuckolls@ninds.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

All visitors must go through a security check at the building entrance to receive a visitor's badge. A government issued photo ID is required. Further information can be found at the registration Web site: *https://meetings.ninds.nih.gov/meetings/MDCC29November2016/.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 11, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24954 Filed 10–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: AIDS-Related Dissemination and Implementation Research in Health.

Date: November 9, 2016.

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: Jessica Bellinger, Ph.D., Scientific Review Administrator, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, *bellingerjd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–16–116: Bioengineering Research Partnerships.

Date: November 10, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301–435–0484, *mohsenim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Lasker Clinical Research Scholars Program (S12).

Date: November 10, 2016.

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: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Psycho/Neuropathology, Lifespan Development, and STEM Education.

Date: November 14–15, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To provide concept review of proposed grant applications.

Place: Residence Inn Alexandria Old Town/Duke Street, 1456 Duke Street, Alexandria, VA 22314.

Contact Person: John H Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: November 15–16, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Suites by Hilton Hotel Tampa Bay, 3050 N. Rocky Point Dr. West, Tampa, FL 33607580.

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: November 15–16, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation: Genes Genomes Genetics.

Date: November 15, 2016.

Time: 11:00 a.m. to 4:00 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: Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7088, *methode.bacanamwo@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–13–231: Phenotyping Embryonic Lethal Knockout Mice.

Date: November 15, 2016.

Time: 1:00 p.m. to 4:00 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: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: DNA Damage and Tumorigenesis.

Date: November 15, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@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: October 12, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–25068 Filed 10–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 03, 2016, 01:00 p.m. to November 03, 2016, 03:00 p.m., Hilton McLean Tysons Corner, 7920 Jones Branch Dr., McLean, VA, 22102 which was published in the **Federal Register** on October 06, 2016, 81 FR 69540–69541.

The meeting will be held on November 4, 2016 from 8:00 a.m. to 12:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 11, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24948 Filed 10–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Mammalian Models for Translational Research.

Date: November 8, 2016.

Time: 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Sharon K Gubanich, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6195D, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Immunology and Pathogenesis Study Section.

Date: November 9, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Musculoskeletal, Oral and Skin Systems.

Date: November 9, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Clinical Studies and Epidemiology Study Section.

Date: November 9, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Shalanda A Bynum, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, *bynumsa@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: November 10, 2016.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skin and Rheumatic Diseases.

Date: November 10, 2016.

Time: 10:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project: Mass Spectrometry Resource for Biology and Medicine.

Date: November 13–15, 2016.

Time: 4:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hampton Inn & Suites Boston Crosstown Center, 811 Massachusetts Avenue, Boston, MA 02118.

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: November 14–15, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–6009, *lin.reigh-yi@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-Infective Therapeutics.

Date: November 14–15, 2016.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301)435–2306, *kaushikbasun@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cancer Diagnostics and Treatments (CDT).

Date: November 14–15, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Zhang-Zhi Hu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 594–2414, *huzhuang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project: Biomedical Technology Research Resource for Microscopy Image Data Analysis.

Date: November 14–16, 2016.

Time: 7:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Dallas Market Center, 4500 Harry Hines Blvd., Dallas, TX 75219.

Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.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: October 11, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24949 Filed 10–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: November 3–4, 2016.

Time: 8:00 a.m. to 5:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 11, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24953 Filed 10–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Objective Measurement of Activity After Retirement in REGARDS Study Participants.

Date: October 25, 2016.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892.

Contact Person: Carmen Moten, MPH., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, 301–402–7703, *cmoten@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 11, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24952 Filed 10–14–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Revocation of Customs Brokers' Licenses

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Revocation of customs brokers' licenses.

SUMMARY: This document provides notice of the revocation of customs brokers' licenses by operation of law.

FOR FURTHER INFORMATION CONTACT: Julia D. Peterson, Branch Chief, Broker Management, Office of Trade, (202) 863–6601, *julia.peterson@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), the following customs brokers' licenses were revoked by operation of law, without prejudice, for failure to file a triennial status report. A list of revoked customs brokers' licenses appears, below, in alphabetical order by name.

Last/company name	First name	License	Port of issuance
Gause	Gabrielle	17291	Charleston.
Hall	Wisty	14475	Charleston.
Hamann	Traci D.	10241	Charleston.
Harrell	Barbara	10565	Charleston.
Pitt	Marisa	10160	Charleston.
Powers	Brenda	10247	Charleston.
Seymour	Jeanne	12246	Charleston.
St. Laurent	Fred	15395	Charleston.
Wrench	Shirley	06055	Charleston.

Dated: October 11, 2016.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2016–24955 Filed 10–14–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0072]

Agency Information Collection Activities: Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100, NACARA), Form I–881; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 16, 2016.

ADDRESSES: All mail submissions received must include the OMB Control Number 1615–0072 in the body of the letter, the agency name and Docket ID USCIS–2008–0077. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0077;

(2) *Mail.* Submit written comments, to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0077 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100, NACARA).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–881; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–881 is used by a nonimmigrant to apply for suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order for USCIS to determine if it has jurisdiction over an

individual applying for this release as well as to elicit information regarding the eligibility of an individual applying for release.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–881 is approximately 304 and the estimated hour burden per response is 12 hours per response; and the estimated number of respondents providing biometrics is 426 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,146 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $120,210.

Dated: October 11, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–25046 Filed 10–14–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0026]

Agency Information Collection Activities: Application To Adjust Status From Temporary to Permanent Resident, Form I–698; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 16, 2016.

ADDRESSES: All mail submissions received must include the OMB Control Number 1615–0035 in the body of the letter, the agency name and Docket ID USCIS–2008–0019. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0019;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0021 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–698; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on Form I–698 is used by USCIS to determine the eligibility to adjust an applicant's residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–698 is 62 and the estimated hour burden per response is 1 hour and 15 minutes. There are 62 respondents requiring Biometric Processing at an estimated 1 hour and 10 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 150 hours.

(7) *An estimate of the total public burden (in cost) associated with the*

collection: There is an estimated $30,380 annual cost burden associated with this collection of information.

Dated: October 11, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–25045 Filed 10–14–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0029]

Agency Information Collection Activities: Application for Waiver of Grounds of Inadmissibility, Form I–601; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 16, 2016.

ADDRESSES: All mail submissions received must include the OMB Control Number 1615–0029 in the body of the letter, the agency name and Docket ID USCIS–2007–0042. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0042;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0042 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–601, USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–601 is necessary for USCIS to determine whether the applicant is eligible for a waiver of inadmissibility under section 212 of the Act. Furthermore, this information collection is used by individuals who are seeking for Temporary Protected Status (TPS).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–601 is 20,194; the estimated hour burden per paper responses is 1.75 hours and the estimated hour burden per electronically-filed responses is 1.33 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 32,795 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,474,305.

Dated: October 11, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–25043 Filed 10–14–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5980–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2017

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' (DDAs) and ''Qualified Census Tracts'' (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Internal Revenue Code (IRC) Section 42 (26 U.S.C. 42). The United States Department of Housing and Urban Development (HUD) makes new DDA and QCT designations annually. Unlike the effective date of the 2016 QCTs and DDAs, which was July 1, 2016, the 2017 QCTs and DDAs are effective January 1, 2017. In order to avoid designating areas unsuitable for residential development, such as airports, HUD is implementing a minimum population requirement for metropolitan Small Difficult Development Areas (SDDAs), as described below.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8234, Washington, DC 20410–6000; telephone number 202–402–5878, or send an email to *Michael.K.Hollar@hud.gov.* For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224; telephone number 202–317–4137, fax number 202–317–6731. For questions about the ''HUB Zone'' program, contact Mariana Pardo, Director, HUBZone Program, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street SW., Suite 8800, Washington, DC 20416; telephone number 202–205–2985, fax number 202–481–6443, or send an email to *hubzone@sba.gov.* (These are not toll-free telephone numbers.) A text telephone is available for persons with hearing or speech impairments at 800–877–8339. Additional copies of this notice are available through HUD User at 800–245–2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: This notice and additional information about DDAs and QCTs are available electronically on the Internet at *http://www.huduser.org/datasets/qct.html.*

SUPPLEMENTARY INFORMATION:

This Document

This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice are based on modified Fiscal Year (FY) 2016 Small Area Fair Market Rents (SAFMRs), FY2016 income limits, and 2010 Census population counts, as explained below.

This notice also designates QCTs based on new income and poverty data released in the American Community Survey (ACS). HUD relies on the most recent three sets of ACS estimates to ensure that anomalous estimates, due to sampling, do not affect the QCT status of tracts.

2010 Census and 2008–2012, 2009–2013 and 2010–2014 American Community Survey Data

Data from the 2010 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) first published new metropolitan area definitions incorporating 2010 Census data in OMB Bulletin No. 13–01 on February 28, 2013. FY2016 FMRs and FY2016 income limits used to designate DDAs are based on these metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs. SAFMRs are calculated for the ZIP Code Tabulation Areas (ZCTAs), or portions of ZCTAs within the metropolitan areas defined by OMB Bulletin No. 13–01.

Data from the 2010 Census on total population of census tracts, metropolitan areas, and the nonmetropolitan parts of states are used in the designation of QCTs. The FY2016 income limits used to designate QCTs are based on these MSA definitions with modifications to account for substantial differences in rental housing markets (and in some cases median income levels) within MSAs. This QCT designation uses the OMB metropolitan area definitions published in OMB Bulletin No. 13–01 on February 28, 2013, without modification for purposes of evaluating how many census tracts can be designated under the population cap, but uses the HUD-modified definitions and their associated area median incomes for determining QCT eligibility.

Because the 2010 Decennial Census did not include questions on respondent household income, HUD uses ACS data to designate QCTs. The ACS tabulates data collected over 5 years to provide estimates of socioeconomic variables for small areas containing fewer than 20,000 persons, such as census tracts. Due to anomalies in estimates from year-to-year, HUD utilizes three sets of ACS tabulations to ensure that anomalous estimates do not affect QCT status.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the LIHTC found at IRC Section 42. The Secretary of HUD is required to designate DDAs and QCTs by IRC Section 42(d)(5)(B). In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

Summary of the Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. IRC Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC Section 42 credits derived from the credit ceiling, states may also provide IRC Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-

exempt bond proceeds. Credits provided under the tax-exempt bond ''volume cap'' do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. A unit is ''rent-restricted'' if the gross rent, including an allowance for tenant-paid utilities, does not exceed 30 percent of the imputed income limitation (*i.e.,* 50 percent or 60 percent of AMGI) applicable to that unit. The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in IRC Section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are determined monthly under procedures specified in IRC Section 42 and cannot be less than 9 percent for buildings that are not federally subsidized. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, or buildings designated by the state agency, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

IRC Section 42 defines a DDA as an area designated by the Secretary of HUD that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

Similarly, IRC Section 42 defines a QCT as an area designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, in which either 50 percent or more of the households have an income which is less than 60 percent of the area median gross income or which has a poverty rate of at least 25 percent. All designated QCTs in a single metropolitan area or nonmetropolitan area (taken together) may not contain more than 20 percent of the population of that metropolitan or nonmetropolitan area. Thus, unlike the restriction on DDA designations, QCTs are restricted by each individual area as opposed to the aggregate population across all metropolitan areas and nonmetropolitan areas.

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs).

Explanation of HUD Designation Method

A. 2017 Difficult Development Areas

In developing the list of DDAs, HUD compared housing costs with incomes. HUD used 2010 Census population for ZCTAs, and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin No. 13–01 on February 28, 2013, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY2016 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and modified FMRs based on the FY2016 FMRs used for the Housing Choice Voucher (HCV) program. For metropolitan DDAs, HUD used SAFMRs based on three annual releases of ACS data, to compensate for statistical anomalies which affect estimates for some ZCTAs. For non-metropolitan DDAs, HUD used the final FY2016 FMRs as published on December 11, 2015 (80 FR 77124) and periodically through July 29, 2016 (81 FR 50003).

In formulating the FY2016 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for differences in rents among areas within each current MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas. All counties added to metropolitan areas will be an HMFA with rents and incomes based on their own county data, where available. HUD no longer requires recent-mover rents to differ by five percent or more in order to form a new HMFA. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2016 FMR areas and FMRs are available at *https://www.huduser.gov/portal/datasets/fmr/fmrs/docsys.html?data=fmr16.* Complete details on HUD's process for determining FY2015 income limits are available at *https://www.huduser.gov/portal/datasets/il/il16/index.html.*)

HUD's unit of analysis for designating metropolitan DDAs consists of ZCTAs, whose SAFMRs are compared to

metropolitan VLILs. For purposes of computing VLILs in metropolitan areas, HUD considers entire MSAs, in cases where these were not broken up into HMFAs for purposes of computing VLILs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the ZCTA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA calculations follows:

1. For each metropolitan ZCTA and each nonmetropolitan county, HUD calculated a ratio. HUD used a modified FY2016 two-bedroom SAFMR for ZCTAs, the final FY2016 two-bedroom FMR as published for non-metropolitan counties, and the FY2016 four-person VLIL for this calculation. The modified FY2016 two-bedroom SAFMRs for ZCTAs differ from the final FY2016 SAFMRs in three ways.

First, HUD did not limit the median gross ZCTA rent to 150 percent of the median gross Core-Based Statistical Area (CBSA) rent, as in the SAFMR calculations used in HUD's demonstration project. Second, HUD adjusted median rent values in New York City to correct for the downward-bias resulting from rent control and stabilization regulations using the New York City Housing and Vacancy Survey, which is conducted by the U.S. Census Bureau.[1] No other jurisdictions have provided HUD with data that could be used to adjust SAFMRs for rent control or stabilization regulations. Finally, the adjustment for recent mover rents is calculated at the HMFA-level rather than CBSA-level.

a. The numerator of the ratio, representing the development cost of housing, was the area's FY2016 FMR, or SAFMR in metropolitan areas. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment.

b. The denominator of the ratio, representing the maximum income of eligible tenants, was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent-of-AMGI base).

[1] HUD encourages other jurisdictions with rent control laws that affect rents paid by recent movers into existing units to contact HUD about what data might be provided or collected to adjust SAFMRs in those jurisdictions.

2. The ratios of the FMR, or SAFMR, to the LIHTC income-based rent limit were arrayed in descending order, separately, for ZCTAs and for nonmetropolitan counties. ZCTAs with populations less than 100 were excluded in order to avoid designating areas unsuitable for residential development, such as ZCTAs containing airports.

3. The DDAs are those with the highest ratios cumulative to 20 percent of the 2010 population of all metropolitan areas and all nonmetropolitan areas. For purposes of applying this population cap, HUD excluded the population in areas designated as 2017 QCTs. Thus, an area can be designated as a QCT or DDA, but not both.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Qualified Census Tracts

In developing this list of QCTs, HUD used 2010 Census 100-percent count data on total population, total households, and population in households; the median household income and poverty rate as estimated in the 2008–2012, 2009–2013 and 2010–2014, ACS tabulations; the FY2016 Very Low-Income Limits (VLILs) computed at the HUD Metropolitan FMR Area (HMFA) level [2] to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 13–01 on February 28, 2013, for determining how many eligible tracts can be designated under the statutory 20 percent population cap.

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically IRC Section 42(d)(5)(B)(iv)(II), refers to the same section of the IRC that defines income for purposes of tenant eligibility and unit maximum rent, specifically IRC Section 42(g)(4). By rule, the IRS sets these income limits according to HUD's VLILs, which, starting in FY2006 and thereafter, are established at the HMFA level. Similarly, HUD uses the entire MSA to determine how many eligible tracts can be designated under the 20 percent population cap as required by the statute (IRC Section

[2] HUD income limits for very low-income households (very low-income limits, or VLILs) are based on 50 percent of AMGI. In formulating the Fair Market Rents (FMRs) and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each new MSA that were in different FMR areas under definitions used in prior years. HUD originally formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census based 40th-percentile recent-mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. Furthermore, HUD created separate ''HUD Metro FMR Areas'' for all counties added to metropolitan areas in the February 28, 2013 re-definition of metropolitan areas published by the Office of Management and Budget. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FMR areas and FMRs are available at *http://www.huduser.org/portal/datasets/fmr.html.* Complete details on HUD's process for determining income limits are available at *http://www.huduser.org/portal/datasets/il.html.*)

42(d)(5)(B)(ii)(III)), which states that MSAs should be treated as singular areas. The QCTs were determined as follows:

1. To be eligible to be designated a QCT, a census tract must have 50 percent of its households with incomes below 60 percent of the AMGI or have a poverty rate of 25 percent or more. Due to potential statistical anomalies in the ACS 5-year estimates, one of these conditions must be met in at least 2 of the 3 evaluation years for a tract to be considered eligible for QCT designation. HUD calculates 60 percent of AMGI by multiplying by a factor of 1.2 the HMFA or nonmetropolitan county FY2016 VLIL adjusted for inflation to match the ACS estimates. For example, the FY2016 VLILs were adjusted for inflation to 2013 dollars to compare with the median income estimate from the 2009–2013 ACS estimates. The inflation-adjusted 2013 VLIL was then deflated to 2012 for comparison with the 2008–2012 ACS estimates and inflated to 2014 to compare with the 2010–2014 ACS estimates.

2. For each census tract, whether or not 50 percent of households have incomes below the 60 percent income standard (income criterion) was determined by: (a) Calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) comparing the average-household-size-adjusted income standard to the median household income for the tract reported in each of the three years of ACS tabulations (2008–2012, 2009–2013 and 2010–2014). HUD did not consider estimates of median household income to be statistically reliable unless the margin of error was less than half of the estimate (or a Margin of Error Ratio, MoER, of 50 percent or less). If at least two of the three estimates were not statistically reliable by this measure, HUD determined the tract to be ineligible under the income criterion due to lack of consistently reliable median income statistics across the three ACS tabulations. Since 50 percent of households in a tract have incomes above and below the tract median household income, if the tract median household income is less than the average-household-size-adjusted income standard for the tract, then more than 50 percent of households have incomes below the standard.

3. For each census tract, the poverty rate was determined in each of the three releases of ACS tabulations (2008–2012, 2009–2013 and 2010–2014) by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined. As with the evaluation of tracts under the income criterion, HUD uses a higher data quality standard for evaluating ACS poverty rate data in designating the 2017 QCTs than HUD used in previous designations. HUD did not consider estimates of the poverty rate to be statistically reliable unless both the population for whom poverty status has been determined and the number of persons below poverty had MoERs of less than 50 percent of the respective estimates. In prior designations of QCTs, HUD accepted ACS data with MoERs of up to, but not including 100 percent. If at least two of the three poverty rate estimates were not statistically reliable, HUD determined the tract to be ineligible under the poverty rate criterion due to lack of reliable poverty statistics across the ACS tabulations.

4. QCTs are those census tracts in which 50 percent or more of the households meet the income criterion in at least two of the three years evaluated, or 25 percent or more of the population is in poverty in at least two of the three years evaluated, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. The income and poverty criteria are each averaged over the three ACS tabulations (2008–2012, 2009–2013 and 2010–2014). Statistically reliable values that did not exceed the income and poverty rate thresholds were included in the average.

b. Eligible tracts are placed in one of two groups based on the averaged values of the income and poverty criteria. The first group includes tracts that satisfy both the income and poverty criteria for QCTs for at least two of the three evaluation years. The second group includes tracts that satisfy either the income criterion or the poverty criterion in at least two of three years, but not both. A tract must qualify by at least one of the criteria in at least two of the three evaluation years to be eligible, although it does not need to be the same criterion.

c. Tracts in the first group are ranked from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, tracts in the first group are ranked from highest to lowest by the average of the poverty rates. The two ranks are averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, more populous tracts are ranked above less populous ones.

d. Tracts in the second group are ranked from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, tracts in the second group are ranked from highest to lowest by the average of the poverty rates. The two ranks are then averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, more populous tracts are ranked above less populous ones.

e. The ranked first group is stacked on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

f. Working down the single, concatenated, ranked list of eligible tracts, census tracts are identified as designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If a census tract is not designated because doing so would raise the percentage above 20 percent, subsequent census tracts are then considered to determine if one or more census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 13–01, defining metropolitan areas:

> ''OMB establishes and maintains the delineations of Metropolitan Statistical Areas, . . . solely for statistical purposes. . . . OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the delineations, [.] In cases where . . . an agency elects to use the Metropolitan . . . Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the delineations are appropriate for such use. An agency using the statistical delineations in a nonstatistical program may modify the delineations, but only for the purposes of that program. In such cases, any modifications should be clearly identified as delineations from the OMB statistical area delineations in order to avoid confusion with OMB's official definitions of Metropolitan . . . Statistical Areas.''

Following OMB guidance, the estimation procedure for the FMRs and income limits incorporates the current OMB definitions of metropolitan areas based on the CBSA standards, as

implemented with 2010 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where counties were added to an existing or newly defined metropolitan area. In CBSAs where subareas are established, it is HUD's view that the geographic extent of the housing markets are not the same as the geographic extent of the CBSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

Future Designations

DDAs are designated annually as updated income and FMR data are made public. QCTs are designated annually as new income and poverty rate data are released.

Effective Date

The 2017 lists of QCTs and DDAs are effective:

(1) For allocations of credit after December 31, 2016; or

(2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2016.

If an area is not on a subsequent list of QCTs or DDAs, the 2017 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 730-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), if:

(a) The bonds are issued or the building is placed in service no later than the end of the 730-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (*i.e.,* total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose QCT or DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2017 DDA that is NOT a designated DDA in 2018 or 2019. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2017. Credits are allocated to Project A on October 30, 2019. Project A is eligible for the increase in basis accorded a project in a 2017 DDA because the application was filed BEFORE January 1, 2018 (the assumed effective date for the 2018 DDA lists), and because tax credits were allocated no later than the end of the 730-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2017 DDA that is NOT a designated DDA in 2018 or 2019. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2017. Credits are allocated to Project B on March 30, 2020. Project B is NOT eligible for the increase in basis accorded a project in a 2017 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2018 (the assumed effective date of the 2018 DDA lists), the tax credits were allocated later than the end of the 730-day period after the filing of the complete application.

(Case C) Project C is located in a 2017 DDA that was not a DDA in 2016. Project C was placed in service on November 15, 2016. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2017. The bonds that will support the permanent financing of Project C are issued on September 30, 2017. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2017 DDA, because the project was placed in service BEFORE January 1, 2017.

(Case D) Project D is located in an area that is a DDA in 2017, but is NOT a DDA in 2018 or 2019. A complete

application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2017. Bonds are issued for Project D on April 30, 2019, but Project D is not placed in service until January 30, 2020. Project D is eligible for the increase in basis available to projects located in 2017 DDAs because: (1) One of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued and buildings placed in service) took place on April 30, 2019, within the 730-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2017 DDA that is NOT a designated DDA or QCT in 2018. The first phase of Project E received an allocation of credits in 2017, pursuant to an application filed March 15, 2017, which describes the multiphase composition of the project. An application for tax credits for the second phase of Project E is filed with the allocating agency by the same entity on March 15, 2018. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2018. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2017 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2017 DDA that is NOT a designated DDA in 2018 or 2019. The first phase of Project F received an allocation of credits in 2017, pursuant to an application filed March 15, 2017, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2019. Credits are allocated to the second phase of Project F on October 30, 2019. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2017 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

This notice involves the establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs and QCTs as required under IRC Section 42, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methods used in making such designations. As a result, this notice is not subject to review under the order.

Dated: October 5, 2016.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2016–25056 Filed 10–14–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[16XD4523WK DWK000000.000000 DS10100000]

Proposed New Information Collection: OMB Control Number 1094–ONEW, Indian Water Rights Settlements: Economic Analysis

AGENCY: Secretary's Indian Water Rights Office, Office of the Secretary, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Secretary's Indian Water Rights Office, Department of the Interior announces the proposed creation of a new public information collection and seeks public comments on the provisions thereof.

DATES: Consideration will be given to all comments received by *December 16, 2016.*

ADDRESSES: Direct all written comments to Rachel Brown, U.S. Department of the Interior, 1849 C Street NW., MS 7069–MIB, Washington, DC 20240, fax 202–208–6970, or by electronic mail to *Rebrown@usbr.gov.* Please mention that your comments concern the Indian Water Rights Settlements: Economic Analysis, OMB Control Number 1093–0NEW.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, any explanatory information and related forms, see the contact information provided in the **ADDRESSES** section above.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice is for a new information collection.

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)).

The Secretary's Indian Water Rights Office (SIWRO) is tasked with overseeing and coordinating the Federal Government's Indian water rights settlement program and is undertaking a study on the economic outcomes associated with Indian water rights settlements (IWRS). The purpose of the study is to identify and track social and economic changes that occur as a result

of the implementation of enacted settlements. The Office of Indian Water Rights is located within the Secretary's Office. The Office leads, coordinates, and manages the Department's Indian water rights settlement program (109 Departmental Manual 1.3.E(2)).

II. Data

(1) *Title:* Indian Water Rights Settlements: Economic Analysis.

OMB Control Number: 1093–0NEW.

Type of Review: New Information Collection.

Affected Entities: State, Local & Tribal Governments as well as some Private Sector entities.

Estimated annual number of respondents: 48.

Frequency of responses: One time.

(2) Annual reporting and recordkeeping burden:

Total annual reporting per response: 2.73 hours.

Total number of estimated responses: 48.

Total annual reporting: 131 hours.

(3) Description of the need and use of the information. Indian reserved water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of Indian tribes. Federal policy supports the resolution of disputes regarding Indian water rights through negotiated settlements. Settlement of Indian water rights disputes breaks down barriers and helps create conditions that improve water resources management by providing certainty as to the rights of all water users who are parties to the disputes. At a time of increasing competition for Federal funds, it is important to quantify and describe the economic impacts and net benefits of the implementation of enacted Indian water rights settlements.

III. Request for Comments

The Departments invite comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden of the collection of information and the validity of the methodology and assumptions used;

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

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

''Burden'' means the total time, effort, and financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, and to complete and review the collection of information; and to transmit or otherwise disclose the information.

It is our policy to make all comments available to the public for review. Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comment(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us in your comment to withhold PII from public view, we cannot guarantee that we will be able to do so. If you wish to view any comments received, you may do so by scheduling an appointment with the contact provided in the **ADDRESSES** section above. A valid picture identification is required for entry into the Department of the Interior.

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.

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 Office of Management and Budget control number.

David D. Alspach,

Information Collection Clearance Officer, Office of the Secretary, Department of the Interior.

[FR Doc. 2016–25044 Filed 10–14–16; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT924000 L14400000.FR0000 16XL1109AF; MO#4500091180; MTM 108489]

Notice of Proposed Classification of Public Lands and Minerals for State Indemnity Selection, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Montana Department of Natural Resources and Conservation (State) has filed a petition for classification and application to obtain public lands and mineral estate in lieu of lands to which the State was entitled, but did not receive under its Statehood Act. The State did not receive title because the lands had previously been appropriated. Under Section 7 of the Taylor Grazing Act of 1934, the Bureau of Land Management (BLM) proposes to classify sufficient acreage of public lands/minerals in Montana for title transfer to the State to satisfy this obligation to the State. Of the area proposed for State Indemnity Selection, 10,560 acres are designated as greater sage-grouse General Habitat Management area.

DATES: Comments must be received by December 16, 2016.

The BLM will not consider or include comments received after the close of the comment period or comments delivered to an address other than the one listed below. Persons asserting a claim to or interest in the lands or mineral estate described in this notice will find the requirements for filing such claims in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The public may submit written comments by mail or hand delivery to: State Director, Montana/Dakotas State Office, Bureau of Land Management, Department of the Interior, 5001 Southgate Drive, Billings, MT 59101.

FOR FURTHER INFORMATION CONTACT: Jim Ledger, Realty Specialist, Branch of Lands, Realty, and Renewable Energy; telephone (406) 329–3733; email *jledger@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Sections 2275 and 2276 of the Revised Statutes,

as amended (43 U.S.C. 851 and 852), provide authority for the State of Montana to receive title to public lands in lieu of lands to which it was entitled under the Enabling Act of 1889 (25 Stat. 676), where it did not receive title because those lands had otherwise been encumbered.

Section 7 of the Taylor Grazing Act of June 8, 1934, requires that such public lands and/or minerals identified for proposed transfer out of Federal ownership must first be classified. The BLM proposes to classify these lands/minerals under Section 7 of the Taylor Grazing Act of June 8, 1934 (48 Stat. 1272, as amended), 43 U.S.C. 315(f). For a period until December 16, 2016 all persons who wish to submit comments, suggestions, or objections in connection with this classification may present their views by the means shown under the **ADDRESSES** section above.

Any adverse comments will be evaluated by the BLM Montana/Dakotas State Director, who will issue a notice of determination to proceed with, modify, or cancel the proposed classification. In the absence of any action by the State Director, this classification action will be issued as the initial classification decision of the State Director.

Comments, including names and street addresses of respondents and records relating to this proposed classification, will be available for public review at the BLM Montana/Dakotas State Office at the address cited in the **ADDRESSES** section above during regular business hours. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The BLM intends to schedule public meetings during the 60-day comment period. The BLM will announce the public meetings 15 days prior to the meetings in newspapers of general circulation in the vicinity of the selected lands and via the Web site at *www.blm.gov/mt/st/en/prog/lands_realty/indemnity.html.*

The lands/minerals included within this proposed classification are in Custer, Fallon, Prairie, Richland, and Yellowstone Counties, Montana, and are described as follows:

Principal Meridian, Montana

T. 3 N., R. 30 E.,
sec. 1;
sec. 2, S½;
sec. 12, N½.
T. 4 N., R. 31 E.,
secs. 6, 7, 8, and 17;
sec. 18, lots 1 thru 4, NE¼, E½NW¼, and E½SW¼.
T. 5 N., R. 46 E.,
sec. 24, E½.
T. 4 N., R. 47 E.,
sec. 6;
sec. 8, NW¼NE¼, SE¼NE¼, N½NW¼, and NE¼SE¼.
T. 7 N., R. 47 E.,
sec. 4; portions of Tracts O and Z.
T. 12 N., R. 50 E.,
sec. 14; lots 1 thru 4, S½SW¼, and S½SE¼.
T. 12 N., R. 52 E.,
sec. 3, lots 1, 2, and 3;
sec. 5;
sec. 6, lots 2 thru 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
sec. 7, lots 1 thru 7, NW¼NE¼, and E½NW¼;
sec. 8, lots 1, 2, and 3.
T. 13 N., R. 52 E.,
sec. 29, E½SE¼SW¼, E½NW¼SE¼SW¼, E½SW¼SE¼SW¼, and S½SE¼;
sec. 30, S½SW¼ and S½SE¼;
sec. 33, lots 5, 6, and 7.
T. 9 N., R. 55 E.,
sec. 25, W½;
sec. 26, E½, E½NW¼, and E½SW¼.
T. 26 N., R. 55 E.,
sec. 1, lot 4;
sec. 2, lots 1 and 2, and SW¼NE¼.
T. 8 N., R. 56 E.,
sec. 12, W½ and E½SE¼;
sec. 13;
sec. 14, N½, excepting a 1 acre tract in the NW¼NW¼ and SW¼;
sec. 24, S½.
T. 27 N., R. 56 E.,
sec. 7, lots 7 thru 12, SE¼SW¼, and S½SE¼;
sec. 8, lot 12 and S½SW¼;
sec. 9, lots 3, 4, and 5, SE¼SW¼, and SW¼SE¼;
sec. 17, E½, N½NW¼, SW¼NW¼, and SW¼;
sec. 18, lots 1 thru 4, NE¼, E½NW¼, SE¼SW¼, and SE¼;
sec. 22, NE¼NE¼, SW¼NW¼, and W½SW¼.
T. 8 N., R. 57 E.,
sec. 18, E½NE¼ and SE¼;
sec. 19.

The areas described aggregate 13,495.74 acres.

The State expressed interest in the selection of lands withdrawn to the Bureau of Reclamation (BOR). The BOR has filed with the BLM a Notice of Intent to Relinquish, dated January 26, 2016, requesting partial revocation of an Order dated, October 15, 1904, and full revocation of an Order dated March 30, 1950. Should the revocations be approved, the following lands in Chouteau and Hill Counties are proposed for classification by this notice as available for State indemnity selection:

Principal Meridian, Montana

T. 29 N., R. 11 E.,
sec. 21, N½NE¼ and N½NW¼;
sec. 22, NW¼NW¼.
T. 29 N., R. 12 E.,
sec. 9, W½ and SE¼;
sec. 21, N½, SW¼, N½SE¼, and SW¼SE¼;
sec. 22;
sec. 28, W½;
sec. 29, E½NE¼ and E½SE¼.
T. 30 N., R. 12 E.,
sec. 35, SE¼.

The areas described aggregate 2,560 acres.

The BLM will examine all lands described above for evidence of valid existing rights and any constraints that would prevent transfer. Right-of-way (ROW) holders will be afforded the opportunity to modify their existing authorization per 43 CFR 2807.15. Oil and gas, geothermal, or other leases issued under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) will remain in effect under the terms and conditions of the leases. Agricultural leases issued under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) will remain in effect under the terms and conditions of the leases.

Current holders of BLM grazing use authorizations were sent the required 2-year notice in January 2016 as outlined in 43 CFR 4110.4–2(b). Upon expiration of the 2-year period or receipt of a waiver from the current holder, such authorizations will be terminated upon transfer of any of the land described above to the State of Montana. State of Montana procedures provide that upon Land Board Approval, the State will offer 10-year grazing leases to the current holders of BLM permits/leases on any transferred lands.

For a period until December 1, 2016 persons asserting a claim to, or interest in, the above-described lands or mineral estate, other than holders of leases, permits, or ROWs, may file such claim with the BLM Montana/Dakotas State Director at the address cited in the **ADDRESSES** section above. You must provide evidence that a copy thereof has been served on the Montana Department of Natural Resources and Conservation, 1625 11th Avenue, P.O. Box 201601, Helena, MT 59620.

Under 43 CFR 2091.3–1(b) the lands described above were segregated from entry upon application by the State from all forms of disposal under the public land laws, including the mining laws, except for the form of land disposal specified in this notice of classification.

However, this publication does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

The segregative effect of this classification will terminate in one of the following ways:

(1) Classification of the lands on or before the expiration of the 2-year period from the date of application;

(2) Publication of a notice of termination of the classification in the **Federal Register**;

(3) An Act of Congress; or

(4) Expiration of the 2-year period from the date of application unless notice of extension for the proposed classification for an additional period, not exceeding 2 years, is given.

Authority: 43 CFR parts 2091, 2400, and 2621.

Jamie Connell,

BLM Montana/Dakotas State Director.

[FR Doc. 2016–24944 Filed 10–14–16; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A0067F 167S180110; S2D2S SS08011000 SX066A000 33F16XS501520]

Action Subject to Intergovernmental Review

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement, are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Abandoned Mine Land (AML) Reclamation Program. Additionally, we are notifying the public that we intend to grant funds to eligible applicants for regulating coal mining within their jurisdictional borders under the Regulatory Program. We will award these grants during fiscal year 2017.

DATES: A single point of contact or other interested state or local entities may submit written comments regarding AML and regulatory funding by December 15, 2016.

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

- *Electronic mail:* Send your comments to *jbautista@osmre.gov.*
- *Mail, hand-delivery, or courier:* Send your comments to Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Jay Bautista, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., MS 130–SIB, Washington, DC 20240; Telephone (202) 208–7411.

SUPPLEMENTARY INFORMATION:

Grant Notification

We are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the AML Reclamation Program. Additionally, we are notifying the public that we intend to grant funds to eligible applicants for regulating coal mining within their jurisdictional borders under the Regulatory Program. We will award these grants during fiscal year 2017. Eligible applicants are those states and Indian tribes with a regulatory program, regulatory development program, and/or reclamation plan approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended, 30 U.S.C. 1201 *et seq.,* and the State of Tennessee. Under Executive Order (E.O.) 12372, we must provide state and tribal officials the opportunity to review and comment on proposed federal financial assistance activities. Of the eligible applicants, nineteen states or Indian tribes do not have single points-of-contact under the E.O.12372 review process; therefore, we are required to publish this notice as an alternate means of notification.

Description of the AML Program

SMCRA established the Abandoned Mine Reclamation Fund to receive the AML fees used to finance reclamation of AML coal mine sites. Title IV of SMCRA authorizes the Office of Surface Mining Reclamation and Enforcement to provide grants to eligible states and Indian tribes that are funded from permanent (mandatory) appropriations. Recipients use these funds to reclaim the highest priority AML coal mine sites that were left abandoned prior to the enactment of SMCRA in 1977, eligible non-coal sites, projects that address the impacts of mineral development, and non-reclamation projects.

Description of the Regulatory Program

Title VII of SMCRA authorizes the Office of Surface Mining Reclamation and Enforcement to provide grants to states and Indian tribes to develop, administer, and enforce state regulatory programs addressing the disturbance from coal mining operations. Title V and Title VII authorize states to develop regulatory programs pursuant to SMCRA, and upon approval of regulatory programs, to assume regulatory primacy and act as the regulatory authority, and to administer and enforce their respective approved SMCRA regulatory programs. Our regulations at Title 30 of the Code of Federal Regulations, Chapter VII implement the provisions of SMCRA.

Dated: September 28, 2016.

Glenda H. Owens,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2016–25016 Filed 10–14–16; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–921 (Enforcement Proceeding)]

Certain Marine Sonar Imaging Devices, Including Downscan and Sidescan Devices, Products Containing the Same, and Components Thereof; Notice of Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to the December 1, 2015 cease and desist orders issued in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the original investigation on July 14, 2014 based on a complaint filed by Navico, Inc. of Tulsa, Oklahoma, and Navico Holding AS, of Egersund, Norway (collectively, ''Navico''). 79 FR 40778 (July 14, 2014). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain marine sonar imaging devices, including downscan and sidescan devices, products containing the same, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,305,840 (''the '840 patent''), 8,300,499 (''the '499 patent''), and 8,605,550 (''the '550 patent''). *Id.* The notice of investigation named as respondents Garmin International, Inc. (''Garmin International''), Garmin USA, Inc. (''Garmin USA''), both of Olathe, Kansas; and Garmin (Asia) Corporation of New Taipei City, Taiwan (''Garmin Asia''). *Id.* The Office of Unfair Import Investigations (''OUII'') was also named as a party. *Id.*

On December 1, 2015, the Commission found a violation of Section 337 based on infringement of claims 1, 5, 7, 9, 11, 16–19, 23, 32, 39–41, 63, and 70–72 of the '840 patent and infringement of claims 32 and 44 of the '550 patent, but found no violation with respect to the '499 patent. 80 FR 76040–41 (Dec. 7, 2015). The Commission issued a limited exclusion order prohibiting Garmin International, Garmin USA, and Garmin Asia from importing certain marine sonar imaging devices, including downscan and sidescan devices, products containing the same, and components thereof that infringe certain claims of the '840 and '550 patent. *Id.* The Commission also issued cease and desist orders against Garmin International, Garmin USA, and Garmin Asia prohibiting the sale and distribution within the United States of articles that infringe certain claims of the '840 and '550 patents. *Id.* at 76041.

On August 30, 2016, Navico filed a complaint requesting that the Commission institute a formal enforcement proceeding under Commission Rule 210.75(b) to investigate violations of the December 1, 2015 cease and desist orders by Garmin International and Garmin USA (collectively, ''Garmin''). Having examined the complaint and the supporting documents, the Commission has determined to institute a formal enforcement proceeding to determine whether Garmin is in violation of the December 1, 2015 cease and desist orders issued in the original investigation and what, if any, enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Complainant Navico; (2) respondents Garmin International and Garmin USA; and (3) OUII.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

By order of the Commission.

Issued: October 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–24987 Filed 10–14–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–325]

The Economic Effects of Significant U.S. Import Restraints; Ninth Update; Special Topic: The Effects of Tariffs and of Customs and Border Procedures on Global Supply Chains

AGENCY: United States International Trade Commission.

ACTION: Notice of ninth update report, scheduling of public hearing, opportunity to file written submissions.

SUMMARY: Following receipt of a letter dated September 13, 2016 from the United States Trade Representative (USTR), the U.S. International Trade Commission (Commission) has announced its schedule for preparing the ninth update report in investigation No. 332–325, *The Economic Effects of Significant U.S. Import Restraints,* including the scheduling of a public hearing in connection with this update report for February 9, 2017. This year's report will include a chapter on the effects of tariffs and customs and border procedures on global supply chains.

DATES: January 26, 2017: Deadline for filing requests to appear at the public hearing.

January 30, 2017: Deadline for filing pre-hearing briefs and statements.

February 9, 2017: Public hearing.

February 16, 2017: Deadline for filing post-hearing briefs and statements.

March 1, 2017: Deadline for filing all other written submissions.

September 13, 2017: Transmittal of Commission report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader William Deese (*william.deese@usitc.gov.* or 202–205–2626) or Deputy Project Leader Lesley Ahmed (*lesley.ahmed@usitc.gov*) for information specific to this investigation (the eighth update). For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(https://www.usitc.gov).* Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background

The Commission instituted this investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt of an initial request from the USTR dated May 15, 1992. The request asked that the Commission assess the quantitative economic effects of significant U.S. import restraints on the U.S. economy and prepare periodic update reports after the initial report. The Commission published a notice of institution of the investigation in the **Federal Register** of June 17, 1992 (57 FR 27063). The first report was delivered to the USTR in November 1993, the first update in December 1995, and successive updates were delivered in 1999, 2002, 2004, 2007, 2009, 2011, and 2013.

In this ninth update, as requested by the USTR in a letter dated September 13, 2016, the Commission will provide, in addition to the quantitative effects analysis similar to that included in prior reports, an assessment of how significant U.S. import restraints affect households with different incomes and

a special chapter that presents an overview of the effects of tariffs and customs and border procedures on global supply chains.

The report will, to the extent practicable, describe the cumulative effects of tariffs and customs and border procedures on goods traded in global supply chains. It will include the effect on services to the extent that they depend on goods traded across borders. The report will also provide an overview of recent literature that discusses the effect of these costs along the supply chain. Finally, the report will include case studies in relevant industries that examine supply chain inefficiencies stemming from customs and border procedures abroad.

As in previous reports in this series, the ninth update will continue to assess the economic effects of significant import restraints on U.S. consumers and firms, the income and employment of U.S. workers, and the net economic welfare of the United States. This assessment will use the Commission's computable general equilibrium model of the U.S. economy. However, as per earlier instructions from the USTR, the Commission will not assess import restraints resulting from antidumping or countervailing duty investigations, section 337 and 406 investigations, or section 301 actions.

Public Hearing

A public hearing in connection with this investigation will be held at the United States International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on February 9, 2017. Requests to appear at the hearing should be filed with the Secretary no later than 5:15 p.m., January 26, 2016, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., January 30, 2017; and all post-hearing briefs and statements addressing matters raised at the hearing should be filed not later than 5:15 p.m., February 16, 2017. In the event that, as of the close of business on January 26, 2017, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after January 26, 2017, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., March 1, 2017. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraphs for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802).

Confidential Business Information

Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission will not include any confidential business information in the report that it sends to the USTR or makes available to the public. However, all information, including confidential business information, submitted in 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 for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions

The Commission intends to publish summaries of the positions of interested persons. Persons wishing to have a summary of their position included in the report should include a summary with their written submission. The summary may not exceed 500 words, should be in MS Word format or a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will identify the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: October 11, 2016.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2016–24984 Filed 10–14–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–382 and 731–TA–800, 801, and 803 (Third Review)]

Stainless Steel Sheet and Strip From Japan, Korea, and Taiwan; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the countervailing duty order on imports of stainless steel sheet and strip from Korea and the antidumping duty orders on imports of stainless steel sheet and strip from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: *Effective Date:* October 4, 2016.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On October 4, 2016, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). With respect to the reviews on subject merchandise from Korea, the Commission found that both the domestic and respondent interested party group responses to its notice of institution (81 FR 43238, July 1, 2016) were adequate. With respect to the reviews on subject merchandise from Japan and Taiwan, the Commission found that the domestic interested party group response was adequate and the respondent interested party group response was inadequate, but that circumstances warranted full reviews.[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–24985 Filed 10–14–16; 8:45 am]

BILLING CODE 7020–02–P

[1] With respect to the review on subject merchandise from Japan, Commissioner F. Scott Kieff concluded that both the domestic and respondent interested party group responses were adequate.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–951]

Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries for Power Tool Products Containing Same, and Power Tool Products With Lithium-Ion Batteries Containing Same; Commission's Procedure for a Public Hearing on the Issues of Laches, Contributory Infringement, and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to hold a public hearing on the issues of laches, contributory infringement, and the public interest.

DATES: The public hearing is scheduled for Thursday, November 17, 2016, beginning at 10 a.m. See the Notice of Appearance section in **SUPPLEMENTARY INFORMATION** for more information.

ADDRESSES: The Commission will hold the public hearing in the Commission's Main Hearing Room (Room 101), 500 E Street SW., Washington, DC 20436.

Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3042.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 30, 2015, based on a complaint filed by BASF Corporation of Florham Park, New Jersey and UChicago Argonne LLC of Lemont, Illinois (collectively, ''Complainants''). 80 FR 16696 (Mar. 30, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lithium metal oxide cathode materials, lithium-ion batteries for power tool products containing same, and power tool products with lithium-ion batteries containing same by reason of infringement of one or more of claims 1–4, 7, 13, and 14 of U.S. Patent No. 6,677,082 (''the '082 patent'') and claims 1–4, 8, 9, and 17 of U.S. Patent No. 6,680,143 (''the '143 patent''). *Id.* The notice of investigation named the following respondents: Umicore N.V. of Brussels, Belgium; Umicore USA Inc. of Raleigh, North Carolina (collectively, ''Umicore''); Makita Corporation of Anjo, Japan; Makita Corporation of America of Buford, Georgia; and Makita U.S.A. Inc. of La Mirada, California (collectively, ''Makita''). *Id.* The Office of Unfair Import Investigations is a party to the investigation.

On November 5, 2015, the ALJ granted a joint motion by Complainants and Makita to terminate the investigation as to Makita based upon settlement. *See* Order No. 32 (Nov. 5, 2015). The Commission determined not to review. *See* Notice (Nov. 23, 2015).

On December 1, 2015, the ALJ granted an unopposed motion by Complainants to terminate the investigation as to claim 8 of the '082 patent. *See* Order No. 35 (Dec. 1, 2015). The Commission determined not to review Order No. 35. *See* Notice (Dec. 22, 2015).

On February 29, 2016, the ALJ issued his final ID, finding a violation of section 337 by Umicore in connection with claims 1–4, 7, 13, and 14 of the '082 patent and claims 1–4, 8, 9, and 17 of the '143 patent. Specifically, the ID found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over Umicore. ID at 10–11. The ID found that Complainants satisfied the importation requirement of section 337 (19 U.S.C. 1337(a)(1)(B)). *Id.* at 9–10. The ID found that the accused products directly infringe asserted claims 1–4, 7, 13, and 14 of the '082 patent; and asserted claims 1–4, 8, 9, and 17 of the '143 patent, and that Umicore contributorily infringes those claims. *See* ID at 65–71, 83–85. The ID, however, found that Complainants failed to show that Umicore induces infringement of the asserted claims. *Id.* at 79–83. The ID further found that Umicore failed to establish that the asserted claims of the '082 or '143 patents are invalid for lack of enablement or incorrect inventorship. ID at 118–20. The ID also found that

Umicore's laches defense fails as a matter of law (ID at 122–124) and also fails on the merits (ID at 124–126). Finally, the ID found that Complainants established the existence of a domestic industry that practices the asserted patents under 19 U.S.C. 1337(a)(2). *See* ID at 18, 24.

On March 14, 2016, Umicore filed a petition for review of the ID. Also on March 14, 2016, the Commission investigative attorney (''IA'') petitioned for review of the ID's finding that a laches defense fails as a matter of law in section 337 investigations. Further on March 14, 2016, Complainants filed a contingent petition for review of the ID. That same day, Umicore filed a motion under Commission Rules 210.15(a)(2) and 210.38(a) (19 CFR 210.15(a)(2) and 210.38(a)), for the Commission to reopen the record in this investigation to admit a paper published on October 29, 2015, and a press release issued that day (collectively, ''documents''). On March 22, 2016, the parties filed responses to the petitions for review. On March 24, 2016, Complainants and the IA filed oppositions to Umicore's motion to reopen the record. On April 5, 2016, Umicore moved for leave to file a reply. The Commission has determined to grant Umicore's motion for leave to file a reply.

On April 8, 2016, 3M Corporation (''3M'') filed a motion to intervene under Commission Rule 210.19. 3M requests that the Commission grant it ''with full participation rights in this Investigation in order to protect its significant interests in the accused materials.''

On May 11, 2016, the Commission determined to review the final ID in part. 81 FR 30548–50 (May 17, 2016). Specifically, the Commission determined to review (1) the ID's contributory and induced infringement findings; (2) the ID's domestic industry findings under 19 U.S.C. 1337(a)(3)(C); and (3) the ID's findings on laches. The Commission determined to deny Umicore's motion to reopen the record to admit certain documents. *Id.* The Commission also determined to deny 3M's motion to intervene, but stated that it would consider 3M's comments in considering remedy, bonding and the public interest this investigation if a violation of Section 337 is found.

The Commission requested the parties to brief their positions on the issues under review with reference to the applicable law and the evidentiary record, and posed specific briefing questions. On May 23, 2016, the parties filed submissions to the Commission's questions. On June 3, 2016, the parties filed responses to the initial submissions.

Pursuant to Commission rule 210.45 (19 CFR 210.45), Umicore's request for a Commission hearing was granted. Details of the hearing are set forth below.

Commission Hearing: The Commission will hold the public hearing on Thursday, November 17, 2016, in the Commission's Main Hearing Room (Room 101), 500 E Street SW., Washington DC 20436, beginning at 10 a.m. The hearing will be limited to the issues of laches, contributory infringement, and the public interest. The hearing will consist of two panels. The first panel will be limited to the parties (*i.e.,* complainants, respondents, and the IA), who will be given an opportunity to comment on the issues identified above based upon the record in this investigation. A representative for each of the private parties and the IA may present opening remarks not lasting more than 10 minutes. After the opening remarks, the Commissioners may ask questions of the panelists. This is a public hearing; confidential business information (''CBI'') should not be discussed. A party, however, can draw the Commission's attention to CBI, if necessary, by pointing to where in the record the information can be found. The name and contact information of the parties' respective representatives must be filed with the Office of the Secretary by Friday, November 4, 2016. The first panel will be from 10 a.m. to 11:30 a.m.

The second panel will be limited to public interest issues. In particular, the Commission will hear presentations concerning the appropriate remedy (if any) and the effect that such remedy would have upon the public interest. Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of remedy and the public interest. Parties to the investigation are expected to present any public interest comments during the first panel and will not participate in the second panel. The panel will be conducted in like manner as the first panel, *i.e.,* an opportunity will be given for opening remarks, not lasting more than 10 minutes, and Commissioners may ask questions of the panelists. The second panel will begin at 11:30 a.m.

After the conclusion of the hearing, no additional written submissions or arguments will be permitted.

Notice of Appearance: Written requests to appear at the Commission hearing with respect to the second panel (*i.e.,* public interest only) must be filed with the Office of the Secretary by November 1, 2016. Persons who wish to participate must provide their email addresses as part of their contact information. Participants are also requested to provide a one-page synopsis of their oral presentations indicating what position they have on the public interest. These documents will be placed in the public record.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–24986 Filed 10–14–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0046]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 81 FR 53161, on August 11, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 16, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact Rinell

Lawrence, Firearms Industry Program Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) either by mail at 99 New York Ave NE., Washington, DC 20226, by email at *fipb-informationcollection@atf.gov,* or by telephone at 202–648–7190. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local, or Tribal Government.

Other: None.

Abstract: Law enforcement officers must use the letter when purchasing firearms to be used in his/her official duties from a licensed firearm dealer in the United States. The letter shall state that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50,000 respondents will utilize the letter, and it will take each respondent approximately 8 minutes to complete and file the letter.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 6,667 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: October 12, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–25013 Filed 10–14–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1110—NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of an Existing Collection in Use Without an OMB Control Number Credit Card Payment Form (1–786)

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at 81 FR 53165 on August 11, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 16, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (facsimile: 304–625–5093). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Approval of an existing Collection in use without OMB control number.

(2) *The Title of the Form/Collection:* Credit Card Payment Form.

(3) *The agency form number:* 1–786.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Individuals. This collection is necessary for individuals to submit payment to receive a copy of their personal identification record.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Annually, the FBI receives 80,000 credit card payment forms, therefore there are 80,000 respondents. The form requires 2 minutes to complete.

6 *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,667 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: October 12, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–25012 Filed 10–14–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; United States Victims of State Sponsored Terrorism Fund Application Form

AGENCY: Criminal Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Criminal Division, United States Victims of State Sponsored Terrorism Fund, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previous published in the **Federal Register** at Volume 81 FR 53166, on August 11, 2016, allowing for a 60 day comment period. No comments were received for this information collection.

DATES: Comments are encouraged and will be accepted for an additional days until November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to either the Special Master, United States Victims of State Sponsored Terrorism Fund, or the Chief, Program Management and Training Unit, Asset Forfeiture and Money Laundering Section, Criminal Division, Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001, telephone (202) 353–2046. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503, or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and/or
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection:

1. *Type of Information Collection:* Revision of a currently approved collection.
2. *The Title of the Form/Collection:* Application Form for the United States Victims of State Sponsored Terrorism Fund.
3. *The agency form number:* N/A.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Abstract: The United States Victims of State Sponsored Terrorism Fund (the ''Fund'') was established to provide compensation to certain individuals who were injured as a result of acts of international terrorism by a state sponsor of terrorism. Under 42 U.S.C. 10609(c), an eligible claimant is (1) a U.S. person, as defined by 42 U.S.C. 10609(j)(8), with a final judgment issued by a U.S. district court under state or federal law against a state sponsor of terrorism and arising from an act of international terrorism, for which the foreign state was found not immune under provisions of the Foreign Sovereign Immunities Act, codified at 28 U.S.C. 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008); (2) a U.S. person, as defined in 42 U.S.C. 10609(j)(8), who was taken and held hostage from the United States Embassy in Tehran, Iran, during the period beginning November 4, 1979, and ending January 20, 1981, or the spouse and child of that U.S. person at that time, and who is also identified as a member of the proposed class in case number 1:00–CV–03110 (EGS) of the United States District Court for the District of Columbia; or (3) the personal representative of a deceased individual in either of those two categories.

The information collected from the Fund's Application Form will be used to determine whether claimants are eligible for compensation from the Fund, and if so, the amount of compensation to be awarded. The Application Form consists of parts related to eligibility and compensation. The eligibility parts seek the information required by the Justice for United States Victims of State Sponsored Terrorism Act to determine whether a claimant is eligible for payment from the Fund, including information related to: Participation in federal lawsuits against a state sponsor of terrorism under the Foreign Sovereign Immunities Act; being taken and held hostage at the U.S. Embassy in Tehran, Iran, from the period beginning November 4, 1979, and ending January 20, 1981; or being spouses and children of such hostages. The compensation parts seek the information required by the Justice for United States Victims of State Sponsored Terrorism Act to determine the amount of compensation for which the claimant is eligible. Specifically, the compensation parts seek information regarding any compensation from sources other than the Fund that the claimant received, is entitled to receive, or is scheduled to receive, as a result of the act of international terrorism by a state sponsor of terrorism and the amount of compensatory damages awarded to the claimant in a final judgment. The Application Form was revised with minor formatting changes. There are no substantive changes in the revised Application Form, which contains the

same information regarding eligibility and compensation.

The Fund may require an eligible claimant to supplement his or her application by submitting additional forms. These additional supplementary forms include information related to: (1) An acknowledgment and certification by applicants and their attorneys regarding the statutory provision on the amount of attorneys' fees; (2) an authorization for the Fund to communicate with individuals identified by an applicant regarding his or her claim; (3) a proposed distribution plan and corresponding consent to the proposed distribution plan in claims filed by a personal representative of a deceased individual; (4) a Notice of Filing Claim for use by those applicants filing claims on behalf of deceased individuals; (5) a claimant's decision to change an attorney or representative; (6) a hearing request upon receipt of a decision denying the claim in whole or in part; and (7) electronic payment information.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 700 respondents may complete the Application Form. It is estimated that respondents will complete the paper form in an average of 2 hours, and the electronic form in an average of 1.5 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1,400 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E–405B, Washington, DC 20530.

Dated: October 12, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–25011 Filed 10–14–16; 8:45 am]

BILLING CODE 4410–14–P

OFFICE OF MANAGEMENT AND BUDGET

Statistical Policy Directive No. 4 Addendum: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies and Recognized Statistical Units

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of Solicitation of Comments.

SUMMARY: Under the *Budget and Accounting Procedures Act* of 1950 (31 U.S.C. 1104 (d)) and the *Paperwork Reduction Act* of 1995 (44 U.S.C. 3504 (e)), the Office of Management and Budget (OMB) issues for comment a proposed Addendum to *Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies* (73 FR 12622, Mar. 7, 2008). This Addendum reflects the ongoing commitment of the Federal statistical system to ensure relevant, accurate, objective, and accessible Federal statistics to the Nation.

In its role as coordinator of the Federal statistical system under the *Paperwork Reduction Act,* OMB, among other responsibilities, is required to ensure the efficiency and effectiveness of the system. A key method used by OMB to achieve this responsibility is the promulgation and oversight of Government-wide principles, policies, standards, and guidelines concerning the development, presentation, and dissemination of statistical products. Accordingly, OMB proposes an Addendum to strengthen provisions in its *Statistical Policy Directive No. 4.* The Addendum would ensure systematic review of the production and dissemination of key statistical products of Federal statistical agencies and recognized statistical units and of how these products conform to the responsibilities identified in *Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units* (79 FR 71610, Dec. 2, 2014). Additional discussion of the proposed Addendum may be found in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Comments and recommendations on the proposed Addendum detailed in this notice must be in writing. To ensure consideration of comments, they must be received no later than 45 days from the publication date of this notice. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to send comments electronically via email, or *www.regulations.gov* (discussed in **ADDRESSES** below).

ADDRESSES: Please send any comments or questions about this directive to: Katherine K. Wallman, Chief Statistician, Office of Management and Budget, 1800 G St., 9th Floor, Washington, DC 20503. You may also send comments or questions via email to *Directive_No._4@omb.eop.gov* or to *www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''OMB–2016–0003'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

This document is available on the Internet on the OMB Web site at *www.whitehouse.gov/sites/default/files/omb/inforeg/directive4/frn_comment_stat_policy_dir_4_addendum.pdf.*

FOR FURTHER INFORMATION CONTACT: Jennifer Park, 1800 G St., 9th Floor, Washington, DC 20503, *email address: Directive_No._4@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Nation relies on the flow of accurate, reliable, and independent statistics to support the decisions of governments, businesses, individuals, households, and other organizations. Federal statistical agencies release many of the statistics available about the United States' economy, population, natural resources, environment, and public and private institutions.

Consistent with the *Information Quality Act* (Pub. L. 106–554, Division C, title V, Sec. 515, Dec. 21, 2000; 114 Stat. 2763A–153 to 2763A–154) and in

accordance with *Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units* (79 FR 71610, Dec. 2, 2014), it is the responsibility of Federal agencies engaging in statistical work to support the quality and accessibility of the Federal statistical information our Nation uses to monitor and assess performance, progress, and needs. It is therefore essential that Federal statistical agencies and recognized statistical units systematically evaluate and continuously improve the quality and accessibility of their statistical products.

Systematic review with the aim of continuous improvement is recognized in Federal guidelines provided in *Statistical Policy Directive No. 3: Compilation, Release, and Evaluation of Principal Federal Economic Indicators* (50 FR 38932, Sep. 25, 1985). *Statistical Policy Directive No. 3* requires agencies that issue Principal Federal Economic Indicators (PFEIs) to submit performance evaluations of each PFEI to the Statistical Policy Office every three years. This review ensures that certain key statistical products are prepared and published in conformity with Federal information quality standards as framed in *Statistical Policy Directive No. 1.*

The requirements set forth in *Statistical Policy Directive No. 3* pertain to PFEIs. However, several other Federal statistical products are also foundational to the interests of the public and the needs of the government. These span, for example, the measurement of educational attainment to the measurement of disability. Recognizing this need, OMB issued *Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies* (73 FR 12622, Mar. 7, 2008) to provide detailed guidance to Federal statistical agencies and recognized statistical units regarding the production and dissemination of statistical products other than PFEIs.

Development and Review: Statistical Policy Directive No. 4 remains a robust and comprehensive source of guidance. However, periodic updates and addenda ensure that this Directive remains most useful to Federal agencies.

In November 2014, OMB requested agency and department heads for selected Executive Branch agencies and departments to provide feedback on *Statistical Policy Directive No. 1* through *M–15–03 Department Support for Implementation of Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units.* Responses identified best practices, new challenges, and areas in need of future support. Among the challenges noted was the desire for continuous self-improvement in the timeliness and accessibility of Federal statistical products in an era of modern data needs and information technology. Communicating these findings would support the Federal statistical system broadly in an effort to leverage efficiencies.

In response to this feedback, OMB examined its current guidance. Although similar in many respects to *Statistical Policy Directive No. 3* (pertaining to PFEIs), one provision of *Statistical Policy Directive No. 3* is not currently found in *Statistical Policy Directive No. 4.* Specifically, there is currently no provision in *Statistical Policy Directive No. 4* for systematic agency self-review and reporting of its key statistical products for conformance with OMB information quality and statistical policy requirements. Systematic agency self-review is recognized in *Statistical Policy Directive No. 1* as the cornerstone for continuous improvement of Federal statistical agencies' products and services. Additionally, these self-reviews would allow users to better evaluate the quality of the statistics produced by Federal statistical agencies and recognized statistical units.

Proposed Addendum: For ease of review, this Notice publishes the entirety of *Statistical Policy Directive No. 4;* the proposed Addendum appears here at the end of *Statistical Policy Directive No. 4* in bold font as *Section 10 Performance Review.* This Addendum does not remove nor replace any of the standards and guidelines currently identified in *Statistical Policy Directive No. 4.* Instead, this Addendum is intended to expand on the guidelines as part of the continuing efforts of the Federal statistical system to ensure the relevance, accuracy, and objectivity of Federal statistics. The Addendum would apply to Federal statistical agencies and recognized statistical units as described in *Section 3 Statistical Agencies or Units* of *Statistical Policy Directive No. 4.* Agencies would identify specific, key statistical products to be reviewed, in consultation with OMB.

Issues for Comment: With this Notice, OMB seeks comments from all interested parties on the purpose, scope, and periodicity of the proposed agency reviews and reports on the production and dissemination procedures for key statistical products. In addition, OMB seeks comment from affected agencies on the expected benefits and burdens of the proposed Addendum.

Howard A. Shelanski,

Administrator, Office of Information and Regulatory Affairs.

Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies

Authority and Purpose

This Directive provides guidance to Federal statistical agencies on the release and dissemination of statistical products. The Directive is issued under the authority of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 1104(d)), the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3504(e)), and Office of Management and Budget (OMB) policies including the Information Quality Act guidelines (67 FR 8451–8460) and OMB Circular No. A–130. Under the Information Quality Act (Pub. L. 106–554, Division C, title V, Sec. 515, Dec. 21, 2000; 114 Stat. 2763A–153 to 2763A–154; 44 U.S.C. Section 3516 note) and associated guidelines, agencies are to maximize the quality, objectivity, utility, and integrity of information, including statistical information, provided to the public. This includes making information available on an equitable and timely basis. The procedures in this Directive are intended to ensure that statistical data releases adhere to data quality standards through equitable, policy-neutral, transparent, and timely release of information to the general public.

Introduction

Statistics produced by the Federal Government are used to shape policies, manage and monitor programs, identify problems and opportunities for improvement, track progress, and measure change. These statistics must meet high standards of reliability, accuracy, timeliness, and objectivity in order to provide a sound and efficient basis for decisions and actions by governments, businesses, households, and other organizations. These data must be objective and free of bias in their presentation and available to all in forms that are readily accessible and understandable.

To be collected and used efficiently, statistical products must gain and preserve the trust of the respondent and user communities; data must be collected and distributed free of any perceived or actual partisan intervention. Widespread recognition of the Federal statistical system's policy-neutral data collection and dissemination fosters such trust. This

trust, in turn, engenders greater cooperation from respondents and higher quality statistics for data users.

1. Scope. This Statistical Policy Directive applies to the full range of statistical products disseminated by Federal statistical agencies or units. However, the Directive excludes coverage of the Principal Federal Economic Indicators addressed in Statistical Policy Directive No. 3, Compilation, Release, and Evaluation of Principal Federal Economic Indicators, which have their own established release and evaluation procedures. Unless otherwise specified in statute, statistical agencies or units are directly and solely responsible for the content, quality, and dissemination of their products. When implementing this Directive, statistical agencies must follow all relevant Statistical Policy Directives and guidance including the principles and practices presented in OMB's Information Quality Guidelines and Statistical Policy Directives providing standards and guidelines for statistical surveys.

2. Statistical Products. Statistical products are, generally, information dissemination products that are published or otherwise made available for public use that describe, estimate, forecast, or analyze the characteristics of groups, customarily without identifying the persons, organizations, or individual data observations that comprise such groups. Statistical products include general-purpose tabulations, analyses, projections, forecasts, or other statistical reports. For purposes of this Directive, a ''statistical press release'' is an announcement to media of a statistical product release that contains the title, subject matter, release date, and Internet address of, and other available information about the statistical product, as well as the name of the statistical agency issuing the product, and may include any executive summary information or key findings section as shown in the statistical product. A statistical press release announcing or presenting statistical data is defined as a statistical product and is covered by the provisions of this Directive. Federal statistical agencies or units may issue their statistical products in printed and/or electronic form, but must provide access to them on their Internet sites. Agencies should assess the needs of data users and provide a range of products to address those needs by whatever means practicable. Information to help users interpret data accurately, including transparent descriptions of the sources and methodologies used to produce the data, must be equitably available for Federal statistical products. With the exception of compilations of statistical information collected and assembled from other statistical products, these products shall contain or reference appropriate information on the strengths and limitations of the methodologies, data sources, and data used to produce them as well as other information such as explanations of other related measures to assist users in the appropriate treatment and interpretation of the data.

3. Statistical Agencies or Units. As identified under OMB's implementation guidance (72 FR 33362, 33368, June 15, 2007) for the Confidential Information Protection and Statistical Efficiency Act of 2002 (Pub. L. 107–347, Title V; 116 Stat. 2962; 44 U.S.C. Section 3501 note), a Federal statistical agency is an organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes. Statistical purpose means the description, estimation, or analysis of the characteristics of groups, customarily without identifying the persons, organizations, or individual data observations that comprise such groups, as well as researching, developing, implementing, maintaining, or evaluating methods, administrative or technical procedures, or information resources that support such purposes. A statistical agency or unit may be labeled an administration, bureau, center, division, office, service, or similar title, so long as it is recognized as a distinct entity. When a statistical agency provides services for a separate sponsoring agency on a reimbursable basis, the provisions of this Directive normally shall apply to the sponsoring agency.

4. Timing of Release. The timing of the release of statistical products, including statistical press releases, regardless of physical form or characteristic, shall be the sole responsibility of the statistical agency or unit that is directly responsible for the content, quality, and dissemination of the data. Agencies should minimize the interval between the period to which the data refer and the date when the product is released to the public.

5. Notification of Release. Prior to the beginning of the calendar year, the releasing statistical agency shall annually provide the public with a schedule of when each regular or recurring statistical product is expected to be released during the upcoming calendar year by publishing it on its Web site. Agencies must issue any revisions to the release schedule in a timely manner on their Web sites.

6. Dissemination. Statistical agencies must ensure that all users have equitable and timely access to data that are disseminated to the public. If there are revisions to the data after an initial release, notification must also be given to the public about these changes in an equitable and timely manner. A statistical agency should strive for the widest, most accessible, and appropriate dissemination of its statistical products and ensure transparency in its dissemination practices by providing complete documentation of its dissemination policies on its Web site. The statistical agency is responsible for ensuring that this documentation remains accurate by reviewing and updating it regularly so that it reflects the agency's current dissemination practices. In unusual circumstances, the requirement that all users initially have equitable and timely access to statistical products may be waived by the releasing statistical agency if the head of the agency determines that the value of a particular type of statistical product, such as health or safety information, is so time-sensitive to specific stakeholders that normal procedures to ensure equitable and timely access to all users would unduly delay the release of urgent findings to those to whom the information is critical. All such instances must be reported to OMB within 30 calendar days of the agency's waiver determination.

Agencies should use a variety of vehicles to attain a data dissemination program designed to reach data users in an equitable and timely manner. Federal statistical agencies or units may issue their statistical products in printed and/or electronic form, but must provide access to them on their Internet sites. In undertaking any dissemination of statistical products, agencies must continue to ensure that they have fulfilled their responsibilities to preserve the confidentiality and security of respondent data. When appropriate to facilitate in-depth research, and feasible in the presence of resource constraints, statistical agencies should provide public access to microdata files with secure safeguards to protect the confidentiality of individually-identifiable responses and with readily accessible documentation, metadata, or other means to facilitate user access to and manipulation of the data.

Statistical agencies are encouraged to use a variety of forums and strategies to release their statistical products. These include conferences, exhibits, presentations, workshops, list serves, the Government Printing Office, public

libraries, and outreach to the media including news conferences and statistical press releases as well as media briefings to improve the media's understanding of the data and the quality and extent of media coverage of the statistics.

a. Outreach to the Media

To accelerate and/or expand the dissemination of data to the public, statistical agencies are encouraged to issue a statistical press release when releasing their products. To maintain a clear distinction between statistical data and policy interpretations of such data, the statistical press release must be produced and issued by the statistical agency and must provide a policy-neutral description of the data; it must not include policy pronouncements. To the extent that any policy pronouncements are to be made regarding the data, those pronouncements are to be made by Federal executive policy officials, not by the statistical agency. Accordingly, these policy officials may issue separate independent statements on the data being released by the statistical agency, and policy officials of the issuing department may review the draft statistical press release to ensure that it does not include policy pronouncements.

In cases in which the statistical unit currently relies on its parent agency for the public affairs function, the statistical agency should coordinate with public affairs officials from the parent organization on the dissemination aspects of the statistical press release process, including planning and scheduling of annual release dates.

b. Pre-Release Access to Final Statistical Products

The purpose of pre-release access is to foster improved public understanding of the data when they are first released and the accuracy of any initial commentary about the information contained in the product. To support the goal of maximizing the public's access to informed discussions of the data when they are first released, statistical agencies may provide pre-release access to their final statistical products. A statistical product is final when the releasing statistical agency determines that the product fully meets the agency's data quality standards based on all presently available information and requires no further changes. Pre-release access to final statistical products may be provided under embargo or through secure pre-release access. The releasing statistical agency determines which final statistical products will be made available under these pre-release provisions and which method of pre-release will be employed.

c. Embargo

Embargo means that pre-release access is provided with the explicit acknowledgement of the receiving party that the information cannot be further disseminated or used in any unauthorized manner before a specific date and time.

The statistical agency may grant pre-release access via an embargo under the following conditions:

1. The agency shall establish arrangements and impose conditions on the granting of an embargo that are necessary to ensure that there is no unauthorized dissemination or use.

2. The agency shall ensure that any person or organization granted access under an embargo has been fully informed of, and has acknowledged acceptance of, these conditions.

3. In all cases, pre-release access via an embargo shall precede the official release time only to the extent necessary for an orderly release of the data.

4. If an embargo is broken, the agency must release the data to the public immediately.

d. Secure Pre-Release Access

For some data that are particularly sensitive or move markets, statistical agency heads may choose to provide secure pre-release access. Secure pre-release access means that pre-release access is provided only within the confines of secure physical facilities with no external communications capability. When the head of a releasing statistical agency determines that secure pre-release access is required, the agency shall provide pre-release access to final statistical products only when it uses secure pre-release procedures.

7. Announcement of Changes in Data Series. Statistical agencies shall announce, in an appropriate and accessible manner as far in advance of the change as possible, significant planned changes in data collection, analysis, or estimation methods that may affect the interpretation of their data series. In the first report affected by the change, the agency must include a complete description of the change and its effects and place the description on its Internet site, if the report is not otherwise available there.

8. Revisions and Corrections of Data. For some statistical products, statistical agencies produce preliminary estimates or initial releases that will subsequently be updated and finalized. Whenever preliminary data are released, they must be identified as preliminary and the release must indicate that an updated or final revision is expected. In applicable cases, the expected date of such revisions must be included. Reference to the preliminary release and appropriate explanations of the methodology and reasons for the revisions must be provided or referenced in any updated or final releases.

Consistent with each agency's information quality guidelines, statistical agencies must also establish and implement policies for handling unscheduled corrections due to previously unrecognized errors. Agencies have an obligation to alert users as quickly as possible to any such changes, to explain corrections or revisions that result from any unscheduled corrections, and to make appropriate changes in all product formats—including statistical press releases.

9. Granting of Exceptions. Prior to any action being taken that may be inconsistent with the provisions of this Directive, the head of a releasing statistical agency shall consult with OMB's Administrator for Information and Regulatory Affairs. If the Administrator determines that the action is inconsistent with the provisions of this Directive, the head of the releasing statistical agency may apply for an exception. The Administrator may authorize exceptions to the provisions in sections 4, 5, 6, 7, and 8 of this Directive. Any agency requesting an exception must demonstrate to the satisfaction of the Administrator that the proposed exception is necessary and is consistent with the purposes of this Directive.

Proposed Addendum

10. Performance Review. Each Federal statistical agency shall submit an annual performance review of the production and dissemination of its key statistical products to the Office of Information and Regulatory Affairs. Each agency will identify its key statistical products for review purposes, in consultation with OMB.

The review shall address the following issues:

(a) The accuracy and reliability of the series, *e.g.,* the magnitude and direction of all revisions, the performance of the series relative to established benchmarks, and the proportion and effect of nonresponses or responses received after the publication of preliminary estimates;

(b) the accuracy, completeness, and accessibility of documentation describing the methods used in compiling and revising the product;

(c) the agency's performance in meeting its established release schedule and the prompt release objective of this Directive;

(d) the agency's ability to avoid disclosure prior to the scheduled release time;

(e) any additional issues (such as periodicity, electronic access, etc.) that the Administrator for Information and Regulatory Affairs specifies in writing to the agency at least 6 months in advance of the scheduled submission date.

The evaluation will be reviewed by the Administrator to determine whether the statistical products are prepared and published in conformity with OMB statistical policies, standards, and guidelines. A summary of the year's evaluations and their reviews will be included in the annual report to Congress required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3504(e)).

[FR Doc. 2016–25049 Filed 10–14–16; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Member Inspection of Credit Union Books, Records, and Minutes

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an extension of a previously approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before December 16, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Troy Hillier, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0176.

Title: Member Inspection of Credit Union Books, Records, and Minutes.

Abstract 12 CFR 701.3 establishes the circumstances and conditions under which Federal credit union (FCU) members may inspect and copy the FCU's books, records, and minutes of meetings. The collection of information requirements apply to FCU members seeking inspection and copying of the FCU's records and FCUs that receive such member requests. To obtain access to records, members are required to submit a petition to the FCU, stating a proper purpose for inspection and signed by at least one percent of the members, with a minimum of 20 and a maximum of 500 members. The FCU must permit inspection of relevant records if it receives such a petition.

Because most of the information exchanged under this regulation is between credit unions and their members, NCUA is not made aware of the requests covered under this regulation unless there is a dispute. We assume that instances of formal petitions being filed to request inspection of records is a fairly rare event. For purposes of estimating burden, we assume no more than five such petitions are filed each year.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals and Households and Private Sector: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 10.

Estimated Annual Frequency: 5.

Estimated Annual Number of Responses: 12.

Estimated Total Annual Burden Hours: 380.

This is an extension without changes of a previously approved collection. The adjustments in burden estimates are attributable to the inclusion of FCU members as respondents and the inclusion of costs associated with potential dispute resolution.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

Authority: Public Law 104–13, 44 U.S.C. Chapter 35

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on October 12, 2016.

Dated: October 12, 2016.

Troy S. Hillier,

NCUA PRA Clearance Officer.

[FR Doc. 2016–25035 Filed 10–14–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will be submitting the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 16, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314, Suite 5067, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0098.

Type of Review: Reinstatement of a previously approved collection.

Title: Advertising of Excess Insurance, 12 CFR 740.3.

Abstract: Requirements of 12 CFR 740.3, Advertising of excess insurance, prescribes that federally insured credit unions must disclose in advertising the share or savings account insurance provided by a party other than NCUA.

This disclosure statement must include the identity of the carrier, the type and amount of such insurance and must avoid any statement or implication that the carrier is affiliated with NCUA or the federal government. The disclosure requirements under § 740.3 are necessary to ensure that share account holders are aware that their accounts are insured by carriers other than the NCUA.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 300.

OMB Number: 3133–0130.

Type of Review: Extension of a previously approved collection.

Title: Written Reimbursement Policy.

Abstract: Federal Credit Unions (''FCU'') may reimburse its board members for reasonable and proper costs incurred in conducting their official responsibilities only if the reimbursement is in accordance with the written reimbursement policies and procedures established by the FCU's board of directors. Access to this plan, and documentation related to its implementation is necessary for NCUA examiners to verify compliance with this requirement.

Affected Public: Private sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 1,890.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on October 12, 2016.

Dated: October 12, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–25018 Filed 10–14–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Division Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Ms. Dianne Campbell Krieger at the above address or (703) 292–5194.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Richard Buckius, Chief Operating Officer, Chairperson

Dorothy Aronson, Division Director, Division of Information Systems

Suzanne C. Iacono, Office Head, Office of Integrative Activities

Sylvia M. James, Division Director, Division of Human Resource Development

Denise Caldwell, Division Director, Division of Physics

Brian W. Stone, Chief of Staff, Office of the Director

Joanne Tornow, Head, Office of Information and Resource Management and Chief Human Capital Officer

Dianne Campbell Krieger, Division Director, Division of Human Resource Management and PRE Executive Secretary

Dated: October 3, 2016.

Dianne Campbell Krieger,

Division Director, Division of Human Resource Management.

[FR Doc. 2016–24958 Filed 10–14–16; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the U.S. Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory advisory Committee established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Full Committee Meetings

An agenda will be published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another day of the same meeting. Persons planning to attend the meeting may contact the Designated Federal Officer (DFO) specified in the **Federal Register** notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACRS Full Committee meetings:

(a) Persons who plan to submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting, but wish to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the DFO five days prior to the meeting to allow time for reproduction and distribution.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO; if possible, the request should be made five days before the meeting, identifying the topic(s) on which oral statements will be made and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled

or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the use of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript will be kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, Maryland 20852–2738. A copy of the certified minutes of the meeting will be available at the same location three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges. ACRS meeting agendas, transcripts, and letter reports are available at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from Agencywide Documents Access and Management System (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/agenda/.*

(f) Video teleconferencing service may be available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Specialist, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, chose to conduct its Subcommittee meetings in accordance with the procedures noted above for ACRS Full Committee meetings, as appropriate, to facilitate public participation, and to provide a forum for stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 50 copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated at Rockville, Maryland, this 11th day of October 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–25010 Filed 10–14–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting

DATE: October 17, 24, 31, November 7, 14, 21, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 17, 2016

Tuesday, October 18, 2016

9:30 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Spent Fuel Storage and Transportation Business Lines (Public Meeting) (Contact: Janelle Jessie: 301–415–6775)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, October 20, 2016

9:30 a.m. Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting) (Contact: Donna Williams: 301–415–1322)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 24, 2016—Tentative

Thursday, October 27, 2016

10:00 a.m. Program Review of Part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR part 37) for the Protection of Risk-Significant Quantities of Radioactive Material (Public Meeting) (Contact: George Smith: 301–415–7201)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 31, 2016—Tentative

Friday, November 4, 2016

10:00 a.m. Briefing on Security Issues (Closed Ex. 1)

Week of November 7, 2016—Tentative

There are no meetings scheduled for the week of November 7, 2016.

Week of November 14, 2016—Tentative

There are no meetings scheduled for the week of November 14, 2016.

Week of November 21, 2016—Tentative

There are no meetings scheduled for the week of November 21, 2016.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify

the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: October 12, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–25106 Filed 10–13–16; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF SPECIAL COUNSEL

Senior Executive Service Performance Board

AGENCY: Office of Special Counsel

ACTION: Notice.

SUMMARY: The Office of Special Counsel (OSC) publishes the names of the persons selected to serve on its SES Performance Review Board (PRB). This notice supersedes all previous notices of the PRB membership.

DATES: October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Kenneth Hendricks, Acting General Counsel, U.S. Office of Special Counsel, 1730 M Street NW., Suite 218, Washington, DC 20036, (202) 254–3600

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more PRBs. The PRB shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the final rating authority relative to the performance of the senior executive.

The following individuals have been selected to serve on the OSC's PRB: Bruce Fong, Associate Special Counsel; Bruce Gipe, Chief Operating Officer; Louis Lopez, Associate Special Counsel; Anne Wagner, Associate Special Counsel.

Dated: October 11, 2016

Bruce Gipe,

Chief Operating Officer.

[FR Doc. 2016–24976 Filed 10–14–16; 8:45 am]

BILLING CODE 7405–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79077; File No. SR–FICC–2016–003)

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Describe the Blackout Period Exposure Charge That May Be Imposed on GCF Repo Participants

October 11, 2016.

On July 12, 2016, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2016–003 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on July 21, 2016.[3] The Commission received no comments on the proposed rule change. On August 30, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–78347 (July 15, 2016), 81 FR 47466 (July 21, 2016) (SR–FICC–2016–003) (''Notice'').

[4] Securities Exchange Act Release No. 78720 (August 30, 2016), 81 FR 61271 (September 6, 2016).

I. Description of the Proposed Rule Change

FICC proposes to amend the Government Securities Division (''GSD'') Rulebook (the ''GSD Rules'') [5] to include a margin charge increase (the ''Blackout Period Exposure Charge'' as further described below) that is imposed on Netting Members that participate in the GCF Repo® service (''GCF Repo Participants''). Specifically, the proposed rule change would amend GSD Rule 1 (Definitions) to include certain defined terms and would amend Section 1b of GSD Rule 4 (Clearing Fund and Loss Allocations) to include the Blackout Period Exposure Charge and the manner in which FICC determines and imposes such charge, as described in detail below.[6]

A. GCF Repo Service and the Required Fund Deposit

FICC states that the GCF Repo service enables GCF Repo Participants to trade general collateral repurchase agreements based on rate, term, and underlying product throughout the day, without requiring intraday, trade-for-trade settlement on a delivery-versus-payment basis. On each trading day, GCF Repo Participants must cover their repurchase obligations by allocating collateral to FICC's account at the GCF Repo Participant's GCF Clearing Agent Bank.[7] FICC accepts mortgage-backed securities (''MBS'') securities for such collateral allocations.[8] Additionally, FICC collects Required Fund Deposits from all Netting Members (including GCF Repo Participants) to help protect FICC against losses that could be realized in the event of a Netting Member's default.

The Required Fund Deposit serves as each Netting Member's margin. FICC states that the objective of the Required Fund Deposit is to mitigate potential losses to FICC associated with liquidation of the Netting Member's portfolio in the event that FICC ceases to act for a Netting Member (hereinafter referred to as a ''default''). FICC determines Required Fund Deposit amounts using a risk-based margin methodology.

FICC determines the adequacy of each Netting Member's Required Fund Deposit through daily backtesting. FICC compares each Netting Member's

[5] *Available at http://www.dtcc.com/legal/rules-and-procedures.* Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the GSD Rules.

[6] The description of the proposed rule change herein is based on the statements prepared by FICC in the Notice. Notice, *supra* note 3, 81 FR 47466–47469.

[7] GSD Rule 20 Section 3.

[8] *Id.*

Required Fund Deposit to the simulated liquidation gains and losses based on the positions in the Netting Member's portfolio, including the allocated collateral of GCF Repo Participants, and the historical security returns. FICC investigates the cause(s) of any deficiencies. As a part of this process, FICC pays particular attention to Netting Members with backtesting deficiencies that bring the results for that Netting Member below a 99 percent confidence level (*i.e.,* greater than two deficiency days in a rolling twelve-month period) [9] to determine if there is an identifiable cause of repeat deficiencies. FICC also evaluates whether multiple Netting Members may experience deficiencies for the same underlying reason.

B. MBS and the Blackout Period

FICC only accepts MBS that are issued and guaranteed by U.S. government-sponsored entities (''GSEs''). Because MBS are composed of pools of mortgages, whose principal balances decrease over time because of scheduled and unscheduled payments by mortgagors, MBS notional values decrease over time. Investors in MBS issued by the GSEs are informed of the amount of this reduction in value on a monthly basis when the GSEs release new ''Pool Factors'' for their MBS at the beginning of every month.[10] The period between the last business day of the prior month (''Record Date'') and the date on which the GSE releases its new Pool Factors (''Factor Date'') is known as the ''Blackout Period.'' [11] FICC states that during the Blackout Period, MBS values may be overstated because they do not capture reductions in the principal balances of the MBS as described above.

FICC states that GCF Repo Participants may experience backtesting deficiencies during the Blackout Period if they allocate substantial amounts of MBS collateral to cover their repurchase obligations. Such deficiencies occur because the value of MBS collateral allocated to cover GCF Repo Participants' repurchase obligations may be overstated on the collateral reports delivered to FICC by the GCF Clearing Agent Banks, which rely on the prior month's Pool Factors to value MBS collateral pledged by GCF Repo Participants. FICC states that the Blackout Period Exposure Charge is designed to mitigate the risk posed to FICC by such deficiencies by temporarily increasing such GCF Repo Participants' Required Fund Deposits.

C. Calculation of the Blackout Period Exposure Charge

FICC states that the objective of the Blackout Period Exposure Charge is to increase Required Fund Deposits by an amount sufficient to maintain backtesting coverage above the 99 percent confidence threshold for GCF Repo Participants that are likely to experience backtesting deficiencies on the basis described above. Because the size of the backtesting deficiencies caused by this issue varies among impacted GCF Repo Participants, FICC must assess a Blackout Period Exposure Charge that is specific to each impacted GCF Repo Participant.

FICC examines each impacted GCF Repo Participant's historical backtesting deficiencies to identify the two largest deficiencies that occurred during a rolling 12-month look-back period. FICC then identifies an amount equal to the midpoint between the two largest historical deficiencies for such GCF Repo Participant as the presumptive Blackout Period Exposure Charge amount, subject to adjustment as further described below.[12] FICC identified the midpoint between the two largest historical deficiencies as an amount that is (i) particular to the GCF Repo Participant and its use of MBS collateral, and (ii) which FICC believes provides a reasonable buffer above the historically observed minimum increase necessary to achieve 99 percent coverage.

FICC states that the resulting Blackout Period Exposure Charge is added to the VaR Charge for such GCF Repo Participant pursuant to FICC's risk-based margining methodology, but that the charge is only imposed during the Blackout Period (*i.e.,* until the GCF Repo Participant's GCF Clearing Agent Bank updates the Pool Factors it uses to value MBS collateral).[13] FICC further states that this charge is applicable only to those GCF Repo Participants that have two or more backtesting deficiencies that occurred during the Blackout Period and whose overall 12-month trailing backtesting coverage falls below the 99 percent coverage target.

Although FICC uses the midpoint between the two largest historical Blackout Period deficiencies for a GCF Repo Participant as the Blackout Period Exposure Charge in most cases, FICC retains discretion to adjust the charge based on other relevant circumstances, such as material differences in the two largest deficiencies, variability in a GCF Repo Participant's use of MBS for collateral allocation, and variability in the magnitude of Pool Factor changes for certain categories of MBS. Based on FICC's assessment of the impact of these circumstances on the likelihood of, and estimated size of, future Blackout Period deficiencies for a GCF Repo Participant, FICC may, in its discretion, adjust the Blackout Period Exposure Charge for such Participant to an amount that FICC determines to be more appropriate for maintaining such GCF Repo Participant's backtesting results above the 99 percent coverage threshold (including a reasonable buffer).

D. Communication With GCF Repo Participants and Imposition of the Charge

If FICC determines that a Blackout Period Exposure Charge should apply to a GCF Repo Participant who was not assessed a Blackout Period Exposure Charge during the immediately preceding month or that the Blackout Period Exposure Charge applied to a GCF Repo Participant during the previous month should be increased, FICC will notify the Participant on or around the 25th calendar day of the month. FICC states that the Participant may avoid or decrease the charge by notifying FICC in writing of its intent to remove or reduce its use of MBS in collateral allocations, followed by the actual removal or reduction of MBS collateral allocations, during the Blackout Period. If such Participant elects not to adjust its portfolio (or fails to do so despite such notification to FICC), then FICC will impose a Blackout Period Exposure Charge as determined above.

FICC imposes the Blackout Period Exposure Charge as of the morning Clearing Fund call on the Record Date through and including the intraday

[9] FICC explains that each deficiency reduces backtesting coverage by 0.4 percent (1 exception/250 observation days). Accordingly, three deficiencies in a 12-month period would decrease backtesting coverage to 98.8 percent.

[10] FICC explains that Pool Factors are stated as a percentage amount of the initial aggregate face value of the security that remains unpaid on the underlying mortgage pool. For example, if the face amount of a mortgage-backed security were $100,000 and the stated pool factor were 0.4587, the remaining principal balance in the security to be paid to the investor would be $45,870.

[11] The Factor Date is typically the fourth or fifth business day of each calendar month.

[12] FICC states that although an increase equal to the third largest historical deficiency would suffice to bring the GCF Repo Participant's historically-observed backtesting coverage above the 99 percent target if deficiencies due to Blackout Period exposures were the only deficiencies experienced, such an approach would fail to take into account potential changes in such GCF Repo Participant's MBS collateral pledges or other factors that could contribute to deficiencies during this period.

[13] The GCF Clearing Agent Banks typically have a one-day lag in updating their databases with the most recent Pool Factor information.

Clearing Fund call on the Factor Date, or until the Pool Factors have been updated to reflect the current month's Pool Factors in the GCF Clearing Agent Bank's collateral reports. Thereafter the charge is removed because updated MBS valuations are incorporated into FICC's risk-based margining methodology for the remainder of the month, alleviating the risk of potentially uncovered credit exposures resulting from overvalued MBS collateral during Blackout Period. FICC repeats this process monthly.

If changes in an impacted GCF Repo Participant's MBS collateral pledges over time materially reduce the Blackout Period Exposure Charge calculated pursuant to the procedures described above, FICC may, in its discretion, reduce the Blackout Period Exposure Charge and would so notify the Participant. If an impacted GCF Repo Participant's trailing 12-month backtesting coverage exceeds 99 percent (without taking into account historically-imposed Blackout Period Exposure Charges), the Blackout Period Exposure Charge would be removed.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [14] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [15] and Rules 17Ad–22(b)(1) and (2) thereunder, as discussed below.[16]

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are within the custody or control of the clearing agency.[17] As a central counterparty (''CCP''), FICC is exposed to losses that could arise out of the default of one of its Netting Members, such as a GCF Repo Participant. As explained above, FICC attempts to cover such potential losses through the collection of daily Required Fund Deposits (*i.e.,* margin) from its Netting Members, including GCF Repo Participants. Consequently, failure to accurately calculate Required Fund Deposits could expose FICC to losses in excess of the margin collected and, thus, jeopardize the securities and funds in FICC's custody or control.

As described above, FICC determined that the Required Fund Deposits collected from GCF Repo Participants during monthly Blackout Periods may not accurately reflect decreases in the value of MBS underlying the GCF Repo transactions and, therefore, the Required Fund Deposits collected may be inadequate to cover the losses that could arise if a GCF Repo Participant defaulted. The Blackout Period Exposure Charge is specifically designed to address that risk. The charge is sized based on certain backtesting deficiencies of GCF Repo Participants. Where FICC identifies deficiencies related to the use of MBS underlying GCF Repo transactions, the Blackout Period Exposure Charge may be applied and, in turn, FICC would collect more margin. Therefore, the proposed rule change enhances the safeguarding of securities and funds that are in the custody or control of FICC, consistent with Section 17(b)(3)(F) of the Act.

Rule 17Ad–22(b)(1) requires a clearing agency that performs CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions, so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.[18] FICC's Blackout Period Exposure Charge is calculated and imposed to cover potential credit exposures to certain GCF Repo Participants during monthly Blackout Periods, under normal market conditions.[19] As described above, FICC estimates the Blackout Period Exposure Charge based on a GCF Repo Participant's backtesting results. Specifically, FICC calculates the Blackout Period Exposure Charge as the midpoint between a GCF Participant's two largest deficiencies over the past twelve months, which, as designed, incorporates a buffer to help ensure that FICC maintain margin coverage at or above the 99 percent confidence threshold during monthly Blackout Periods. Therefore, because the proposed rule change will help FICC limit its potential losses from the default of certain GCF Repo Participants during monthly Blackout Periods, under normal market conditions, the proposed rule change is consistent with Rule 17Ad–22(b)(1).

Rule 17Ad–22(b)(2) requires a clearing agency that performs CCP services to maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements.[20] As described above, FICC limits its exposure to Netting Members, including GCF Participants, by collecting margin (*i.e.,* Required Fund Deposit), which is sized using a risk-based margin methodology. The Blackout Period Exposure Charge is a component of a GCF Repo Participant's daily Required Fund Deposit and is sized based on the GCF Repo Participant's backtesting deficiencies, as described above. The charge is designed to address the potential increased exposure that FICC may face if the MBS collateral underlying a GCF Repo Participant's transactions decreases during a monthly Blackout Period, under normal market conditions. Therefore, because the proposed rule change will help FICC limit its exposure to GCG Repo Participants during monthly Blackout Periods, under normal market conditions, by collecting more margin, as needed, the proposed rule change is consistent with Rule 17Ad–22(b)(2) under the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly those set forth in Section 17A,[21] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–FICC–2016–003) be, and hereby is, APPROVED.[23]

[14] 15 U.S.C. 78s(b)(2)(C).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(b)(1)–(2).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(b)(1).

[19] As used in Rule 17Ad–22(b)(1), normal market conditions are conditions in which the expected movement of the price of cleared securities would produce changes in a clearing agency's exposures to its participants that would be expected to breach margin requirements or other risk control mechanisms only one percent of the time (*i.e.,* a 99 percent confidence threshold). 17 CFR 240.17Ad–22(a)(4).

[20] 17 CFR 240.17Ad–22(b)(2).

[21] 15 U.S.C. 78q–1.

[22] 15 U.S.C. 78s(b)(2).

[23] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24982 Filed 10–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79081; File No. SR–NASDAQ–2016–135]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend the Continued Listing Requirements for Exchange-Traded Products

October 11, 2016

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the continued listing requirements for exchange-traded products (''ETPs'') in the Nasdaq Rule 5700 Series, as well as a related amendment to Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department). The Exchange is also making housekeeping changes throughout the Nasdaq Rule 5700 Series and in Nasdaq Rule 5810 for improved clarity.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the listing rules for ETPs in the Nasdaq Rule 5700 Series (Other Securities) to add additional continued listing standards as well as a related amendment to Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department). The Exchange is also making housekeeping changes throughout the Nasdaq Rule 5700 Series and in Nasdaq Rule 5810 (*e.g.,* punctuation, formatting, capitalization and renumbering) for improved clarity.

The proposed rule changes are being made in concert with discussions with the SEC. Citing their concern for potential manipulation of ETPs, staff (''Staff'') of the SEC's Office of Trading and Markets (''T&M'') requested that the Exchange adopt certain additional continued listing standards for ETPs.

As a result, the proposed amended rules reflect the guidance provided by T&M Staff to clarify that most initial listing standards, as well as certain representations included in Exchange rule filings under SEC Rule 19b–4[3] to list an ETP (''Exchange Rule Filings''), are also considered continued listing standards. The Exchange Rule Filing representations that will also be required to be maintained on a continuous basis include: (a) The description of the fund; (b) the fund's investment restrictions; and (c) the applicability of Nasdaq rules and surveillance procedures.

The proposed rule changes require that ETPs listed by the Exchange without an Exchange Rule Filing must maintain the initial index or reference asset criteria on a continued basis. For example, in the case of a domestic equity index, these criteria generally include: (a) Stocks with 90% of the weight of the index must have a minimum market value of at least $75 million; (b) stocks with 70% of the weight of the index must have a minimum monthly trading volume of at least 250,000 shares; (c) the most heavily weighted component cannot exceed 30% of the weight of the index, and the five most heavily weighted stocks cannot exceed 65%; (d) there must be at least 13 stocks in the index; and (e) all securities in the index must be listed in the U.S. There are similar criteria for international indexes, fixed-income indexes and indexes with a combination of components.

If an Exchange Rule Filing is made to list a specific ETP, the proposed rule change requires that the issuer of the security comply on a continuing basis with any statements or representations contained in the applicable rule proposal, including: (a) The description of the portfolio; (b) limitations on portfolio holdings or reference assets; and (c) the applicability of Nasdaq rules and surveillance procedures.

The Nasdaq listing rules will also be modified to require that issuers of securities listed under the Nasdaq Rule 5700 Series must notify the Exchange regarding instances of non-compliance. In addition, while listed ETPs are currently subject to the delisting process in the Rule 5800 Series, the rules will be clarified to make this explicit.[4] The Rule 5800 Series will also be clarified to make explicit that in cases where Listing Qualifications staff has notified an ETP that it is deficient under one or more listing standards, the ETP may submit a plan to regain compliance as set forth under the Listing Rules. In this regard, consistent with deficiencies from most other rules that allow issuers to submit a plan to regain compliance,[5] Nasdaq proposes to allow issuers of ETPs 45 calendar days to submit such a plan. Nasdaq staff will review the plan and may grant a limited period of time for the ETP to regain compliance as permitted under the Listing Rules. If Nasdaq staff does not accept the plan, Nasdaq staff would issue a Delisting Determination, which the company could appeal to a Hearings Panel pursuant to Rule 5815.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4.

[4] ETPs are also subject to Nasdaq Rule 4120, which governs trading halts.

[5] Pursuant to Rule 5810(c)(2)(A), a company is provided 45 days to submit a plan to regain compliance with Rules 5620(c) (Quorum), 5630 (Review of Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), and 5640 (Voting Rights). A company is generally provided 60 days to submit a plan to regain compliance with the requirement to timely file periodic reports contained in Rule 5250(c)(1).

of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The proposed rule changes accomplish these objectives by enhancing the current continued listing standards by clarifying that most initial listing standards, as well as certain representations included in Exchange Rule Filings to list an ETP, are considered continued listing standards. Additionally, the Nasdaq listing rules will be modified to require that issuers of securities listed under the Nasdaq Rule 5700 Series must notify the Exchange regarding instances of non-compliance and to clarify that deficiencies will be subject to potential trade halts and the delisting process in the Rule 5800 Series. The Exchange believes that these amendments will enhance the Nasdaq listing rules, thereby serving to improve the national market system and protect investors and the public interest.

The Exchange does not believe that the housekeeping changes have any impact on the reasonable and equitable and not unfairly discriminatory nature of the proposal.

For these reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposed rule change to amend the listing rules for ETPs in the Nasdaq Rule 5700 Series and the notification requirement in Rule 5810 will have no impact on competition. Furthermore, since T&M Staff has provided the same guidance regarding ETP continued listing requirements to all exchanges, the Exchange believes that there will be no effect on competition.

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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–135 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–135. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–135 and should be submitted on or before November 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24979 Filed 10–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79082; File No. SR–NASDAQ–2016–134]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To List and Trade Exchange-Traded Managed Funds

October 11, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under Nasdaq Rule 5745 (Exchange-Traded Managed Fund Shares (''NextShares'')) the common shares (''Shares'') of the exchange-traded managed funds described herein (each, a ''Fund,'' and collectively, the ''Funds'').[3]

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Except for the specific Fund information set forth below, this rule filing conforms to the rule filing, as modified by amendments 1 and 2 thereto, relating to the listing and trading on Nasdaq of the shares of 18 series of the Eaton Vance ETMF Trust

Continued

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 list and trade the Shares of each Fund under Nasdaq Rule 5745, which governs the listing and trading of exchange-traded managed fund shares or NextShares, as defined in Nasdaq Rule 5745(c)(1), on the Exchange.[4] Each Fund listed below is registered with the Commission as an open-end investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission. Each Fund is a series of the Trust listed below and will be advised by an investment adviser registered under the Investment Advisers Act of 1940 (''Adviser''), as described below. Each Fund will be actively managed and will pursue various principal investment strategies, as noted below.[5]

1. Gabelli NextShares™ Trust

Gabelli NextShares™ Trust (the ''Trust'') is registered with the Commission as an open-end investment company and has filed a Registration Statement with the Commission.[6] Each of the following Funds is a series of the Trust.[7]

Gabelli Funds, LLC will be the Adviser to the Funds. The Adviser is not a registered broker-dealer, although it is affiliated with a broker-dealer. Gabelli Funds, LLC will also act as administrator to the Funds. The Adviser has implemented a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to each Fund's portfolio. In the future event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the relevant Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. G.distributors, LLC, will be the principal underwriter and distributor of each Fund's Shares. BNY Mellon Investment Servicing (US) Inc. will act as the custodian, transfer agent, and sub-administrator to the Funds. Interactive Data Pricing and Reference Data, Inc. will be the intraday indicative value (''IIV'') calculator to the Funds.

Each Fund will be actively managed and will pursue the various principal investment strategies described below.[8]

a. Gabelli ESG NextShares™ (the ''Gabelli ESG Fund'')

The Gabelli ESG Fund seeks to provide capital appreciation. The Gabelli ESG Fund seeks to achieve its objective by investing substantially all, and in any case no less than 80%, of its net assets plus borrowings for investment purposes in common and preferred stocks of companies that meet the Gabelli ESG Fund's guidelines for social responsibility at the time of investment. Pursuant to its social responsibility guidelines, the Gabelli ESG Fund will not invest in publicly traded fossil fuel (coal, oil, and gas) companies, the top 50 defense/weapons contractors, or in companies that derive more than 5% of their revenues from the following areas: Tobacco, alcohol, gaming, defense/weapons production, and companies involved in the manufacture of abortion related products.

b. Gabelli All Cap NextShares™ (the ''Gabelli All Cap Fund'')

The Gabelli All Cap Fund primarily seeks to provide capital appreciation. The Gabelli All Cap Fund's secondary goal is current income. Under normal market conditions, the Gabelli All Cap Fund invests at least 80% of its net assets plus borrowings for investment purposes in stocks that are listed on a recognized securities exchange or similar market. The Gabelli All Cap Fund may also invest in common and preferred securities of foreign issuers.

c. Gabelli Equity Income NextShares™ (the ''Gabelli Equity Income Fund'')

The Gabelli Equity Income Fund seeks a high level of total return on its assets with an emphasis on income. The Gabelli Equity Income Fund will seek to achieve its investment objective through a combination of capital appreciation and current income by investing, under normal market conditions, at least 80% of its net assets plus borrowings for investment purposes in income producing equity securities. Income producing equity securities include, for example, common stock and preferred stock.

d. Gabelli Small and Mid Cap Value NextShares™ (the ''Gabelli Small and Mid Cap Value Fund'')

The Gabelli Small and Mid Cap Value Fund seeks long-term capital growth. Under normal market conditions, the Gabelli Small and Mid Cap Value Fund invests at least 80% of its net assets plus borrowings for investment purposes (''80% Policy'') in equity securities (such as common stock and preferred stock) of companies with small or medium-sized market capitalizations (''small cap'' and ''mid cap'' companies, respectively). A company's market capitalization is generally calculated by multiplying the number of a company's shares outstanding by its stock price. The Gabelli Small and Mid Cap Value Fund defines ''small cap companies'' as those with a market capitalization generally less than $3 billion at the time of investment and ''mid cap companies'' as those with a market capitalization between $3 billion and $12 billion at the time of investment. Subject to its 80% Policy, the Gabelli Small and Mid Cap Value Fund may invest in equity securities of companies of any market capitalization. In addition, the Gabelli Small and Mid Cap Value Fund may invest up to 25% of its total assets in securities of issuers in a single industry.

and the Eaton Vance ETMF Trust II, as approved by the Commission in Securities Exchange Act Release No. 75499 (July 21, 2015), 80 FR 44406 (July 21, 2015) (SR–NASDAQ–2015–036).

[4] The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR–NASDAQ–014–020) [sic].

[5] Additional information regarding the Funds will be available on the free public Web site for the Funds and in the Registration Statements for the Funds.

[6] *See* Registration Statement on Form N–1A for the Trust dated June 6, 2016 (File Nos. 333–211881 and 811–23160). The descriptions of the Funds and the Shares contained herein conform to the Registration Statement.

[7] The Commission has issued an order granting the Trust and certain affiliates exemptive relief under the Investment Company Act. *See* Investment Company Act Release No. 31608 (May 19, 2015) (File No. 812–14438).

[8] Additional information regarding the Funds will be available on a free public Web site for the Funds (*www.gabelli.com* or *www.nextshares.com.*) and in the Registration Statement for the Funds.

e. Gabelli Media Mogul NextShares™ (the ''Gabelli Media Mogul Fund'')

The Gabelli Media Mogul Fund seeks to provide capital appreciation. Under normal market conditions, the Fund invests at least 80% of net assets plus borrowings for investment purposes in companies that were spun-off from or that are tracking stocks issued by Liberty Media Corporation, as well as in companies that resulted from subsequent mergers of any such spin-offs or stocks that track performance of companies that resulted from subsequent mergers of any such spin-offs or tracking stocks, and in public companies in which Liberty Media Corporation and its successor companies invest. The current investable universe includes approximately 28 U.S. and non-U.S. listed companies in the telecommunications, media, publishing, and entertainment industries.

Creations and Redemptions of Shares

Shares will be issued and redeemed on a daily basis for each Fund at the next-determined net asset value (''NAV'')[9] in specified blocks of Shares called ''Creation Units.'' A Creation Unit will consist of at least 25,000 Shares. Creation Units may be purchased and redeemed by or through ''Authorized Participants.''[10] Purchases and sales of Shares in amounts less than a Creation Unit may be effected only in the secondary market, as described below, and not directly with a Fund.

The creation and redemption process for Funds may be effected ''in kind,'' in cash, or in a combination of securities and cash. Creation ''in kind'' means that an Authorized Participant—usually a brokerage house or large institutional investor—purchases the Creation Unit with a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit. When an Authorized Participant redeems a Creation Unit in kind, it receives a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit.[11]

Composition File

As defined in Nasdaq Rule 5745(c)(3), the Composition File is the specified portfolio of securities and/or cash that a Fund will accept as a deposit in issuing a Creation Unit of Shares, and the specified portfolio of securities and/or cash that a Fund will deliver in a redemption of a Creation Unit of Shares. The Composition File will be disseminated through the NSCC once each business day before the open of trading in Shares on such day and also will be made available to the public each day on a free Web site. Because the Funds seek to preserve the confidentiality of their current portfolio trading program, a Fund's Composition File generally will not be a pro rata reflection of the Fund's investment positions. Each security included in the Composition File will be a current holding of the Fund, but the Composition File generally will not include all of the securities in the Fund's portfolio or match the weightings of the included securities in the portfolio. Securities that the Adviser is in the process of acquiring for a Fund generally will not be represented in the Fund's Composition File until their purchase has been completed. Similarly, securities that are held in a Fund's portfolio but in the process of being sold may not be removed from its Composition File until the sale program is substantially completed. Funds creating and redeeming Shares in kind will use cash amounts to supplement the in-kind transactions to the extent necessary to ensure that Creation Units are purchased and redeemed at NAV. The Composition File also may consist entirely of cash, in which case it will not include any of the securities in the Fund's portfolio.[12]

Transaction Fees

All persons purchasing or redeeming Creation Units of a Fund are expected to incur a transaction fee to cover the estimated cost to that Fund of processing the transaction, including the costs of clearance and settlement charged to it by NSCC or DTC, and the estimated trading costs (*i.e.,* brokerage commissions, bid-ask spread, and market impact) to be incurred in converting the Composition File to or from the desired portfolio holdings. The transaction fee is determined daily and will be limited to amounts determined by the Adviser to be appropriate to defray the expenses that a Fund incurs in connection with the purchase or redemption of Creation Units. The purpose of transaction fees is to protect a Fund's existing shareholders from the dilutive costs associated with the purchase and redemption of Creation Units. Transaction fees will differ among Funds and may vary over time for a given Fund depending on the estimated trading costs for its portfolio positions and Composition File, processing costs and other considerations. Funds that specify greater amounts of cash in their Composition File may impose higher transaction fees. In addition, Funds that include in their Composition File instruments that clear through DTC may impose higher transaction fees than Funds with a Composition File that consists solely of instruments that clear through NSCC, because DTC may charge more than NSCC in connection with Creation Unit transactions.[13] The transaction fees applicable to each Fund's purchases and redemptions on a given business day will be disseminated through the NSCC prior to the open of market trading on that day and also will be made available to the public each day on a free Web site. In all cases, the transaction fees will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

[9] As with other registered open-end investment companies, NAV generally will be calculated daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, normally 4:00 p.m. Eastern Time. NAV will be calculated by dividing a Fund's net asset value by the number of Shares outstanding. Information regarding the valuation of investments in calculating a Fund's NAV will be contained in the Registration Statement for its Shares.

[10] ''Authorized Participants'' will be either: (1) ''Participating parties,'' *i.e.,* brokers or other participants in the Continuous Net Settlement System (''CNS System'') of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (2) DTC participants, which in either case have executed participant agreements with the Fund's distributor and transfer agent regarding the creation and redemption of Creation Units. Investors will not have to be Authorized Participants in order to transact in Creation Units, but must place an order through and make appropriate arrangements with an Authorized Participant for such transactions.

[11] In compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, each Fund's application for exemptive relief under the Investment Company Act states that the Fund must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933, as amended (15 U.S.C. 77a) (''Securities Act'').

[12] In determining whether a Fund will issue or redeem Creation Units entirely on a cash basis, the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution for a Fund than Authorized Participants because of the Adviser's size, experience and potentially stronger relationships in the fixed-income markets.

[13] Authorized Participants that participate in the CNS System of the NSCC are expected to be able to use the enhanced NSCC/CNS process for effecting in-kind purchases and redemptions of ETFs (the ''NSCC Process'') to purchase and redeem Creation Units of Funds that limit the composition of their baskets to include only NSCC Process-eligible instruments (generally domestic equity securities and cash). Because the NSCC Process is generally more efficient than the DTC clearing process, NSCC is likely to charge a Fund less than DTC to settle purchases and redemptions of Creation Units.

NAV-Based Trading

Because Shares will be listed and traded on the Exchange, Shares will be available for purchase and sale on an intraday basis. Shares will be purchased and sold in the secondary market at prices directly linked to a Fund's next-determined NAV using a new trading protocol called ''NAV-Based Trading.'' [14] All bids, offers and execution prices of Shares will be expressed as a premium/discount (which may be zero) to the Fund's next-determined NAV (*e.g.,* NAV − $0.01, NAV+$0.01). A Fund's NAV will be determined each business day, normally as of 4:00 p.m. Eastern Time. Trade executions will be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of NAV.

Trading Premiums and Discounts

Bid and offer prices for Shares will be quoted throughout the day relative to NAV. The premium or discount to NAV at which Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for Shares among investors, transaction fees and other costs in connection with creating and redeeming Creation Units of Shares, the cost and availability of borrowing Shares, competition among market makers, the Share inventory positions and inventory strategies of market makers, the profitability requirements and business objectives of market makers, and the volume of Share trading. Reflecting such market factors, prices for Shares in the secondary market may be above, at or below NAV. Funds with higher transaction fees may trade at wider premiums or discounts to NAV than other Funds with lower transaction fees, reflecting the added costs to market makers of managing their Share inventory positions through purchases and redemptions of Creation Units.

Because making markets in Shares will be simple to manage and low risk, competition among market makers seeking to earn reliable, low-risk profits should enable the Shares to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV. As noted below, each Fund will maintain a public Web site that will be updated on a daily basis to show current and historical trading spreads and premiums/discounts of Shares trading in the secondary market.

Transmitting and Processing Orders

Member firms will utilize certain existing order types and interfaces to transmit Share bids and offers to Nasdaq, which will process Share trades like trades in shares of other listed securities.[15] In the systems used to transmit and process transactions in Shares, a Fund's next-determined NAV will be represented by a proxy price (*e.g.,* 100.00) and a premium/discount of a stated amount to the next-determined NAV to be represented by the same increment/decrement from the proxy price used to denote NAV (*e.g.,* NAV − $0.01 would be represented as 99.99; NAV+$0.01 as 100.01).

To avoid potential investor confusion, Nasdaq will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers and execution prices of Shares that are made available to the investing public follow the ''NAV − $0.01/NAV+$0.01'' (or similar) display format. All Shares listed on the Exchange will have a unique identifier associated with their ticker symbols, which would indicate that the Shares are traded using NAV-Based Trading. Nasdaq makes available to member firms and market data services certain proprietary data feeds that are designed to supplement the market information disseminated through the consolidated tape (''Consolidated Tape''). Specifically, the Exchange will use the NASDAQ Basic and NASDAQ Last Sale data feeds to disseminate intraday price and quote data for Shares in real time in the ''NAV − $0.01/NAV+$0.01'' (or similar) display format. Member firms could use the NASDAQ Basic and NASDAQ Last Sale data feeds to source intraday Share prices for presentation to the investing public in the ''NAV − $0.01/NAV+$0.01'' (or similar) display format. Alternatively, member firms could source intraday Share prices in proxy price format from the Consolidated Tape and other Nasdaq data feeds (*e.g.,* Nasdaq TotalView and Nasdaq Level 2) and use a simple algorithm to convert prices into the ''NAV − $0.01/NAV+$0.01'' (or similar) display format. As noted below, prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the identities of the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

Intraday Reporting of Quotes and Trades

All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape [16] and separately disseminated to member firms and market data services through the Exchange data feeds listed above. The Exchange will also provide the member firms participating in each Share trade with a contemporaneous notice of trade execution, indicating the number of Shares bought or sold and the executed premium/discount to NAV.[17]

Final Trade Pricing, Reporting and Settlement

All executed Share trades will be recorded and stored intraday by Nasdaq to await the calculation of such Fund's end-of-day NAV and the determination of final trade pricing. After a Fund's NAV is calculated and provided to the Exchange, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.[18] After the pricing is finalized, Nasdaq will deliver the Share trading data to NSCC for clearance and settlement, following the same processes used for the clearance

[14] Aspects of NAV-Based Trading are protected intellectual property subject to issued and pending U.S. patents held by NextShares Solutions LLC (''NextShares Solutions''), a wholly owned subsidiary of Eaton Vance Corp. Nasdaq will enter into a license agreement with NextShares Solutions to allow for NAV-Based Trading on the Exchange of exchange-traded managed funds that have themselves entered into license agreements with NextShares Solutions.

[15] As noted below, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the effect of this characteristic on existing order types.

[16] Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for Shares using a proxy price format. As noted, Nasdaq will separately report real-time execution prices and quotes to member firms and providers of market data services in the ''NAV − $0.01/NAV+$0.01'' (or similar) display format, and otherwise seek to ensure that representations of intraday bids, offers and execution prices for Shares that are made available to the investing public follow the same display format.

[17] All orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day.

[18] File Transfer Protocol (''FTP'') is a standard network protocol used to transfer computer files on the Internet. Nasdaq will arrange for the daily dissemination of an FTP file with executed Share trades to member firms and market data services.

and settlement of trades in other exchange-traded securities.

Availability of Information

Prior to the commencement of market trading in Shares, each Fund will be required to establish and maintain a public Web site through which its current prospectus may be downloaded. The Web site will include additional Fund information updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average and closing prices of Shares in Exchange trading; (b) the midpoint of the highest bid and lowest offer prices as of the close of Exchange trading, expressed as a premium/discount to NAV (the ''Closing Bid/Ask Midpoint''); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading (the ''Closing Bid/Ask Spread.''). The Web site will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints and Closing Bid/Ask Spreads over time.

The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free Web site as noted above. Consistent with the disclosure requirements that apply to traditional open-end investment companies, a complete list of current Fund portfolio positions will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

Reports of Share transactions will be disseminated to the market and delivered to the member firms participating in the trade contemporaneous with execution. Once a Fund's daily NAV has been calculated and disseminated, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.

Information regarding NAV-based trading prices, best bids and offers for Shares, and volume of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services.

Initial and Continued Listing

Shares will conform to the initial and continued listing criteria as set forth under Nasdaq Rule 5745. A minimum of 50,000 Shares and no less than two Creation Units of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily (on each business day that the New York Stock Exchange is open for trading) and provided to Nasdaq via the Mutual Fund Quotation Service (''MFQS'') by the fund accounting agent. As soon as the NAV is entered into MFQS, Nasdaq will disseminate the value to market participants and market data vendors via the Mutual Fund Dissemination Service (''MFDS'') so all firms will receive the NAV per share at the same time. The Reporting Authority [19] also will ensure that the Composition File will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's portfolio positions and changes in the positions.

For each Fund, an estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the ''Intraday Indicative Value,'' will be calculated and disseminated at intervals of not more than 15 minutes throughout the Regular Market Session [20] when Shares trade on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated on an intraday basis and provided to Nasdaq for dissemination via the Nasdaq Global Index Service (''GIDS'').

The IIV will be based on current information regarding the value of the securities and other assets held by a Fund.[21] The purpose of the IIVs is to enable investors to estimate the next-determined NAV so they can determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount (*e.g.,* if an investor wants to acquire approximately $5,000 of a Fund, how many Shares should the investor buy?).[22]

If the Adviser is a registered broker-dealer or affiliated with a broker-dealer, the Adviser has implemented a fire wall with respect to its relevant broker-dealer personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to each Fund's portfolio. In the future event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the relevant Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Trading Halts

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Shares. Nasdaq will halt trading in Shares under the conditions specified in Nasdaq Rule 4120 and in Nasdaq Rule 5745(d)(2)(C). Additionally, Nasdaq may cease trading Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. To manage the risk of a non-regulatory Share trading halt, Nasdaq has in place back-up processes and procedures to ensure orderly trading. Because, in NAV-Based Trading, all trade execution prices are linked to end-of-day NAV, buyers and sellers of Shares should be less exposed to risk of loss due to intraday trading halts than buyers and sellers of conventional exchange-traded funds (''ETFs'') and other exchange-traded securities.

Trading Rule

Nasdaq deems Shares to be equity securities, thus rendering trading in

[19] *See* Nasdaq Rule 5745(c)(4).

[20] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

[21] IIVs disseminated throughout each trading day would be based on the same portfolio as used to calculate that day's NAV. Funds will reflect purchases and sales of portfolio positions in their NAV the next business day after trades are executed.

[22] Because, in NAV-Based Trading, prices of executed trades are not determined until the reference NAV is calculated, buyers and sellers of Shares during the trading day will not know the final value of their purchases and sales until the end of the trading day. A Fund's Registration Statement, Web site and any advertising or marketing materials will include prominent disclosure of this fact. Although IIVs may provide useful estimates of the value of intraday trades, they cannot be used to calculate with precision the dollar value of the Shares to be bought or sold.

Shares to be subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in Shares from 9:30 a.m. until 4:00 p.m. Eastern Time.

Every order to trade Shares of the Funds is subject to the proxy price protection threshold of plus/minus $1.00, which determines the lower and upper threshold for the life of the order and whereby the order will be cancelled at any point if it exceeds $101.00 or falls below $99.00, the established thresholds.[23] With certain exceptions, each order also must contain the applicable order attributes, including routing instructions and time-in-force information, as described in Nasdaq Rule 4703.[24]

Surveillance

The Exchange represents that trading in Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority, Inc. (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[25] The Exchange represents that these procedures are adequate to properly monitor trading of Shares on the Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG'')[26] regarding trading in Shares, and in exchange-traded securities and instruments held by the Funds (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund's portfolio holdings), and FINRA may obtain trading information regarding such trading from other markets and other entities. In addition, the Exchange may obtain information regarding trading in Shares, and in exchange-traded securities and instruments held by the Funds (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund's portfolio holdings), from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material non-public information by its employees.

Information Circular

Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and noting that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Shares to customers; (3) how information regarding the IIV and Composition File is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing Shares prior to or concurrently with the confirmation of a transaction; and (5) information regarding NAV-Based Trading protocols.

As noted above, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. The Information Circular will discuss the effect of this characteristic on existing order types. The Information Circular also will identify the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. Members purchasing Shares from a Fund for resale to investors will deliver a summary prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

The Information Circular also will reference that the Funds are subject to various fees and expenses described in the Registration Statements. The Information Circular will also disclose the trading hours of the Shares and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares will be publicly available on the Fund's Web site.

Information regarding Fund trading protocols will be disseminated to Nasdaq members in accordance with current processes for newly listed products. Nasdaq intends to provide its members with a detailed explanation of NAV-Based Trading through a Trading Alert issued prior to the commencement of trading in Shares on the Exchange.

All statements and representations made in this filing regarding (a) the description of the Funds' portfolios, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Funds on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by any Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Nasdaq Rule 5800, *et. seq.*

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act[27] in general, and Section 6(b)(5) of the Act[28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would be listed and traded on the Exchange pursuant to the initial and

[23] *See* Nasdaq Rule 5745(h).

[24] *See* Nasdaq Rule 5745(b)(6).

[25] FINRA provides surveillance of trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[26] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of a Fund's portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

continued listing criteria in Nasdaq Rule 5745. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on Nasdaq and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the Adviser is a registered broker-dealer or affiliated with a broker-dealer, the Adviser has implemented a ''fire wall'' between the Adviser and the relevant broker-dealer personnel or broker-dealer affiliate with respect to access to information concerning the composition and/or changes to the Funds' portfolio holdings. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement, to the extent necessary.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange will obtain a representation from each issuer of Shares that the NAV per Share will be calculated on each business day that the New York Stock Exchange is open for trading and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information would be publicly available regarding the Funds and the Shares, thereby promoting market transparency.

Prior to the commencement of market trading in Shares, the Funds will be required to establish and maintain a public Web site through which its current prospectus may be downloaded. The Web site will display additional Fund information updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average and closing prices of Shares in Exchange trading; (b) the Closing Bid/Ask Midpoint; and (c) the Closing Bid/Ask Spread. The Web site will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints, and Closing Bid/Ask Spreads over time. The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free Web site. The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated and disseminated on an intraday basis at intervals of not more than 15 minutes during trading on the Exchange and provided to Nasdaq for dissemination via GIDS. A complete list of current portfolio positions for the Funds will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

Transactions in Shares will be reported to the Consolidated Tape at the time of execution in proxy price format and will be disseminated to member firms and market data services through Nasdaq's trading service and market data interfaces, as defined above. Once each Fund's daily NAV has been calculated and the final price of its intraday Share trades has been determined, Nasdaq will deliver a confirmation with final pricing to the transacting parties. At the end of the day, Nasdaq will also post a newly created FTP file with the final transaction data for the trading and market data services. The Exchange expects that information regarding NAV-based trading prices and volumes of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services. Because Shares will trade at prices based on the next-determined NAV, investors will be able to buy and sell individual Shares at a known premium or discount to NAV that they can limit by transacting limit orders at the time of order entry. Trading in Shares will be subject to Nasdaq Rules 5745(d)(2)(B) and (C), which provide for the suspension of trading or trading halts under certain circumstances, including if, in the view of the Exchange, trading in Shares becomes inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of the Funds, which seek to provide investors with access to a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure to ensure a tight relationship between market trading prices and NAV.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the introduction of the Funds would promote competition by making available to investors a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure to ensure a tight relationship between market trading prices and NAV. Moreover, the Exchange believes that the proposed method of Share trading would provide investors with transparency of trading costs, and the ability to control trading costs using limit orders, that is not available for conventionally traded ETFs.

These developments could significantly enhance competition to the benefit of the markets and investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–134 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–134. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–134 and should be submitted on or before November 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24978 Filed 10–14–16; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79080; File No. SR–Phlx–2016–100]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change To Amend the Pricing Schedule at Section IV, Part B titled ''Flex Transaction Fees''

October 11, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2016, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Pricing Schedule at Section IV, Part B titled ''Flex Transaction Fees'' to permit FLEX[3] options to trade as strategies for purposes Section II Strategy Cap pricing.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section IV, Part B, related to FLEX pricing, to permit Multiply Listed FLEX options to be eligible for the Section II Strategy Caps.[4] The Section II Strategy Fee cap generally applies to all strategy executions executed in standard option contracts (as opposed to Mini Option contracts) on the same trading day in the same option class.[5] Today, Multiply Listed FLEX options are excluded from Strategy Caps. The proposal is designed to compete with other markets that apply similar fee caps but that do not exclude Multiply Listed FLEX option transactions from Strategy Fee Caps.[6] FLEX options are only executed on the Exchange's trading floor and are not executed electronically on the Exchange.

Today, Customers are not assessed a fee for Multiply Listed FLEX options and Non-Customers are assessed a $0.25 per contract fee for Multiply Listed FLEX options. Further, the Monthly Firm Fee Cap, Monthly Market Maker Cap, and the Options Surcharge in BKX, MNX and NDX described in Section II apply to Multiply Listed FLEX options. No other fees described in Section II apply to Multiply Listed FLEX options. The FLEX transaction fees for a Firm are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. In addition, FLEX transaction fees for a Broker-Dealer are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (''BD-Customer Facilitation''), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. Finally, Multiply Listed FLEX options are not eligible for Section II strategy caps.

The Exchange proposes to permit Multiply Listed FLEX options to be subject to strategy cap pricing.[7] Currently, to qualify for a strategy cap,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FLEX options are flexible exchange-traded index, equity, or currency option contracts that provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX options may have expiration dates within five years. *See* Rule 1079. FLEX currency option contracts traded on the Exchange are also known as FLEX WCO or FLEX FCO contracts.

[4] Section II includes pricing for Multiply Listed Options Fees which includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

[5] Dividend, merger and short stock interest strategies are the same trading day in the same options class when such members are trading in their own proprietary accounts.

[6] *See* NYSE AMEX OPTIONS Fee Schedule. *See also* Securities Exchange Act Release No. 71015 (December 6, 2013), 78 FR 75642 (December 12, 2013).

[7] The Exchange noted in a prior rule change that there is no mechanism to mark FLEX Option transactions for strategy caps, and therefore excluded Multiply Listed FLEX options for strategy treatment. *See* Securities Exchange Act Release No. 69548 (May 9, 2013), 78 FR 28681 (May 15, 2013) (SR-Phlx-2013–29). With this proposal the Exchange will implement a manual process to record the FLEX strategy with staff intervention thereby documenting the strategy for billing purposes.

the buy and sell side of a transaction must originate from the Exchange floor.

The following are the strategy fee caps in Section II:

Floor options transactions—multiply listed options	Strategy	Qualification	Cap
Specialist, Market Maker, Professional, Firm, and Broker–Dealer.	Dividend, merger and short stock interest strategies.	Executed on the same trading day in the same options class when such members are trading in their own proprietary accounts.	$1,500
	Reversal and conversion strategies	Executed on the same trading day in the same options class.	700
	Jelly rolls	Executed on the same trading day in the same options class.	700
	Box spreads	Executed on the same trading day in the same options class.	700
Per member organization	Dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategies (''Monthly Strategy Cap'').	Combined executions in a month when trading in own proprietary accounts.	65,000

The following types of strategies are eligible for the pricing in Section II: dividend strategy,[8] merger strategy,[9] short stock interest strategy,[10] reversal and conversion strategies,[11] jelly roll strategy [12] and a box spread strategy.[13] Reversal and conversion, jelly roll and box spread strategy executions are not included in the Monthly Strategy Cap for a Firm. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are excluded from the Monthly Market Maker Cap.

The Exchange is amending the rule text to include Strategy Caps in the list of Section II pricing which is applicable to Multiply Listed FLEX options. As a result, a Multiply Listed FLEX option transaction that is part of a strategy execution would be included in the Strategy Fee cap. The proposal is designed to encourage members and member organizations to engage in both additional Multiply Listed FLEX option transactions and strategy executions on the Exchange.

The Exchange also proposes to correct a typographical error in Section IV to add a hyphen in the term BD-Customer.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [17] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[18] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [19]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution;' [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers.' . . .'' [20] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to permit Multiply-Listed FLEX options to be eligible for the Section II Strategy Caps is reasonable because including

[8] A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

[9] A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock.

[10] A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

[11] Reversal and conversion strategies are transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

[12] A jelly roll strategy is defined as transactions created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position.

[13] A box spread strategy is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[17] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[18] *See NetCoalition,* at 534–535.

[19] *Id.* at 537.

[20] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

Multiply-Listed FLEX option transactions in the Strategy Fee Cap may encourage members and member organizations to execute additional Multiply-Listed FLEX options and strategy executions on the Exchange. The proposed change would therefore result in greater amounts of liquidity on the Exchange, which should benefit the quality of the Exchange's market and investors, generally. This proposed change is further reasonable because the Exchange understands that other option markets similarly include Multiply Listed FLEX option transactions in certain fee caps applicable to strategy executions on such other markets.[21]

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because all members and member organizations are eligible to transact Multiply Listed FLEX options and are eligible for the Strategy Fee Cap.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The pricing proposed herein are intended to continue to incentivize market participants to execute additional Multiply Listed FLEX options and strategy executions on the Exchange and for this reason imposes no inter-market burden on competition. The proposal could increase competition on the Exchange by including Multiply Listed FLEX option transactions in the Strategy Fee Cap. This could result in members and member organizations engaging in both additional Multiply Listed FLEX option transactions and strategy executions in order to reach the fee cap levels. The proposed change could also increase competition between the Exchange and other option markets by making the Exchange a more desirable market with respect to pricing for Multiply Listed FLEX option transactions and strategy executions.

If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

The Exchange's proposal to permit Multiply Listed FLEX options to be eligible for the Section II Strategy Caps does not impose an undue burden on intra-market competition because all members and member organizations are eligible to transact Multiply Listed FLEX options and are eligible for the Strategy Fee Cap.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–100 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–100. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2016–100 and should be submitted on or before November 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24980 Filed 10–14–16; 8:45 am]

BILLING CODE 8011–01–P

[21] *See* note 6 above.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services,

100 F Street, NE., Washington, DC 20549–2736.

Extension:

Rule 17a–4. SEC File No. 270–198, OMB Control No. 3235–0279.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information provided for in Rule 17a–4 (17 CFR 240.17a–4), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a–4 requires approximately 4,104 active, registered exchange members, brokers and dealers (''broker-dealers'') to preserve for prescribed periods of time certain records required to be made by Rule 17a–3 and other Commission rules, and other kinds of records which firms make or receive in the ordinary course of business. Rule 17a–4 also permits broker-dealers to employ, under certain conditions, electronic storage media to maintain these required records. The records required to be maintained under Rule 17a–4 are used by examiners and other representatives of the Commission to determine whether broker-dealers are in compliance with, and to enforce their compliance with, the Commission's rules.

There are approximately 4,104 active, registered broker-dealers. The staff estimates that the average amount of time necessary to preserve the books and records as required by Rule 17a–4 is 254 hours per broker-dealer per year. In addition, the Commission is moving into this information collection the annual burden hours for paragraph (b)(11) of Rule 17a–4, which requires any broker-dealer that sponsors an internal broker-dealer system to maintain certain records relating to such system for at least three years. The Commission estimates that paragraph (b)(11) of Rule 17a–4 imposes an annual burden of 3 hours per year to maintain the requisite records. The Commission estimates that there are approximately 150 internal broker-dealer systems, resulting in an annual recordkeeping burden of 450 hours. Therefore, the Commission estimates that compliance with Rule 17a–4 requires 1,042,866 hours each year ((4,104 broker-dealers × 254 hours) + (150 broker-dealers × 3 hours). These burdens are recordkeeping burdens.

The staff believes that compliance personnel would be charged with ensuring compliance with Commission regulation, including Rule 17a–4. The staff estimates that the hourly salary of a Compliance Clerk is $65 per hour.[1] Based upon these numbers, the total internal cost of compliance for 4,104 respondents is the dollar cost of approximately $67.8 million (1,042,416 yearly hours x $65). The total burden hour decrease of 242,062 is due to a decrease in the number of respondents from 5,057 to 4,104.

Based on conversations with members of the securities industry and the Commission's experience in the area, the staff estimates that the average broker-dealer spends approximately $5,000 each year to store documents required to be retained under Rule 17a–4. Costs include the cost of physical space, computer hardware and software, etc., which vary widely depending on the size of the broker-dealer and the type of storage media employed. The Commission estimates that the annual reporting and recordkeeping cost burden is $20,520,000. This cost is calculated by the number of active, registered broker-dealers multiplied by the reporting and recordkeeping cost for each respondent (4,104 active, registered broker-dealers × $5,000).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 11, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24977 Filed 10–14–16; 8:45 am]

BILLING CODE 8011–01–P

[1] This figure is based on SIFMA's *Office Salaries in the Securities Industry 2016,* modified by Commission staff to account for an 1,800-hour work-year multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79078; File No. SR–NYSEArca–2016–135]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules To Remove Definitions and Trading Rules That Are No Longer Operative After the Completed Full Migration of All Symbols to the Pillar Trading Platform

October 11, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 28, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to remove definitions and trading rules that are no longer operative after the completed full migration of all symbols to the Pillar trading platform. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to remove definitions and trading rules that are no longer operative after the completed full migration of all symbols to the Pillar trading platform. The Exchange proposes to delete superseded rules that were applicable only to the prior trading system and to delete the ''P'' modifier that distinguished the Pillar trading rules from the now obsolete rules.

On April 30, 2015, the Exchange filed the first of four proposed rule changes (the ''first Pillar filing'') to adopt new equity trading rules to reflect the implementation of Pillar, the Exchange's new integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC and NYSE MKT LLC.[4] The Commission approved the first Pillar filing, including the interim use of the ''P'' modifier;[5] and subsequently also approved the successive Pillar proposed rule filings.[6]

In the first Pillar filing, the Exchange anticipated rolling out the new Pillar technology platform over a period of time based upon a range of symbols. Consequently, the Exchange also proposed that it would continue to operate under its then-current trading rules for symbols that had not yet migrated to Pillar, pending the complete migration of all symbols to Pillar and the retirement of the old trading system. As proposed, the new rules governing trading on Pillar would have the same numbering as current rules, but with the modifier ''P'' appended to the rule number during this interim period. In addition, the Exchange proposed adding to its rulebook new ''P'' definitions and introductory Pillar rule text. Once all symbols had migrated to the Pillar platform, the Exchange would file a rule proposal to delete the obsolete rules, definitions and introductory Pillar rule text that were no longer operative, as well as the ''P'' modifiers that distinguished the interim rules.[7]

The migration of all symbols to Pillar having been completed, the Exchange now proposes to amend its rules to delete the rules, definitions and introductory rule text that are no longer operative or necessary, as well as the ''P'' modifiers. The Exchange believes that removing the obsolete references that no longer have any impact on trading would add greater clarity to its rules and promote market transparency and efficiency. The rule filing history for Exchange rules that is maintained on the Exchange's Web site will reflect the prior rule filing history of the deleted trading rule in order to further promote clarity and transparency.

Specifically, the Exchange proposes within the ''Rule 1 Definitions'' section of the rule book:

- Deleting the introductory language that explained the use of the ''P'' modifier;
- Deleting the obsolete definition ''NYSE Arca Book'', that now has been superseded by the equivalent Pillar definition, and deleting the ''P'' modifier in the remaining Pillar definition;
- Deleting the definition ''Imbalance'' that was linked to former Rule 7.35;
- Deleting the definition ''Indicative Match Price'' that also was linked to former Rule 7.35;
- Deleting the definition ''NOW Recipient'', that now has been superseded by the equivalent Pillar definition of ''Away Market'', and deleting the ''P'' modifier in the remaining Pillar definition; and
- Deleting the ''P'' modifier in the definition ''Official Closing Price''.

Specifically, the Exchange proposes within the ''Rule 7 Equities Trading'' section of the rule book:

- Deleting the preamble following Rule 7 that explains the use of the ''P'' modifier;
- Deleting obsolete Rule 7.10 ''Clearly Erroneous Executions'' that has been superseded by the equivalent Pillar Rule 7.10P of the same caption, deleting the ''P'' modifiers in the remaining rule;
- Deleting obsolete Rule 7.11 ''Limit Up–Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility'' that has been superseded by the equivalent Pillar Rule 7.11P of the same caption, deleting the ''P'' modifiers in the remaining rule;
- Deleting obsolete Rule 7.16 ''Short Sales'' that has been superseded by the equivalent Pillar Rule 7.16P of the same caption, deleting the ''P'' modifier in the remaining rule;
- Deleting obsolete Rule 7.18 ''UTP Regulatory Halts'' that has been superseded by the equivalent Pillar Rule 7.18P ''Halts'', deleting the ''P'' modifier in the remaining rule;
- Deleting obsolete Rule 7.31 ''Orders and Modifiers'' that has been superseded by the equivalent Pillar Rule 7.31P of the same caption, deleting the ''P'' modifiers in the remaining rule;
- Deleting obsolete Rule 7.34 ''Trading Sessions'' that has been replaced by the equivalent Pillar Rule 7.34P of the same caption, deleting the ''P'' modifiers in the remaining rule;
- Deleting obsolete Rule 7.35 ''Auctions'' that has been superseded by the equivalent Pillar Rule 7.35P of the same caption, deleting the ''P'' modifiers in the remaining rule;
- Deleting obsolete Rule 7.36 ''Order Ranking and Display'' that has been superseded by the equivalent Pillar Rule 7.36P of the same caption, deleting the ''P'' modifiers in the remaining rule;
- Deleting obsolete Rule 7.37 ''Order Execution'' that has been superseded by the equivalent Pillar Rule 7.37P ''Order Execution and Routing'', deleting the ''P'' modifiers in the remaining rule;
- Deleting obsolete Rule 7.38 ''Odd and Mixed Lots'' that has been superseded by the equivalent Pillar Rule 7.38P of the same caption, deleting the ''P'' modifiers in the remaining rule; and
- Deleting obsolete Rule 7.44 ''Retail Liquidity Program'' that has been superseded by the equivalent Pillar Rule 7.44P of the same caption, deleting the ''P'' modifiers in the remaining rule.

2. Statutory Basis

The proposed rule changes are consistent with Section 6(b) of the Act,[8] in general, and further the objectives of Section 6(b)(5) of the Act,[9] in particular, in that they are designed to prevent fraudulent and manipulative acts and

[4] *See* Securities Exchange Act Release No. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (SR–NYSEARCA–2015–38) (notice of filing of proposed rule change adopting new equity trading rules relating to trading sessions, order ranking and display, and order execution, and the use of the ''P'' modifier).

[5] *See* Securities Exchange Act Release No. 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR–NYSEARCA–2015–38) (approval of proposed rule change adopting new equity trading rules relating to trading sessions, order ranking and display, and order execution, and the use of ''P'' modifier).

[6] *See* Securities Exchange Act Release No. 76198 (October 20, 2015), 80 FR 65274 (October 26, 2015) (SR–NYSEArca–2015–58) (approval of proposed rule change and order granting accelerated approval of amendment 1 thereto adopting new equity trading rules relating to trading halts, short sales, limit up-limit down, and odd lots and mixed lots); Securities Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR–NYSEArca–2015–56) (approval of proposed rule change and order granting accelerated approval of amendments 1 and 2 thereto adopting new equity trading rules relating to orders and modifiers and the retail liquidity program); Securities Exchange Act Release No. 76869 (January 11, 2016), 81 FR 2276 (January 15, 2016) (SR–NYSEArca–2015–86) (approval of proposed rule change and order granting accelerated approval of amendments 1 and 3 adopting new equity trading rules relating to auctions).

[7] *See supra* Note 5 at 44171.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

In particular, the Exchange believes that amending its rules to remove definitions and trading rules that are no longer operative after the completed full migration of all symbols to the Pillar trading system would promote the protection of investors and the public interest because it would promote clarity and transparency in Exchange rules governing what rules govern trading on the Exchange. The Exchange further believes that deleting superseded rules that were applicable only to the prior trading system, and deleting the ''P'' modifier that distinguished the Pillar trading rules from the now obsolete rules during this transitional period to a single trading platform and a single set of rules governing trading, would remove impediments to and perfect the mechanism of a national market system because these proposed changes would add greater clarity to the Exchange's rules and promote market transparency and efficiency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address competitive issues but rather is designed to ensure a fair and orderly market by removing definitions and trading rules that are no longer operative after the completed full migration of all symbols to the Pillar trading system. As such, the proposed rule changes are intended to promote greater efficiency and transparency concerning trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of the operative delay is consistent with the protection of investors and the public interest because it has completed its transition to a single trading platform and such waiver would permit the Exchange to immediately provide enhanced transparency in Exchange rules regarding equities trading. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–135 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–135. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–135, and should be submitted on or before November 7, 2016.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24981 Filed 10–14–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 32310/October 11, 2016]

Investment Company Act of 1940

In the Matter of: AB Private Credit Investors Corporation, AB Private Credit Investors Middle Market Direct Lending Fund, L.P., AB Energy Opportunity Fund, L.P., AB Private Credit Investors LLC, 1345 Avenue of the Americas, New York, NY 10105, (812–14453)

Order Under Sections 17(d) and 57(i) of the Investment Company Act of 1940 and Rule 17d–1 Under the Act

AB Private Credit Investors Corporation, AB Private Credit Investors Middle Market Direct Lending Fund, L.P., AB Energy Opportunity Fund, L.P., and AB Private Credit Investors LLC filed an application on April 30, 2015, and amendments to the application on October 5, 2015, and May 24, 2016, requesting an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act that would permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act. The order would permit a business development company and certain closed end investment companies (collectively, the ''Regulated Funds'') to co-invest in portfolio companies with each other and with affiliated investment funds.

On September 13, 2016, a notice of the filing of the application was issued (Investment Company Act Release No. 32261). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing was ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found, on the basis of the information set forth in the application, as amended, that participation by the Regulated Funds in the proposed transactions is consistent with the provisions, policies and purposes of the Act and is on a basis no less advantageous than that of other participants.

Accordingly,

It is ordered, under sections 17(d) and 57(i) of the Act and rule 17d–1 under the Act, that the relief requested by AB Private Credit Investors Corporation, *et al.* (File No. 812–14453) is granted, effective immediately, subject to the conditions contained in the application, as amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24983 Filed 10–14–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9762]

Culturally Significant Objects Imported for Exhibition Determinations: ''Doris Salcedo: The Materiality of Mourning'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Doris Salcedo: The Materiality of Mourning,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Harvard Art Museums, Cambridge, Massachusetts, from on or about November 4, 2016, until on or about April 9, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: October 11, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–25031 Filed 10–14–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9761]

Industry Advisory Group: Notice of Open Meeting

The Industry Advisory Group (IAG) of the Bureau of Overseas Buildings Operations (OBO) will meet on Thursday, November 3 from 2:00 p.m. until 4:00 p.m. Eastern Daylight Time. The meeting is open to the public and will be held in the Loy Henderson Conference Room of the U.S. Department of State, located at 2201 C Street NW., (entrance on 23rd Street) Washington, DC For logistical and security reasons, the public must enter and exit the building using only the 23rd Street entrance.

This committee serves the U.S. Government in a solely advisory capacity concerning industry and academia's latest concepts, methods, best practices, innovations, and ideas related to OBO's mission to provide safe, secure, and functional facilities that represent the U.S. Government to the host nation and support our staff in the achievement of U.S. foreign policy objectives. These facilities should represent American values and the best in American architecture, engineering, technology, sustainability, art, culture, and construction execution.

The majority of the meeting will be devoted to discussions between the Department's senior management and IAG representatives with respect to industry and academia's latest concepts, methods, best practices, innovations and ideas related to property management that are applicable to OBO's vital mission. Reasonable time will be provided for members of the public to provide comment.

Admittance to the State Department building will be by means of a pre-arranged clearance list. To register for the meeting, please visit the OBO Web site at *http://overseasbuildings.state.gov/* for the registration page by Friday, October 21. In order to register, you must provide the following information: First and last name, company/firm name, date of birth, country of citizenship, and the number and issuing country/state associated with a valid government-issued ID (*i.e.,* U.S. Government ID, U.S.

Military ID, passport, or driver's license). Requests for reasonable accommodation should also be sent to *IAGR@state.gov* by October 21. Requests made after that date will be considered, but may not be able to be fulfilled. The public may attend this meeting as seating capacity allows.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database.

Please see the Security Records System of Records Notice (State–36) at *https://foia.state.gov/_docs/SORN/State-36.pdf* for additional information.

Please contact *IAGR@state.gov* with any questions.

Dated: October 3, 2016.

Lydia Muniz,

Director, U.S. Department of State, Bureau of Overseas Buildings Operations.

[FR Doc. 2016–25030 Filed 10–14–16; 8:45 am]

BILLING CODE 4710–51–P

DEPARTMENT OF STATE

[Public Notice: 9760]

Notice of Intent To Solicit Comments and Conduct a Public Scoping Meeting on a Global Water Strategy

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The U.S. Department of State (Department) will host a listening session to solicit public comments on the development and content of a strategy to address global water challenges including, but not necessarily limited to: (1) Increasing access to safe drinking water, sanitation, and hygiene; (2) improving water resource management; and (3) promoting cooperation on shared waters. Participants will be asked to provide brief remarks (up to 3 minutes) highlighting specific challenges that should be addressed and opportunities to strengthen U.S. engagement on international water issues.

DATES: This session will take place on Friday, October 28 from 1:00–4:00 p.m. in the George C. Marshall Center at the U.S. Department of State, 2201 C St. NW., (21st Street Entrance), Washington, DC. Attendees must confirm their attendance at *GWSRSVP@state.gov*. A photo identification will be necessary to attend the session. Written comments must be received no later than November 12, 2016.

ADDRESSES: Written comments may be submitted to *https://www.surveymonkey.com/r/USG-Water* by following the prompts. Comments may also be submitted by mail, addressed to: Global Water Strategy Manager, Office of Conservation and Water, Room 2657, U.S. Department of State, 2201 C Street NW., Washington, DC 20520 and/or by email to *GWSRSVP@state.gov.* Written comments may also be submitted at the public scoping meeting on Friday, October 28, 2016 from 1:00–4:00 p.m.

SUPPLEMENTARY INFORMATION:

Written, electronic, and oral comments will be given equal weight and the Department will consider all comments received or postmarked by November 12, 2016. Comments received or postmarked after that date may be considered to the extent practicable.

For information contact Global Water Strategy Manager at the address listed in **ADDRESSES**, by email at *GWSRSVP@state.gov,* or by fax at (202) 736–7351.

Legislation regarding U.S. efforts on international water and sanitation issues include the Senator Paul Simon Water for the Poor Act of 2005 (found at: *https://www.congress.gov/bill/109th-congress/house-bill/1973*) and the Senator Paul Simon Water for the World Act of 2014 (found at: *https://www.congress.gov/bill/113th-congress/house-bill/2901*).

Previous Reports to Congress on the implementation of the Senator Paul Simon Water for the Poor Act can be found at: *http://www.state.gov/e/oes/water/waterforthepoor/index.htm.*

Dated: October 5, 2016.

Sherry Zalika Sykes,

Acting Director, Office of Conservation and Water, Department of State.

[FR Doc. 2016–25033 Filed 10–14–16; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 736]

InterVISTAS Study

AGENCY: Surface Transportation Board.

ACTION: Notice of roundtable discussion.

SUMMARY: The Board will host a roundtable discussion among noted economists on an independent report that assesses the Board's rate reasonableness methodologies, including the stand-alone cost methodology, and possible alternatives.

DATES: The roundtable discussion will take place on Tuesday, October 25, 2016, from 10:00 a.m. to 12:30 p.m.

ADDRESSES: The roundtable discussion will be held in the Hearing Room on the first floor of the Board's headquarters at Patriot's Plaza, 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe: (202) 245–0376. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board commissioned a study by InterVISTAS Consulting LLC (InterVISTAS) in late 2014, and the study was released by the Board on September 22, 2016. The Board asked for an independent assessment of its stand-alone cost (SAC) rate reasonableness methodology and possible alternatives. Among other things, the scope of the work required InterVISTAS to look for alternative methodologies to SAC that could be used to reduce the time, complexity, and expense historically involved in rate cases; determine whether SAC is sufficient for large rate cases; and whether the Board's simplified methodologies were appropriate alternatives to SAC. The report is available at *https://www.stb.gov/stb/elibrary/IndependentStudy.html.*

To promote discourse on these issues, the Board will hold an economic roundtable regarding the issues and conclusions presented in the report. The panel will include the following independent and government economists:

Michael Tretheway, InterVISTAS Consulting LLC
Richard Schmalensee, Massachusetts Institute of Technology
Wesley W. Wilson, University of Oregon
John Mayo, Georgetown University
Jeffrey Macher, Georgetown University
Mark Cooper, Consumer Federation of America
Russell Pittman, Director of Economic Research in the Economic Analysis Group,
Antitrust Division, U.S. Department of Justice
William Huneke, Chief Economist, Surface Transportation Board, Office of Economics
William Brennan, Deputy Director, Surface Transportation Board, Office of Economics

The roundtable discussion will be open for public observation but not public participation. In addition, the discussion will be available on the Board's Web site by live video streaming. To access the roundtable,

click on the ''Live Video'' link under ''Information Center'' at the left side of the home page beginning at 10:00 a.m. on October 25, 2016. The Board also intends to hold a public hearing on the report for all stakeholders and interested parties to participate in this important discourse. The date of that hearing will be announced in a subsequent Board decision.

Decided: October 12, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–25020 Filed 10–14–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–102]

Petition for Exemption; Summary of Petition Received; 501ZD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 7, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–6880 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 3, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–6880.

Petitioner: 501ZD.

Section of 14 CFR Affected: § 25.841(a).

Description of Relief Sought: 501ZD has requested that the FAA allow a Cessna Citation 500 airplane to operate to a maximum cruise altitude of 41,000 feet without incorporating the provisions of Cessna/Textron Service Bulletin SB500–21–9. This would result in a maximum cabin pressure altitude of 10,000 feet during 14 CFR part 91 operations. Section 25.841(a) allows a maximum cabin pressure altitude of not more than 8,000 feet under normal operating conditions.

[FR Doc. 2016–24962 Filed 10–14–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0212]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions of three individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were effective on August 28, 2016. The exemptions will expire on August 28, 2018. Comments must be received on or before November 16, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0212 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., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) 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., 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 online.

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 from 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 for two years 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.'' The statute also allows the Agency to renew exemptions at the end of the two-year period.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The three individuals listed in this notice have requested renewal of their exemptions from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the three applicants has satisfied the conditions for obtaining an exemption from the Epilepsy and Seizure Disorder requirements and were published in the **Federal Register** (79 FR 73394). In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce.

The three drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. FMCSA has concluded that renewing the exemptions for each of these applicants is likely to achieve a level of safety equal to that existing without the exemption. Therefore, FMCSA has decided to renew each exemption for a two-year period. In accordance with 49 U.S.C. 31136(e) and 31315, each driver has received a renewed exemption.

As of August 28, 2016, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (79 FR 73394): Peter Bender (MN); Terry Hamby (NC); and Louis Lerch (IA).

These drivers were included in FMCSA–2014–0212. The exemptions were effective on August 28, 2016, and will expire on August 28, 2018.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (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.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the three exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41 (b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: October 7, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24966 Filed 10–14–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration (PHMSA)

[Docket No. PHMSA–2016–0101]

Pipeline Safety: General Policy Statement; Civil Penalties

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this policy statement is to advise pipeline owners and operators that the Pipeline and Hazardous Materials Safety Administration (PHMSA) has now made a civil penalty framework accessible on its Web site and, effective October 17, 2016, a respondent in an enforcement case may request a proposed civil penalty calculation related to that case. It further advises pipeline owners and operators that PHMSA will, as appropriate, issue higher penalties in order to apply stronger deterrence and drive down incident risk.

DATES: A respondent in an enforcement case may request the proposed civil penalty calculation associated with its case, effective October 17, 2016. In addition, the civil penalty summary attached to this policy statement is now available on PHMSA's Web site.

FOR FURTHER INFORMATION CONTACT: Rod Dyck, Enforcement Director, *rod.dyck@dot.gov,* 202–366–3844.

SUPPLEMENTARY INFORMATION: In accordance with chapter 601 of Title 49, United States Code, after notice and an opportunity for a hearing, the Associate Administrator may assess a civil penalty for a violation of a pipeline safety regulation or order (49 U.S.C. 60122). In order to provide summary guidance to operators about the penalty ranges for proposed penalties, PHMSA currently provides a civil penalty framework upon request, as referenced in an earlier notice ''Pipeline Safety: Administrative Procedures; Updates and Technical Corrections'' (78 FR 58897; September 25, 2013). PHMSA will now post the civil penalty framework on its Web site in order to provide greater transparency regarding administrative civil penalties. This summary will be updated periodically and is available at *http://www.phmsa.dot.gov.* Effective October 17, 2016, PHMSA will also provide a more detailed proposed civil penalty calculation upon request to a respondent, along with the violation report, and any other items in the case file, as defined in 49 CFR 190.209.

PHMSA's proposed penalty calculation methodology is based upon 49 U.S.C. 60122 and 49 CFR 190.225. The Associate Administrator must consider:

> (1) The nature, circumstances and gravity of the violation, including adverse impact on the environment; (2) The degree of the respondent's culpability; (3) The respondent's history of prior offenses; (4) Any good faith by the respondent in attempting to achieve compliance; and (5) The effect on the respondent's ability to continue in business. The Associate Administrator may consider: (1) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and (2) Such other matters as justice may require.

Consistent with this statutory direction, enforcement personnel use a proposed civil penalty calculation to document consideration of these factors and how its personnel arrive at a proposed civil penalty.

The Pipeline Safety Act of 2011 (''the 2011 Act'') increased the maximum administrative civil penalties for violation of the pipeline safety laws and regulations to $200,000 per violation per day, with a maximum of $2,000,000 for a related series of violations. These administrative civil penalty maximums apply to violations that occur or are discovered after January 3, 2012. In order to apply stronger deterrence and drive down incident risk, PHMSA intends to exercise its current authority, as appropriate, which will result in higher penalties across the board for any violation of Federal pipeline safety standards. In addition, PHMSA will give greater weight to certain factors when assessing civil penalties, specifically for violations that: (1) Are causal to incidents or that increase the severity of incidents, including those involving smaller hazardous liquid spills or resulting in methane releases; (2) are ''repeat offenses'' or violations of the same safety standard in the past five years; and (3) involve multiple instances of the same violation. Finally, PHMSA recently increased its maximum civil penalties to account for changes in inflation. (Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 81 FR 42564, June 30, 2016).

Administrative civil penalties constitute only one of the enforcement tools that PHMSA employs to promote compliance with the pipeline safety regulations. While PHMSA is providing greater transparency to the regulated community, the agency retains broad discretion in its evaluation of the assessment considerations outlined in its regulations. The release of these additional materials regarding the proposed calculation of civil penalties will not otherwise alter the administrative enforcement process.

Civil Penalty Framework

This summary provides a general overview to assist the public in understanding civil penalty calculations. Following an inspection or investigation of a pipeline facility that reveals a probable violation, the Office of Pipeline Safety prepares a Violation Report to document the violation. For any violation that warrants a civil penalty, data from the completed Violation Report is used to calculate risk-based civil penalties considering the statutory assessment factors in 49 U.S.C. 60122 and 49 CFR 190.225.

The assessment factors are listed below in the left side column of the table. The middle column explains the range of potential conduct that was observed by PHMSA in connection with the violation, generally from least to most severe. A Violation Report must make a selection within this range for each assessment factor. The right side column provides a range for the civil penalty that may be assessed under each assessment factor.

A civil penalty for a single violation is arrived at by combining the amounts assigned under each assessment factor. Application of the assessment factors in an individual case will depend on the facts specific to that case.

BILLING CODE 4910–60–P

Assessment Consideration	Range of Conduct	Civil Penalty Range
Nature	- Records: ▪ Examples: Missing, inaccurate, or incomplete records - Activities: ▪ Examples: Performance or conduct of activities such as inspections, tests, maintenance, meetings, notifications, reports, emergency response, not preparing procedures, or not following procedures - Equipment/Facilities: ▪ Examples: Equipment not installed, missing, defective, inoperative, not properly sized, or not compatible with transported commodity	$1,728 ↓ $8,640
Circumstances	- Operator self-reported the violation to PHMSA (PHMSA includes State Partners) before it was discovered by PHMSA - PHMSA discovered the violation - Public reported the violation to PHMSA (including State Partners) or public inquiry lead to investigation, verified by PHMSA	Variable credit ↓ $13,824
Gravity	- Records violation - Pipeline safety or integrity was minimally affected - Pipeline safety or integrity was compromised in areas that are not in an HCA or, for Hazardous Liquids, also if not in an HCA "could affect" segment - Pipeline safety or integrity was significantly compromised in areas that are not in an HCA or, for Hazardous Liquids, also if not in an HCA "could affect" segment. - Pipeline safety or integrity was compromised in an HCA (High Consequence Area[1]) or, for Hazardous Liquids, also if in an HCA "could affect" segment - Pipeline safety or integrity was significantly compromised in an HCA or, for Hazardous Liquids, also if in an HCA "could affect" segment - Probable violation increased the severity of an accident/incident - Probable violation was a causal factor for an accident /incident	$1,728 ↓

[1] See 49 CFR Parts 192 and 195 for definition of a high consequence area.

	- The number of instances of a violation incrementally increases the penalty Accident/Incident Consequences Factor Multipliers for the base penalty applied to all assessment considerations: - Reportable accident or incident - Unintentionally released Gas - Hazardous Liquid releases - Hospitalization injuries - Fatalities	Unlimited
Culpability Culpability (cont'd)	Based on operator actions before the violation occurred: - After the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and corrected the non-compliance before PHMSA learned of the violation. Does not apply for operator Post-accident actions. - After the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and was in the process of correcting the non-compliance before PHMSA learned of the violation. Does not apply for operator Post-accident actions. - The operator took significant steps to comply with a requirement but failed to achieve compliance for reasons such as unforeseeable events/conditions that were partly or wholly outside its control. - The operator took significant steps to comply with a requirement but did not achieve compliance. - The operator failed to take appropriate action to comply with a requirement that was clearly applicable. - The operator made a conscious decision not to comply with a requirement that was clearly applicable. - The operator took egregious action (such as manipulation of records or reconfiguration of equipment) that evidenced an effort to evade compliance or conceal non-compliance.	-$25,920 ↓ ↓ $2,056,320
History of Prior Offenses	- Prior findings of violation include a civil penalty or compliance order in the five years that precede the date of the Notice. The prior findings of violation may be the same, similar, or different violations.	$0 ↓ $17,280
	Based on operator actions before the violation occurred:	

Good Faith	- The operator's interpretation of the requirement was reasonable, and it had a credible justification for its actions or lack of actions. - The operator did not make a reasonable interpretation of the requirement or did not have a credible justification for its actions or lack of actions.	-$17,280 ↓ $0
Other Matters as Justice May Require (Any and all appropriate factors will be applied to the violation) Other Matters (cont'd)	Examples of individual Matters : - Operator's written procedures exceeded a regulatory requirement and the non-compliance was against the requirements of the procedure that exceeded the regulation. - Violation of Section 60129, Protection of employees providing pipeline safety information - Reporting- Not reporting a known death with a telephonic or accident/incident report; Not reporting a known reportable injury in water with a telephonic or accident/incident report; Telephonic or accident/incident report not submitted before PHMSA discovers it was not submitted. - Additional penalty for LNG violation per (190.223(c)) - Failure to comply with any PHMSA order including CAO or SO - Repeat Violation - Repeat of a Repeat Violation	-$17,280 ↓ ↓ $2,056,320
Economic Benefit	- Economic Benefit gained from not complying with the regulation.	Variable addition
Ability to Pay and/or Ability to Continue in Business	- Determination based on additional information that is presented later by operator (Ability to pay is not valid for violations occuring after 1/2/2012).	Variable credit

The total civil penalty per violation is calculated based on these assessment considerations and adjusted for the applicable daily and series limit. If a calculated penalty exceeds the maximum amount permitted by statute, the penalty will be reduced by the amount exceeding the cap. An administrative civil penalty under 49 U.S.C. 60122(a)(1) is capped at $200,000 per day for violations occurring after January 3, 2012. The maximum civil penalty for a related series of violations is $2,000,000 for violations occurring after January 3, 2012.

For an administrative civil penalty that occurs on or after August 1, 2016, the maximum civil penalty limit was increased to $205,638 per day and $2,056,380 for a related series of violations pursuant to the requirements of Section 701 of the ''Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015'' (Pub. L. 114–72), which amended the ''Federal Civil Penalties Inflation Adjustment Act of 1990'' (Pub. L. 101–410) (Inflation Adjustment Act).

Issued in Washington, DC, on October 11, 2016, under authority delegated in 49 CFR 1.97.

Linda Daugherty,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2016–25000 Filed 10–14–16; 8:45 am]

BILLING CODE 4910–60–C

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW., Washington, DC, on November 1, 2016 at 10:00 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information-that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committees deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: October 7, 2016.

Fred Pietrangeli,

Director, Office of Debt Management.

[FR Doc. 2016–24787 Filed 10–14–16; 8:45 am]

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