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# Rules and Regulations

Federal Register

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

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 2 CFR Part 1800

RIN 2700-AE29

#### Revisions to Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (NASA Case 2015-N030)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is issuing a final rule to amend its regulations, titled Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to revise the requirements related to information contained in a Federal award for commercial firms with no cost sharing requirement and to add new or modify existing terms and conditions related to indirect cost charges and access to research results.

**DATES:** *Effective:* November 28, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Richards, telephone 202-358-0047.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

NASA published a proposed rule in the **Federal Register** at 81 FR 24735 on April 27, 2016, to amend title 2 CFR part 1800, titled Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to modify the requirements related to information contained in a Federal award for commercial firms with no cost sharing requirement and to add new or modify existing terms and conditions related to indirect cost charges and access to research results. Eight respondents submitted public comments in response to the proposed rule.

## II. Discussion and Analysis

A. This final rule makes the following significant changes from the proposed rule:

- 2 CFR part 1800, appendix B, 1800.929 was changed to state an exclusion for institutions of higher education as prescribed under 2 CFR part 200.
- 2 CFR part 1800, appendix B, 1800.930(a)(2) was changed to reflect that all graphics and supplemental materials submitted must be those prepared by the Awardee.
- 2 CFR part 1800, appendix B, 1800.930(b)(2) was changed to reflect a modification to the submission deadline for the Final Peer-Reviewed Manuscript to within one year of completion of the peer review process.
- 2 CFR part 1800, appendix B, 1800.930(b)(2) was changed to add a statement indicating that NASA would provide instructions for completing the submission process under separate cover.
- 2 CFR part 1800, appendix B, 1800.930(b)(2) was changed to include a more direct link to the PubMed Central system.
- 2 CFR part 1800, appendix B, 1800.930(b)(4) was changed to include a representation and warranty in respect of the right to submit the Final Peer-Reviewed Manuscript to the NASA repository.
- For added visibility, an administrative change was made to 2 CFR part 1800, appendix B, 1800.930 to move a requirement from paragraph (b)(4) into a new paragraph (b)(5).

##### B. Analysis of Public Comments

NASA reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

##### 1. Change in Negotiated Indirect Cost Rate Agreement During the Period of Performance of an Award

*Comment:* One respondent recommended that the term and condition clarify that indirect cost rates may only be adjusted when a provisional rate is in place at the time of award. The respondent also recommended that the term and condition acknowledge that institutions of higher education must follow indirect cost guidance provided in 2 CFR part 200, appendix III.C.7.

*Response:* NASA concurs that institutions of higher education must follow indirect cost guidance in 2 CFR part 200, appendix III.C.7. However, we note that the guidance stating indirect cost rates may only be adjusted when a provisional rate is in place at the time of award applies only to IHEs and not to other types of non-Federal entities. As a result, we will adjust the term and condition to reflect the exclusion for institutions of higher education.

##### 2. Final Peer-Reviewed Manuscript

*Comment:* One respondent recommended that due to intellectual property concerns associated with the use of graphics, NASA modify its definition of the Final Peer-Reviewed Manuscript to include the text and author-created graphics, and note that supplemental materials (or links to the same) may be included where helpful to understanding the text.

*Response:* To address this concern, NASA has modified the language in the term and condition.

##### 3. PubMed Central System as the NASA-Designated Repository for Final Peer-Reviewed Manuscripts

*Comment:* Three respondents expressed concern with using the PubMed Central system as the NASA-designated repository for Final Peer-Reviewed Manuscripts, and recommended consideration of alternative repositories to potentially increase flexibility and reduce administrative burden.

*Response:* The term and condition was written to ensure compliance with NASA's Plan. During the public consultation phase of the development of the Plan, alternative repositories were considered. However, the PubMed Central system emerged as the most mature and the lowest risk for NASA. Alternative solutions may be considered in Phase 2.

##### 4. One Year Submission Period

*Comment:* One respondent recommended that the language describing the submission period of "within one year of peer-review or publication by a journal, whichever is sooner" be modified to reflect that the length of the embargo period is provisional, since the Office of Science and Technology Policy (OSTP) memo allows for publishers to petition for a longer embargo period.

*Response:* NASA does not believe such a change is necessary because the requirement for submission is not inconsistent with the ability of publishers to petition for more time since the manuscripts do not automatically become public when uploaded.

#### 5. Embargo Period

*Comment:* One respondent expressed concern over the use of an initial twelve month uniform embargo period for all fields of research, as well as the criteria used for potentially lengthening the embargo period. The respondent did not believe the criteria reflected the primary purpose of such a period, and suggested that NASA look to language in the National Science Foundation's plan regarding petitions.

*Response:* The term and condition was written to ensure compliance with NASA's Plan. Because OSTP recommended 12 months as the default period, and 12 months is the maximum and most common period for PubMed Central, NASA chose an embargo period of 12 months. NASA used a public consultation process for developing the plan and believes the current language is in NASA's best interest.

#### 6. Ambiguous Language

*Comment:* Two respondents stated that the language in the direction to submit the Final Peer-Reviewed Manuscript within one year of peer-review or publication by a journal, whichever is earlier, is ambiguous and should be clarified.

*Response:* To address this concern, NASA has modified the language in the term and condition.

#### 7. Publisher's Agreements

*Comment:* One respondent stated that award recipients are not party to publisher's agreements, and therefore, recommended that the obligation of publisher's agreements be limited to investigators rather than recipients.

*Response:* In the proposed revision at 1800.930, NASA defined Awardee to mean any recipient of a NASA grant or cooperative agreement as well as its investigators and subrecipients at any level. If the recipient is not the investigator/author, then NASA expects that the recipient will be in privity with (i.e., have their own agreement with) the investigator/author, and can therefore enforce the obligation regarding publishing agreements. NASA is only in privity with the recipient, so NASA would not otherwise have the ability to enforce such obligation upon the investigator/author.

*Comment:* Two respondents recommended that language requiring rights to permit users to download XML and plain text formats be removed. One respondent suggested a technology-neutral approach be used to allow for potential future changes in technology, and another respondent suggested specifying the requirements in either broader terms or more specific terms—the middle ground approach that is currently being used is ambiguous.

*Response:* The term and condition was written to ensure compliance with NASA's Plan. NASA used a public consultation process for developing the plan and believes the current language is in NASA's best interest.

#### 8. Copyright Protection

*Comment:* One respondent recommended that NASA add language that recognizes that the rights provided to NASA to permit users to download materials can be limited by commercial use and other appropriate restrictions chosen by the author and copyright holder. Another respondent commented that NASA should support and uphold copyright protections for scholarly publications.

*Response:* The U.S. Government has unlimited rights in data deliverables produced under grant agreements, and has an obligation to assure that such deliverables are available for taxpayer use in accordance with law and regulation. This includes peer-reviewed articles funded with NASA grants. In recognition of the valuable contributions of publishers to the scholarly process, NASA is implementing embargo periods that permit publishers to benefit from a period of exclusive distribution.

#### 9. Responsibility for Claims Against NASA

*Comment:* Three respondents stated that either they or those they represent will not be able to meet this requirement due to state statutes that do not grant authority to represent non-state personnel or entities.

*Response:* To address this concern, NASA has modified the language in the term and condition.

#### C. Other Changes

During internal deliberations some minor changes were made as follows:

- 2 CFR part 1800, appendix B, 1800.930(b)(2) was changed to add a statement indicating that NASA would provide instructions for completing the submission process under separate cover.
- 2 CFR part 1800, appendix B, 1800.930(b)(2) was changed to include a

more direct link to the PubMed Central system.

- For added visibility, an administrative change was made to 2 CFR part 1800, appendix B, 1800.930 to move a requirement from paragraph (b)(4) into a new paragraph (b)(5).

### III. Executive Orders 12866 and 13563

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

### IV. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small entities are not a substantial number of NASA grant and cooperative agreement recipients. In addition, within the subset of awards issued to small entities, the majority are not for research so would not be affected by the new term and condition regarding access to research results. Furthermore, this rule actually benefits small businesses and all other for profit recipients by removing a requirement that could potentially expose sensitive financial information. NASA chose to remove the requirement for the inclusion of indirect cost rates on notices of Federal award in response to feedback from for profit recipients.

### V. Paperwork Reduction Act

This rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to 2 CFR part 1800 do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 2700-0092, entitled Financial Assistant Awards/Grants and Cooperative Agreements.

**List of Subjects in 2 CFR Part 1800**

Government financial assistance.

**Manuel Quinones,**

*NASA Federal Register Liaison Officer.*

Accordingly, 2 CFR part 1800 is amended as follows:

- 1. The authority citation for 2 CFR part 1800 continues to read as follows:

**Authority:** 51 U.S.C. 20113(e), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

- 2. Revise § 1800.210 to read as follows:

**§ 1800.210 Information contained in a Federal award.**

NASA waives the requirement for the inclusion of indirect cost rates on any notice of Federal award for commercial firms with no cost sharing requirement. The terms and conditions for NASA may be found at appendix B of this part and [https://prod.nais.nasa.gov/pub/pub\\_library/srba](https://prod.nais.nasa.gov/pub/pub_library/srba).

- 3. Amend appendix B to part 1800 by:
- a. Under 1800.902 Technical Publications and Reports, adding paragraph (a)(4); and
- b. Adding 1800.929 Indirect Costs and 1800.930 Access to Research Results.

The additions read as follows:

**Appendix B to Part 1800—Terms and Conditions**

\* \* \* \* \*

**1800.902 Technical Publications and Reports**

\* \* \* \* \*

(a) \* \* \*

(4) For research and research-related awards, see additional reporting requirements at 1800.930 Access to Research Results.

\* \* \* \* \*

**1800.929 Indirect Costs**

**Prescription—**The Grant Officer shall include this term and condition in all awards with indirect costs, excluding those awards to institutions of higher education and to entities using the 10% de minimis rate.

**Indirect Costs**

Unless otherwise directed in 2 CFR part 200, if during the course of this award, the approved indirect cost rate is revised, changed or removed, that rate must be applied, as allowed, to the covered direct costs that are expended during the time frame of that rate agreement. Any corrections, either up or down, to the approved budget submitted with the awarded application must be reflected in the awardees' records of costs and should be audited as such.

(End of Term and Condition)

**1800.930 Access to Research Results**

**Prescription—**The Grant Officer shall include this term and condition in all research and research-related awards.

**Access to Research Results**

(a) This award is subject to the requirements of the, “NASA Plan: Increasing Access to the Results of Scientific Research,” which covers public access to digital scientific data and peer-reviewed publications. For purposes of this term and condition, the following definitions apply:

(1) Awardee: Any recipient of a NASA grant or cooperative agreement, its investigators, and subrecipient (subaward or contract as defined in 2 CFR 200.92 and 200.22, respectively) at any level.

(2) Final Peer-Reviewed Manuscript: The final text version of a peer-reviewed article disclosing the results of scientific research which is authored or co-authored by the Awardee or funded, in whole or in part, with funds from a NASA award, that includes all modifications from the publishing peer review process, and all graphics and supplemental material prepared by Awardee.

(b) The recipient shall:

(1) Comply with their approved Data Management Plan submitted with its proposal, and as modified upon agreement by the recipient and NASA from time to time during the course of the period of performance.

(2) Ensure that any Final Peer-Reviewed Manuscript is submitted to the NASA-designated repository, currently the PubMed Central system at <http://www.ncbi.nlm.nih.gov/pmc/>. NASA will provide instructions for completing the submission process under separate cover. Ensure that the Final Peer-Reviewed Manuscript is submitted to PubMed Central within one year of completion of the peer review process.

(3) Ensure that any publisher's agreements entered into by an Awardee will allow for the Awardee to comply with these requirements including submission of Final Peer-Reviewed Manuscripts to the NASA-designated repository, as listed in paragraph (b)(2) of this term and condition, with sufficient rights to permit such repository to use such Final Peer-Reviewed Manuscript in its normal course, including rights to permit users to download XML and plain text formats.

(4) Hereby represent and warrant that Awardee has secured for recipient the right to submit the Final Peer-Reviewed Manuscript to the NASA-designated repository for use as set forth herein.

(5) Include in annual and final reports a list of Final Peer-Reviewed Manuscripts covered by this term and condition.

(End of Term and Condition)

[FR Doc. 2016–26014 Filed 10–26–16; 8:45 am]

**BILLING CODE 7510–13–P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 922**

[Doc. No. AMS–SC–16–0050; SC16–922–1 FR]

**Apricots Grown in Designated Counties in Washington; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Washington Apricot Marketing Committee (Committee) to increase the assessment rate established for the 2016–17 and subsequent fiscal periods from \$0.75 to \$1.40 per ton of Washington apricots handled under the marketing order. The Committee, which is composed of growers and handlers, locally administers the order which regulates the handling of apricots grown in designated counties in Washington. Assessments upon apricot handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective October 28, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dale Novotny, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: [DaleJ.Novotny@ams.usda.gov](mailto:DaleJ.Novotny@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 922, both as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, apricot handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Washington apricots beginning April 1, 2016, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2016–17 and subsequent fiscal periods from \$0.75 to \$1.40 per ton of Washington apricots handled under the order.

The Washington apricot marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of apricots in designated counties in Washington. They are familiar with the Committee's needs, and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2015–16 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from

fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 11, 2016, and unanimously recommended 2016–17 expenditures of \$7,160 and an assessment rate of \$1.40 per ton of apricots. In comparison, the previous fiscal period's budgeted expenditures were \$7,610. The recommended assessment rate of \$1.40 per ton is \$0.65 per ton higher than the rate currently in effect.

Last year at the May 12, 2015, meeting, Committee members voted to moderately increase the budget from \$7,095 to \$7,610, and to decrease the assessment rate from \$1.50 to \$0.75 per ton of apricots handled. The Committee was attempting to lower their excess reserve funds to approximately one fiscal period's operating expenses to remain in compliance with § 922.42(a)(2) of the order. The Committee based its recommendation on a crop estimate of 5,800 tons for the 2015–16 crop year. The actual crop yield for that period was 4,795 tons, 1,005 tons less than the 5,800 ton estimate used by the Committee for budgeting purposes. Low water supply and higher than average temperatures were reported by the industry at the May 11, 2016, meeting as the major factors for the short 2015–16 crop. As a result of the reduced crop size and related lower assessment revenue, the Committee was forced to use more funds from its reserve than previously anticipated. The Committee intends to fully fund ongoing operations and maintain adequate reserve funds through the implementation of the assessment rate increase for the 2016–17 and future fiscal periods.

The major expenditures recommended by the Committee for the 2016–17 fiscal period include \$3,000 for the contracted management fee to the Washington State Fruit Commission, \$1,200 for Committee travel, \$2,000 for the annual audit, \$500 for computer and technical services, and \$250 for office supplies. Budgeted expenses for these items in the 2015–2016 fiscal period were \$3,000 for the management fee, \$1,200 for Committee travel, \$2,500 for the annual audit, and \$500 for office supplies, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington apricots, while also taking into account the Committee's monetary reserve. Washington apricot shipments for the

year are estimated at 5,000 tons which should provide \$7,000 in assessment income at the rate of \$1.40 per ton of Washington apricots handled. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for the 2016–17 fiscal period. Funds in the reserve (currently \$7,301) would be kept within the maximum amount permitted by the order of approximately one fiscal period's operational expenses. Authority for maintaining a financial reserve is found in § 922.42(a)(2) of the order. The Committee expects its monetary reserve to decrease from \$7,301 at the beginning of the 2016–17 fiscal period to approximately \$7,141 at the end of the 2016–17 fiscal period. That amount would be within the provisions of the order and should provide the Committee with the ability to absorb fluctuations in assessment income and expenses into the future.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee meetings are available from the Committee or the USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2016–17 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the

Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 100 growers and 17 handlers of Washington apricots subject to regulation under the marketing order in the regulated area. Most apricot producers and all handlers accounted for in the regulated area are engaged in the production of other crops in addition to apricots. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reports that the 2015 total production and utilization (including both fresh and processed markets) of Washington apricots was approximately 8,000 tons, the average price was \$1,050 per ton, and the total farm-gate value was approximately \$8,400,000. Based on these reports and the number of apricot growers within the production area, it is estimated that the 2015 average revenue from the sale of apricots was approximately \$84,000. In addition, based on information from the USDA's Market News Service, 2015 f.o.b. prices for Washington No.1 apricots ranged from \$20.00 to \$26.00 per 24-pound container for both loose pack and 2-layer tray-pack containers. Using average prices and shipment information provided by the Committee, it is determined that each of the Washington apricot handlers currently ship less than \$7,500,000 worth of apricots on an annual basis. In view of the foregoing, it is concluded that the majority of handlers and growers of Washington apricots may be classified as small entities.

This rule increases the assessment rate established for the Committee, and collected from handlers, for the 2016–17 and subsequent fiscal periods from \$0.75 to \$1.40 per ton of Washington apricots handled. The new assessment rate of \$1.40 is \$0.65 higher than the 2015–16 rate. The quantity of assessable apricots for the 2016–17 fiscal period is estimated at 5,000 tons. Thus, the \$1.40 rate should provide \$7,000 in assessment income and, combined with the existing reserve fund, should be adequate to meet this year's budgeted expenses.

The major expenditures recommended by the Committee for the 2016–17 fiscal period include \$3,000 for the contracted management fee to the Washington State Fruit Commission,

\$1,200 for Committee travel, \$2,000 for the annual audit, \$500 for computer and technical services, and \$250 for office supplies. Budgeted expenses for these items in the 2015–2016 fiscal period were \$3,000 for the management fee, \$1,200 for Committee travel, \$2,500 for the annual audit, and \$500 for office supplies.

The Committee discussed alternatives to this action, including recommending alternative expenditure levels and assessment rates. Although lower assessment rates were considered, none were selected because they would not have generated sufficient income to administer the order.

A review of historical data and preliminary information pertaining to the 2016–17 season indicates that the grower price for Washington apricots could range between \$1,050 and \$1,300 per ton. Therefore, the assessment revenue for the 2016–17 fiscal period, as a percentage of total grower revenue, could range between 0.133 and 0.108 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 11, 2016, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to

reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on August 23, 2016 (81 FR 57493). Copies of the proposed rule were also mailed or sent via facsimile to all apricot handlers. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 22, 2016, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2016–17 fiscal period began on April 1, 2016, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Washington apricots handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (3) handlers are already shipping Washington apricots from the 2016 crop; and (4) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment



period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

#### PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

*Authority:* 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

##### § 922.235 Assessment rate.

On or after April 1, 2016, an assessment rate of \$1.40 per ton is established for Washington apricots handled in the production area.

Dated: October 19, 2016.

**Elanor Starmer,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–25694 Filed 10–26–16; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2016–5306; Directorate Identifier 2015–SW–010–AD; Amendment 39–18697; AD 2016–22–08]

RIN 2120–AA64

#### Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB–BK 117 C–2 helicopters. This AD requires inspecting each terminal lug and replacing any lug that has discoloration, corrosion, incorrect crimping, or incorrect installation. This AD was prompted by the discovery that terminal lugs with incorrect crimping may have been installed on these helicopters. The actions of this AD are intended to detect incorrectly installed or crimped terminal lugs and prevent contact resistance and reduced gastightness

between the wire and terminal lug, subsequent loss of electrical power, and an electrical fire.

**DATES:** This AD is effective December 1, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of December 1, 2016.

**ADDRESSES:** For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at <http://www.airbushelicopters.com/techpub>. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2016–5306.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2016–5306; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

#### SUPPLEMENTARY INFORMATION:

##### Discussion

On April 22, 2016, at 81 FR 23656, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Model MBB–BK 117 C–2 helicopters. The NPRM proposed to require inspecting each terminal lug and replacing any lug that has discoloration, corrosion, incorrect crimping, or incorrect installation. The

proposed requirements were intended to detect incorrectly installed or crimped terminal lugs and prevent contact resistance and reduced gastightness between the wire and terminal lug, subsequent loss of electrical power, and an electrical fire.

The NPRM was prompted by AD No. 2015–0044, dated March 13, 2015, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for certain serial-numbered Airbus Helicopters Model MBB–BK117 C–2 helicopters. EASA advises that terminal lugs with incorrect crimping, which can adversely affect contact resistance and gastightness of the contact between the wire and the terminal lug, may have been installed on some helicopters in production. EASA advises that this condition, if not detected and corrected, could lead to the loss of electrical power during flight. Because of this, the EASA AD requires a one-time visual inspection of the terminal lugs and replacement of affected lugs if incorrect crimping is found.

#### Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (81 FR 23656, April 22, 2016).

#### FAA's Determination

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

#### Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Alert Service Bulletin ASB MBB–BK117 C–2–24A–013, Revision 1, dated November 25, 2014 (ASB). The ASB specifies a visual inspection of the terminal lugs in the distribution and diode boxes for correct crimping, damage, discoloration, corrosion, and correct installation. If any deviation is detected, the terminal lug must be replaced. The ASB also specifies reporting certain information to Airbus Helicopters.

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

### Costs of Compliance

We estimate that this AD affects 183 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at \$85 per work-hour. We estimate about 9 work-hours to inspect the terminal lugs for a cost of \$765 per helicopter and \$139,995 for the U.S. operator fleet. The cost to replace a lug is minimal.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
- (3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

#### 2016–22–08 Airbus Helicopters

##### Deutschland GmbH Helicopters:

Amendment 39–18697; Docket No. FAA–2016–5306; Directorate Identifier 2015–SW–010–AD.

#### (a) Applicability

This AD applies to Model MBB–BK 117 C–2 helicopters, certificated in any category, with a serial number as listed in the Planning Information, paragraph 1.A.1, of Airbus Helicopters Alert Service Bulletin ASB MBB–BK117 C–2–24A–013, Revision 1, dated November 25, 2014 (ASB).

#### (b) Unsafe Condition

This AD defines the unsafe condition as a terminal lug with incorrect crimping. This condition could result in contact resistance and reduced gastightness between the wire and terminal lug and a subsequent loss of electrical power, which could cause an electrical fire.

#### (c) Effective Date

This AD becomes effective December 1, 2016.

#### (d) Compliance

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

#### (e) Required Actions

Within 100 hours time-in-service or 12 months, whichever occurs first:

- (1) Using a mirror, inspect each terminal lug for discoloration and corrosion, and for correct crimping and correct installation in accordance with the Accomplishment Instructions, Table 1, and the examples in Figure 1 through Figure 5 of the ASB.
- (2) If a terminal lug is not correctly crimped or installed or if it has any discoloration or corrosion, replace it before further flight.

### (f) Alternative Methods of Compliance (AMOCs)

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

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

### (g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0044, dated March 13, 2015. You may view the EASA AD on the Internet at <http://www.regulations.gov> in Docket No. FAA–2016–5306.

### (h) Subject

Joint Aircraft Service Component (JASC) Code: 2400 Electrical Power System.

### (i) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Alert Service Bulletin ASB MBB–BK117 C–2–24A–013, Revision 1, dated November 25, 2014.

(ii) Reserved.

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

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

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

Issued in Fort Worth, Texas, on October 18, 2016.

**James A. Grigg,**

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–25741 Filed 10–26–16; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2016-9318; Directorate Identifier 2016-CE-031-AD; Amendment 39-18695; AD 2016-22-06]

RIN 2120-AA64

**Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes**

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Diamond Aircraft Industries GmbH Models DA 40 NG, DA 42 NG, and DA 42 M-NG airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracked autopilot bridle cable clamps. We are issuing this AD to correct the unsafe condition on these products.

**DATES:** This AD is effective November 16, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 16, 2016.

We must receive comments on this AD by December 12, 2016.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A-2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; email: [office@diamond-air.at](mailto:office@diamond-air.at); Internet: <http://www.diamondaircraft.com>. You may

view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available on the Internet at <http://www.regulations.gov> by searching for locating Docket No. FAA-2016-9318.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-9318; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:**

Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; fax: (816) 329-4090; email: [mike.kiesov@faa.gov](mailto:mike.kiesov@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2016-0190, dated September 26, 2016 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

During an inspection of the pitch and roll control system of an aeroplane, cracked autopilot bridle cable clamps were discovered. Over-torqueing has been determined as a possible reason for the cracking.

This condition, if not corrected, could lead to detachment of the clamps from the control system, possibly resulting in reduced control of the aeroplane.

To address this potential unsafe condition, Diamond Aircraft Industries (DAI) issued Recommended Service Bulletins DAI RSB 40NG-048, DAI RSB 42NG-059 and DAI RSB 42NG-059 Revision 1. Later DAI issued Mandatory Service Bulletins DAI MSB 40NG-048 Revision 1 and DAI MSB 42NG-059 Revision 2 (referred to as ‘the applicable SB’ in this AD) to provide inspection instructions. DAI also improved the clamp material in a redesign.

For the reasons described above, this AD requires repetitive inspections of the autopilot bridle cable clamps, and replacement of clamps with redesigned clamps if cracks are found.

You may examine the MCAI on the Internet at <http://www.regulations.gov>

by searching for and locating Docket No. FAA-2016-9318.

**Related Service Information Under 14 CFR Part 51**

Diamond Aircraft Industries GmbH has issued Mandatory Service Bulletin MSB 40NG-048/1, dated September 9, 2016, Work Instruction WI-MSB 40NG-048, Revision 1, dated September 9, 2016, Mandatory Service Bulletin MSB 42NG-059/2, dated September 9, 2016, and Work Instruction WI-MSB 42NG-059, Revision 2, dated September 9, 2016. In paired combinations, the mandatory service bulletins and work instructions describe procedures for inspecting the autopilot bridle cable clamps and replacing the clamps with redesigned clamps if cracks are found on the applicable airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

**FAA’s Determination and Requirements of This AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**FAA’s Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracked autopilot bridle cable clamp could cause detachment of the clamps from the control system and result in reduced control. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant

data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2016–9318; Directorate Identifier 2016–CE–031–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

### Costs of Compliance

We estimate that this AD will affect 78 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic inspection requirement of this AD. The average labor rate is \$85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be \$6,630, or \$85 per product.

In addition, we estimate that any necessary follow-on replacement actions will take about 1 work-hour and require parts costing \$41 per autopilot bridle cable clamp. There are a total of 4 clamps per airplane. This AD requires replacing 2 clamps at a time, for a cost of \$167 per product. We have no way of determining the number of products that may need these actions.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

**2016–22–06 Diamond Aircraft Industries GmbH:** Amendment 39–18695; Docket No. FAA–2016–9318; Directorate Identifier 2016–CE–031–AD.

#### (a) Effective Date

This airworthiness directive (AD) becomes effective November 16, 2016.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to the following Diamond Aircraft Industries GmbH model airplanes certificated in any category.

- (1) Model DA 40 NG: Serial numbers 40.N260 through 40.N314;
- (2) Model DA 42 NG: Serial numbers 42.N150 through 42.N223; and
- (3) Model DA 42 M–NG: Serial numbers 42.MN035 through 42.MN052.

### (d) Subject

Air Transport Association of America (ATA) Code 22: Autopilot.

### (e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to detect and correct cracked autopilot bridle cable clamps, which could cause detachment of the clamps from the control system and could result in reduced control.

### (f) Actions and Compliance

Unless already done, do the following actions.

- (1) Within the next 25 hours time-in-service (TIS) after November 16, 2016 (the effective date of this AD) or within the next 3 months after November 16, 2016 (the effective date of this AD), whichever occurs first, and repetitively thereafter at intervals not to exceed 200 hours TIS, inspect each autopilot bridle cable clamp, part numbers (P/Ns) D41–2213–10–53 and D41–2213–10–54. Do the inspections following the INSTRUCTIONS section of Diamond Aircraft Industries GmbH (DAI) Work Instruction WI–MSB 40NG–048, Revision 1, dated September 9, 2016, as specified in the Accomplishments/Instructions paragraph of DAI Mandatory Service Bulletin MSB 40NG–048/1, dated September 9, 2016, and the INSTRUCTIONS section of DAI Work Instruction WI–MSB 42NG–059, Revision 2, dated September 9, 2016, as specified in the Accomplishments/Instructions paragraph of DAI Mandatory Service Bulletin MSB 42NG–059/2, dated September 9, 2016, as applicable.

**Note 1 to paragraph (f)(1) of this AD:** The European Aviation Safety Agency (EASA) AD No. 2016–0190, dated September 26, 2016, and the DAI service bulletins referenced in paragraph (f)(1) of this AD allow the compliance time for the initial inspection of each autopilot bridle cable clamp to be extended from within the 25 hours time-in-service or within the next 3 months, whichever occurs first, to 200 hours TIS or 12 months, whichever occurs first, as long as the autopilot is deactivated. This AD does not allow for this extension.

- (2) If a crack is found in either autopilot bridle cable clamp during any inspection required in paragraph (f)(1) of this AD, before further flight, replace both autopilot bridle cable clamps with improved design autopilot bridle cable clamps, P/Ns D41–2213–10–53\_01 (or higher) and P/N D41–2213–10–54\_01 (or higher). Do the replacements following the INSTRUCTIONS section of DAI Work Instruction WI–MSB 40NG–048, Revision 1, dated September 9, 2016, as specified in the Accomplishments/Instructions paragraph of DAI Mandatory Service Bulletin MSB 40NG–048/1, dated September 9, 2016, and the INSTRUCTIONS section of DAI Work Instruction WI–MSB 42NG–059, Revision 2, dated September 9, 2016, as specified in the Accomplishments/Instructions paragraph of DAI Mandatory Service Bulletin MSB 42NG–

059/2, dated September 9, 2016, as applicable.

(3) Installing improved design autopilot bridle cable clamps, P/N D41-2213-10-53\_01 (or higher) and P/N D41-2213-10-54\_01 (or higher) terminates the repetitive inspections required in paragraph (f)(1) of this AD.

(4) As of November 16, 2016 (the effective date of this AD), do not install autopilot bridle cable clamps, P/Ns D41-2213-10-53 and D41-2213-10-54.

#### (g) Credit for Actions Done Following Previous Service Information

This AD allows credit for doing only the initial inspection action required in paragraph (f)(1) of this AD if done before November 16, 2016 (the effective date of this AD), following DAI Recommended Service Bulletin RSB 40NG-048, dated August 24, 2016, and DAI Recommended Service Bulletin RSB 42NG-059, dated June 30, 2016, or DAI Recommended Service Bulletin RSB 42NG-059, Revision 1, dated August 24, 2016, as applicable.

#### (h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; fax: (816) 329-4090; email: [mike.kiesov@faa.gov](mailto:mike.kiesov@faa.gov). Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn:

Information Collection Clearance Officer, AES-200.

#### (i) Related Information

Refer to MCAI EASA AD No. 2016-0190, dated September 26, 2016, DAI Recommended Service Bulletin RSB 40NG-048, dated August 24, 2016, DAI Recommended Service Bulletin RSB 42NG-059, dated June 30, 2016, and DAI Recommended Service Bulletin RSB 42NG-059, Revision 1, dated August 24, 2016, for related information. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-9318.

#### (j) Material Incorporated by Reference

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

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

(i) Diamond Aircraft Industries GmbH Mandatory Service Bulletin MSB 40NG-048/1, dated September 9, 2016.

(ii) Diamond Aircraft Industries GmbH Work Instruction WI-MSB 40NG-048, Revision 1, dated September 9, 2016.

(iii) Diamond Aircraft Industries GmbH Mandatory Service Bulletin MSB 42NG-059/2, dated September 9, 2016.

(iv) Diamond Aircraft Industries GmbH Work Instruction WI-MSB 42NG-059, Revision 2, dated September 9, 2016.

(3) For Diamond Aircraft Industries GmbH service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A-2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; email: [office@diamond-air.at](mailto:office@diamond-air.at); Internet: <http://www.diamondaircraft.com>.

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-9318.

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

Issued in Kansas City, Missouri on October 17, 2016.

**Pat Mullen,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016-25657 Filed 10-26-16; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2016-6123; Directorate Identifier 2016-CE-007-AD; Amendment 39-18690; AD 2016-22-01]

RIN 2120-AA64

#### Airworthiness Directives; Schempp-Hirth Flugzeugbau GmbH Gliders

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Schempp-Hirth Flugzeugbau GmbH Models Discus-2a, Discus-2b, Discus-2c, Discus 2cT, Ventus-2a, and Ventus-2b gliders. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition insufficient overlap of the airbrake panels. We are issuing this AD to correct the unsafe condition on these products.

**DATES:** This AD is effective December 1, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 1, 2016.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-6123; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, 73230 Kirchheim/Teck, Germany; telephone: +49 7021 7298-0; fax: +49 7021 7298-199; email: [info@schempp-hirth.com](mailto:info@schempp-hirth.com); Internet: <http://www.schempp-hirth.com>. You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available on the Internet at <http://www.regulations.gov> by searching for Docket No. FAA-2016-6123.

**FOR FURTHER INFORMATION CONTACT:** Jim Rutherford, Aerospace Engineer, FAA,

Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4165; fax: (816) 329-4090; email: [jim.rutherford@faa.gov](mailto:jim.rutherford@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Schempp-Hirth Flugzeugbau Model Discus-2a, Discus-2b, Discus-2c, Discus 2cT, Ventus-2a, and Ventus-2b gliders. The NPRM was published in the **Federal Register** on April 27, 2016 (81 FR 24743). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

Operational experience shows that, under certain conditions, the overlap between the two airbrake panels can be insufficient and the panels can interlock.

This condition, if not corrected, could lead to blockage of the airbrakes, possibly resulting in reduced control of the (powered) sailplane.

To address this potential unsafe condition, Schempp-Hirth Flugzeugbau GmbH issued TN 349-39, 360-29, 825-55 and 863-22 (single document, hereafter referred to as 'the TN' in this AD), to provide inspection instructions to verify the correct overlap between the two affected airbrake panels.

For the reason described above, this AD requires a one-time inspection of the overlap of the affected airbrake panels and, depending on findings, accomplishment of applicable corrective action(s).

The MCAI can be found in the AD docket on the Internet at: <https://www.regulations.gov/document?D=FAA-2016-6123-0002>.

##### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

##### Request for Pilot-Owner To Conduct Inspection

Glenn Yeldezan commented that the EASA AD mandated the use of a Schempp-Hirth Technical Note that allowed for the pilot-owner to accomplish the inspection. The commenter requested that the FAA AD include this option for the pilot-owner to accomplish the inspection or, alternately, asked whether the revised Technical Note is enough justification for the pilot-owner to perform the inspection.

We do not agree with allowing pilot-owner to do this inspection. The U.S. regulatory system will not allow a pilot-owner to accomplish inspections on their gliders in accordance with Title 14 Code of Federal Regulations (CFR) part 43. Therefore, we will not revise the AD to account for the allowance in the foreign AD for the pilot-owner to accomplish the specified inspections.

##### Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

##### Related Service Information Under 14 CFR Part 51

We reviewed Schempp-Hirth Flugzeugbau GmbH Technical Note No. 349-39, 360-29, 825-55, 863-22; dated January 29, 2016 (published as a single document), and Arbeitsanweisung (English translation: Working instructions) for Technische Mitteilung Nr. (English translation: Technical Note No.) 349-39, 360-29, 825-55, 863-22, Ausgabe (English translation: Issue) 1, Datum (English translation: Dated) January 22, 2016 (published as a single document). In combination, this service information describes procedures for inspection of the overlap of the airbrake panels and, if necessary, replacement of the airbrake panels. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

##### Costs of Compliance

We estimate that this AD will affect 86 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this AD.

Based on these figures, we estimate the cost of this AD on U.S. operators to be \$14,620, or \$170 per product.

In addition, we estimate that any necessary follow-on actions would take about 4 work-hours and require parts costing \$100, for a cost of \$440 per product. We have no way of determining the number of products that may need these actions.

##### Authority for This Rulemaking

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

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

##### Regulatory Findings

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

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

##### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-6123; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

**2016–22–01 Schempp-Hirth Flugzeugbau:**  
Amendment 39–18690; Docket No.  
FAA–2016–6123; Directorate Identifier  
2016–CE–007–AD.

#### (a) Effective Date

This airworthiness directive (AD) becomes effective December 1, 2016.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to the following Schempp-Hirth Flugzeugbau GmbH model and serial number gliders, certificated in any category:

- (1) Model Discus–2a, serial numbers 1 through 253;
- (2) Model Discus–2b, serial numbers 1 through 255;
- (3) Model Discus–2c, serial numbers 1 through 61;
- (4) Model Discus 2cT, serial numbers 1 through 127;
- (5) Model Ventus–2a, serial numbers 1 through 178; and
- (6) Model Ventus–2b, serial numbers 1 through 175.

#### (d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

#### (e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient overlap of the airbrake panels. We are issuing this proposed AD to require actions to address the unsafe condition on these products. We are issuing this AD to prevent interlocking of the airbrake panels, which could lead to blockage of the airbrakes and possible loss of control.

#### (f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (2) of this AD:

- (1) Within the next 40 days after December 1, 2016 (the effective date of this AD), inspect

the overlap of the airbrake panels for a minimum overlap of at least 3 millimeters following Action 1 in Schempp-Hirth Flugzeugbau GmbH Technische Mitteilung Nr. (English translation: Technical Note No.) 349–39, 360–29, 825–55, 863–22, dated January 29, 2016 (published as a single document); and Action 1 in the associated Arbeitsanweisung (English translation: Working instructions) for Technische Mitteilung Nr. (English translation: Technical Note No.) 349–39, 360–29, 825–55, 863–22, Ausgabe (English translation: Issue) 1, Datum (English translation: Dated) January 22, 2016 (published as a single document).

**Note 1 to paragraph (f)(1) and (2) of this AD:** This service information contains German to English translation. The EASA used the English translation in referencing the document. For enforceability purposes, we will refer to the Schempp-Hirth Flugzeugbau GmbH service information as it appears on the document.

(2) If, during the inspection required in paragraph (f)(1) of this AD, the overlap on the airbrake panels is found to be less than 3 millimeters, before further flight, install eccentric bushings and make adjustments following Action 2 in Schempp-Hirth Flugzeugbau GmbH Technische Mitteilung Nr. (English translation: Technical Note No.) 349–39, 360–29, 825–55, 863–22, dated January 29, 2016 (published as a single document); and Action 2 in the associated Arbeitsanweisung (English translation: Working instructions) for Technische Mitteilung Nr. (English translation: Technical Note No.) 349–39, 360–29, 825–55, 863–22, Ausgabe (English translation: Issue) 1, Datum (English translation: Dated) January 22, 2016 (published as a single document).

**Note 2 to paragraph (f)(2) of this AD:** The Schempp-Hirth Flugzeugbau GmbH Technische Mitteilung Nr. (English translation: Technical Note No.) 349–39, 360–29, 825–55, 863–22, dated January 29, 2016 (published as a single document) includes four German language drawings that you may use for additional information, but the drawings are not required to comply with this AD.

#### (g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) **Alternative Methods of Compliance (AMOCs):** The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: [jim.rutherford@faa.gov](mailto:jim.rutherford@faa.gov). Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) **Airworthy Product:** For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they

are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

#### (h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2016–0027, dated February 9, 2016, for related information. The MCAI can be found in the AD docket on the Internet at: <https://www.regulations.gov/document?D=FAA-2016-6123-0002>.

#### (i) Material Incorporated by Reference

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

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

- (i) Schempp-Hirth Flugzeugbau GmbH Technische Mitteilung Nr. (English translation: Technical Note No.) 349–39, 360–29, 825–55, 863–22, dated January 29, 2016 (published as a single document); and
- (ii) Arbeitsanweisung (English translation: Working instructions) for Technische Mitteilung Nr. (English translation: Technical Note No.) 349–39, 360–29, 825–55, 863–22, Ausgabe (English translation: Issue) 1, Datum (English translation: Dated) January 22, 2016 (published as a single document).

**Note 3 to paragraph (i)(2) of this AD:** This service information contains German to English translation. The EASA used the English translation in referencing the document. For enforceability purposes, we will refer to the Schempp-Hirth Flugzeugbau GmbH service information as it appears on the document.

(3) For Schempp-Hirth Flugzeugbau GmbH service information identified in this AD, contact Schempp-Hirth Flugzeugbau GmbH, Krehenstrasse 25, 73230 Kirchheim/Teck, Germany; telephone: +49 7021 7298–0; fax: +49 7021 7298–199; email: [info@schempp-hirth.com](mailto:info@schempp-hirth.com); Internet: <http://www.schempp-hirth.com>.

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2016–6123.

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

Issued in Kansas City, Missouri, on October 17, 2016.

**Pat Mullen,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–25674 Filed 10–26–16; 8:45 am]

**BILLING CODE 4910–13–P**



**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2016-8160; Directorate Identifier 2016-CE-019-AD; Amendment 39-18691; AD 2016-22-02]

RIN 2120-AA64

**Airworthiness Directives; Embraer S.A. Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Embraer S.A. Models EMB-500 and EMB-505 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrect installation of passenger seat attachment fittings. We are issuing this AD to correct the unsafe condition on these products.

**DATES:** This AD is effective December 1, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 1, 2016.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-8160; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Embraer—S.A., Phenom Maintenance Support, Avenida Brigadeiro Faria Lima, 2170, São José dos Campos—SP—12227-901, P.O. Box 36/2, Brasil; phone: +55 12 3927 1000; fax: +55 12 3927-2619; email: [phenom.reliability@embraer.com.br](mailto:phenom.reliability@embraer.com.br); Internet: <http://www.embraer.com.br/en-US/Pages/home.aspx>. You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available on the Internet at <http://www.regulations.gov> by searching for Docket No. FAA-2016-8160.

**FOR FURTHER INFORMATION CONTACT:** Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4165; fax: (816) 329-4090; email: [jim.rutherford@faa.gov](mailto:jim.rutherford@faa.gov).

**SUPPLEMENTARY INFORMATION:****Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Embraer S.A. Models EMB-500 and EMB-505 airplanes. The NPRM was published in the **Federal Register** on July 7, 2016 (81 FR 44238). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

There is the possibility that certain attachment fittings of passenger seats have been incorrectly installed. This AD results from a determination that the passenger seat on which the attachment fittings were improperly installed may not meet certain static strength, and dynamic strength criteria. Failure to meet static and dynamic strength criteria could result in injuries to the occupants during an emergency landing condition.

This AD requires the inspection of each passenger seat for the correct installation of the attachment fittings and correction, if necessary.

The MCAI can be found in the AD docket on the Internet at: <https://www.regulations.gov/document?D=FAA-2016-8160-0001>.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

**Request To Withdraw the Proposed AD and Replace With SAIB**

Embraer S.A requested that the FAA withdraw this AD stating there is no data available considering the real seat dynamic strength if the fittings were not assembled in the correct way, as this wrong configuration was never tested during the seat certification process. The commenter stated that assuming the possible uncorrected seat fittings were installed, the unsafe condition would require a survivable crash landing to exist. Due to lack of better data and considering a total of six (6) hull losses in the fleet as being survivable crash landings, then the current fleet probability of a crash landing would be  $1,15 \times 10^{-5}$ . Based on this

consideration, Embraer understood that the probability of an unsafe condition would be extremely remote, therefore not justifying the issuance of an AD as per 14 CFR part 39 requirements.

The commenter suggested that the issuance of a special airworthiness information bulletin (SAIB) would be more appropriate for a possible improper installation because, per FAA definition, the "Special Airworthiness Information Bulletin (SAIB) is an information tool that alerts, educates, and makes recommendations to the aviation community. SAIBs contain non-regulatory information and guidance that does not meet the criteria for an AD."

We don't agree because as part of the investigation into the Embraer request, the FAA contacted the Brazilian Airworthiness Authority, ANAC, to get their input as the certifying authority and originator of the original mandatory continuing airworthiness information (MCAI). ANAC reported that they had received similar comments from Embraer and had decided to go ahead and issue their AD. They justified this decision because there is no data indicating that a seat installation on which the aluminum and steel fittings have been switched would meet the static and dynamic criteria. They also reasoned that the seat assembly criteria for the current requirements are to provide a specific level of safety to the occupants in case of impact. Therefore, they disagreed with removing these safety features just because they would only be used in a crash landing event. After review of the Embraer request and the related comments from ANAC, the FAA has decided that we agree with ANAC and will not withdraw our proposed AD for this unsafe condition.

**Request To Change Wording for Passenger Seat**

Justin Collins requested that the FAA make changes to the wording of the proposed AD Applicability, paragraph (c)(2), which excludes "any passenger seat replaced during routine maintenance." The commenter believes that a more appropriate phrase would be "any passenger seat removed and reinstalled" or "any passenger seat that has been installed."

The commenter states that the word 'replaced' in the proposed AD infers a different part has been installed.

We don't agree with adding the concept of 'reinstallation' to the final rule. If the unsafe condition exists on the aircraft, it is possible that this seat could be removed and reinstalled without the fitting installation being corrected and thus still have the unsafe



condition. The Embraer S.A. Service Bulletin (SB) No. 500–25–0016, dated December 8, 2015, states in paragraph 1.A., that “This effectivity list includes the aircraft originally equipped with the affected component. Since this component is a ‘Line Replaceable Unit’ (LRU), it may be necessary to refer to the fleet maintenance control record and verify whether the unit has been replaced with another one during routine maintenance.” The other referenced Embraer SB for the Model EMB–505 has a similar note. The point is that the unsafe condition originated during the manufacturing process of the seat assembly. If an affected seat is replaced with a different seat during subsequent maintenance, then the unsafe condition is no longer a factor as the new seat should be assembled according to correct instructions. For this reason, the FAA will not add the word ‘reinstall’ to the final rule based on this comment. However, in order to better reflect the wording in the service information, we will add the words “with another one” after the word “replaced” and before the phrase “during routine maintenance.”

### Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

### Related Service Information Under 14 CFR Part 51

We reviewed Embraer S.A. Service Bulletin (SB) No.: 500–25–0016, dated December 8, 2015; and Embraer S.A. SB No.: 505–25–0020, dated December 8, 2015. The service information describes procedures for inspection of the passenger seat attachment fittings and correction to the fittings if necessary on the applicable airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section of the AD.

### Costs of Compliance

We estimate that this AD will affect 203 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be \$69,020, or \$340 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours for a cost of \$510 per product. We have no way of determining the number of products that may need these actions.

According to the manufacturer, all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

For the reasons discussed above, I certify this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

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

### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2016–8160; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

**2016–22–02 Embraer S.A.:** Amendment 39–18691; Docket No. FAA–2016–8160; Directorate Identifier 2016–CE–019–AD.

#### (a) Effective Date

This airworthiness directive (AD) becomes effective December 1, 2016.

#### (b) Affected Ads

None.

#### (c) Applicability

(1) This AD applies to Embraer S.A. Model EMB–500 airplanes, serial numbers 50000322, 50000324 through 50000328, 50000330 through 50000344, 50000346 through 50000350, and 50000353, certificated in any category; and Embraer S.A. Model EMB–505 airplanes, serial numbers 50500004 through 50500215, 50500217 through 50500245, 50500247 through 50500255, 50500257 through 50500259, 50500261 through 50500263, 50500265, and 50500267, certificated in any category.

(2) The airplanes identified in paragraph (c)(1) of this AD had passenger seats installed at manufacturer as listed in Embraer S.A. Service Bulletin (SB) No.: 500–25–0016, dated December 8, 2015; or Embraer S.A. SB No.: 505–25–0020, dated December 8, 2015. Since these are line replaceable units and the unsafe condition of this AD was originated during manufacturing, any passenger seat replaced with another one during routine maintenance is not affected by the actions of this AD.

**(d) Subject**

Air Transport Association of America (ATA) Code 25: Equipment/Furnishing.

**(e) Reason**

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrect installation of passenger seat attachment fittings. We are issuing this proposed AD to detect and correct improperly installed seat attachment fittings, which could result in seat damage causing injury to occupants during an emergency landing condition.

**(f) Actions and Compliance**

Unless already done, do the following actions in paragraphs (f)(1) and (2) of this AD following the Accomplishment Instructions in Embraer S.A. Service Bulletin (SB) No.: 500–25–0016, dated December 8, 2015; or Embraer S.A. SB No.: 505–25–0020, dated December 8, 2015, as applicable:

(1) Within the next 30 months after December 1, 2016 (the effective date of this AD), inspect each applicable passenger seat for the correct installation of attachment fittings.

(2) If any discrepancy is found during the inspection required in paragraph (f)(1) of this AD, before further flight, correct the discrepancy following the applicable service information or using FAA-approved procedures.

**(g) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: [jim.rutherford@faa.gov](mailto:jim.rutherford@faa.gov). Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, only use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated

agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

**(h) Related Information**

Refer to MCAI Agência Nacional de Aviação Civil (ANAC) AD No.: 2016–05–01, dated May 27, 2016, for related information. You may examine the MCAI in the AD docket on the Internet at: <https://www.regulations.gov/document?D=FAA-2016-8160-0001>.

**(i) Material Incorporated by Reference**

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

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

(i) Embraer S.A. Service Bulletin (SB) No.: 500–25–0016, dated December 8, 2015.

(ii) Embraer S.A. SB No.: 505–25–0020, dated December 8, 2015.

(3) For Embraer S.A. service information identified in this AD, contact Embraer—S.A., Phenom Maintenance Support, Avenida Brigadeiro Faria Lima, 2170, São José dos Campos—SP—12227–901, P.O. Box 36/2, Brasil; phone: +55 12 3927 1000; fax: +55 12 3927–2619; email: [phenom.reliability@embraer.com.br](mailto:phenom.reliability@embraer.com.br); Internet: <http://www.embraer.com.br/en-US/Pages/home.aspx>.

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2016–8160.

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

Issued in Kansas City, Missouri, on October 17, 2016.

**Pat Mullen,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–25660 Filed 10–26–16; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

**[Docket No.: FAA–2014–0225; Amdt. No. 91–331D]**

**RIN 2120–AK92**

**Extension of the Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions (FIRs)**

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

**ACTION:** Final rule.

**SUMMARY:** This action extends the prohibition against certain flight operations in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) flight information regions (FIRs) by all United States (U.S.) air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action to be necessary to address a continuing hazard to persons and aircraft engaged in such flight operations.

**DATES:** This final rule is effective on October 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Michael Filippell, Air Transportation Division, AFS–220, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8166; email: [michael.e.filippell@faa.gov](mailto:michael.e.filippell@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

This action continues the prohibition on flight operations in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft,

except when such operators are foreign air carriers. The FAA finds this action necessary to address a continuing hazard to persons and aircraft engaged in such flight operations.

## II. Legal Authority and Good Cause

### A. Authority for This Rulemaking

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in title 49, U.S. Code. Subtitle I, section 106(f), describes the authority of the FAA Administrator. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority because it continues to prohibit the persons subject to paragraph (a) of Special Federal Aviation Regulation (SFAR) No. 113, § 91.1607, from conducting flight operations in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs due to the hazard to the safety of such persons' flight operations, as described in the Background section of this rule.

### B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." In this instance, the FAA finds that notice and public comment to this immediately adopted final rule, as well as any delay in the effective date of this rule, are contrary to the public interest due to the immediate need to address the continuing hazard to civil aviation that exists in the Simferopol (UKFV) and

Dnipropetrovsk (UKDV) FIRs, as described in the Background section of this final rule.

## III. Background

The threat to safety in existence when the FAA first published SFAR No. 113, § 91.1607 on April 25, 2014 (79 FR 22862) has not abated. At that time, the FAA viewed the possibility of civil aircraft receiving confusing and conflicting air traffic control instructions from both Ukrainian and Russian air traffic service providers when operating in the portion of the Simferopol (UKFV) FIR covered by SFAR No. 113, § 91.1607, as an unsafe condition that presented a potential hazard to U.S. civil flight operations in the disputed airspace. Because political and military tensions between Ukraine and the Russian Federation remained high, the FAA was also concerned that compliance with air traffic control instructions issued by the authorities of one country could result in a civil aircraft being misidentified as a threat and intercepted or otherwise engaged by air defense forces of the other country. The FAA continues to have these concerns.

On July 18, 2014, the FAA issued a Notice to Airmen (NOTAM) FDC 4/2182, expanding the flight prohibition to the entire Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs, primarily as an immediate response to the shoot down of Malaysia Airlines MH17 on July 17, 2014, while flying over Ukraine at 33,000 feet just west of the Russian border. Two hundred ninety eight passengers and crew perished. In addition, there were other attacks on fixed-wing and rotary-wing Ukrainian military aircraft flying at lower altitudes, such as the shoot down of a Ukrainian An-26 flying at 21,000 feet southeast of Luhansk on July 14, 2014. As a result of these events, the FAA determined that the ongoing conflict in the region posed a significant threat to U.S. civil aviation operations in these FIRs. The use of weapons capable of targeting and shooting down aircraft flying on civil air routes at cruising altitudes posed a significantly dangerous threat to civil aircraft flying in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs. The FAA published a final rule incorporating the expanded flight prohibition into SFAR No. 113, § 91.1607, on December 29, 2014 (79 FR 77857). The FAA extended this flight prohibition in a final rule published October 27, 2015 (80 FR 65621).

The State Aviation Administration of Ukraine conducted and completed an airspace restructuring that went into

effect in the late 2014 timeframe. The new configuration altered both the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Region (FIR) altitude structures. To address the Ukraine airspace restructuring and provide additional clarity, on July 22, 2016, the FAA published a technical amendment to specifically identify the prohibited airspace in which SFAR No. 113, § 91.1607, applies, with inclusive altitudes and lateral limitations (latitude and longitude coordinates). 81 FR 47699.

The FAA has continued to evaluate the situation in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs and has determined there is a continuing significant flight safety hazard to U.S. civil aviation. Although the European Aviation Safety Agency's (EASA) published a Safety Information Bulletin (SIB) on February 17, 2016, indicating that ATS routes L851 and M856 could be considered for planning flights in the Simferopol (UKFV) FIR, there is continuing concern over the hazard to U.S. civil aviation from possible conflicting air traffic control instructions from Ukrainian and Russian air traffic service providers. Shortly following the EASA bulletin, the Russian Federal Air Transport Agency responded with a press release in which it again asserted that it was responsible for air traffic services in a portion of the Simferopol (UKFV) FIR. The Russian circular (from Feb 21, 2016) further stated, "The Russian Federation does not bear the responsibility for the provision of safety to those flights, which will be operated within Simferopol FIR under control of ATC unit other than Simferopol Air Traffic Management Centre." Russia contended that EASA's decision was politically motivated and 'pose[d] a threat to aviation safety in the region.' In addition, there have been reported incidents of purposeful interference, including GPS jamming, in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs. Based on this information, the FAA continues to assess that there is a significant flight safety hazard to U.S. civil aviation in the Simferopol (UKFV) FIR.

In the Dnipropetrovsk (UKDV) FIR, there is an ongoing risk of skirmishes in the area and a potential for larger-scale fighting in eastern Ukraine involving combined Russian-separatist forces, which could result in civil aircraft being misidentified as a threat and then intercepted or otherwise engaged, as demonstrated by the shoot down of Malaysia Airlines Flight 17 on July 17, 2014. These combined forces have access to a variety of anti-aircraft

weapons, to include man-portable air defense systems (MANPADS) and possibly more advanced surface-to-air-missiles (SAMs) that have the capability to engage aircraft at higher altitudes. Separatists have demonstrated their ability to use these anti-aircraft weapons by successfully shooting down a number of aircraft during the course of the fighting in eastern Ukraine in 2014. More recently, Organization for Security and Cooperation in Europe (OSCE) Special Monitoring Mission to Ukraine (SMM) unmanned aerial systems (UASs) also have been shot down by surface-to-air missiles and small arms ground fire, and brought down with GPS jamming in the Dnipropetrovsk (UKDV) FIR.

Due to the previously described continuing hazards to U.S. civil aviation operations, the FAA is extending the expiration date of SFAR No. 113, § 91.1607, to continue the prohibition on flight operations in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. This rule extends the expiration date of SFAR No. 113, § 91.1607, from October 27, 2016, to October 27, 2018.

The FAA will continue to actively evaluate the area to determine to what extent U.S. civil aviation may be able to safely operate therein. Adjustments to this SFAR may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind this SFAR as necessary prior to its expiration date.

Because the circumstances described herein warrant a continuation of the flight restrictions imposed by SFAR No. 113, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. I also find that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

#### IV. Regulatory Notices and Analyses

##### A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation

justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39), as amended, 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action as defined in section 3(f) of Executive Order 12866 or as defined in DOT's Regulatory Policies and Procedures, as it raises novel policy issues. This final rule merely extends an existing flight prohibition without change. This rule will not have a significant economic impact on a substantial number of small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

This rule extends the existing prohibition against U.S. civil flight operations in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs. As we noted in the most recent previous

amendment to SFAR No. 113, § 91.1607 (80 FR 65621, October 27, 2015), almost all U.S. operators already had voluntarily ceased their operations in these FIRs prior to the issuance of the FAA NOTAM on July 18, 2014 (UTC), which prohibited U.S. civil flight operations in these two FIRs in their entirety. Prior to the issuance of the July 18, 2014 (UTC) NOTAM, the FAA had already prohibited U.S. civil flight operations in a portion of the Simferopol (UKFV) FIR due to a dispute between Ukraine and the Russian Federation over which country is responsible for providing air navigation services in the area, first via NOTAM and subsequently when the FAA initially published SFAR No. 113, § 91.1607, on April 25, 2014. Consequently, no U.S. operators were operating in that portion of the Simferopol (UKFV) FIR at the time of the December 29, 2014 amendment to the rule.

Because of the continuing significant hazards to U.S. civil aviation discussed in the Background section of this final rule, the FAA believes that few, if any, U.S. operators presently wish to conduct operations in either of these two FIRs. Moreover, both the amendment published on December 29, 2014, and this rule, permit a U.S. Government department, agency, or instrumentality to request FAA approval on behalf of a person described in paragraph (a) of SFAR No. 113, § 91.1607, to conduct operations under a contract (or subcontract), grant, or cooperative agreement with that department, agency, or instrumentality. As no U.S. Government department, agency, or instrumentality has requested such approval since December 29, 2014, there is apparently little demand for such approvals. Finally, the possibility of obtaining an approval, should one be requested, lowers the expected cost of the extended rule. Accordingly, the FAA believes the incremental costs of this final rule will be minimal. These minimal costs will be exceeded by the benefits of avoiding the deaths, injuries, and/or property damage that would result from a U.S. operator's aircraft being shot down (or otherwise damaged) while operating in either or both of the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs.

##### 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 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.

As described in the Regulatory Evaluation section of this preamble, the incremental costs of this rule are minimal. Therefore, as provided in § 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

#### *C. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended, prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from a hazard outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act.

#### *D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

#### *E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 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 is no new requirement for information collection associated with this immediately adopted final rule.

#### *F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

#### *G. Environmental Analysis*

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f of this order and involves no extraordinary circumstances.

The FAA has reviewed the implementation of this SFAR and determined it is categorically excluded from further environmental review according to FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.6f. The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the action, the FAA

finds that this Federal action does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

#### **V. Executive Order Determinations**

##### *A. Executive Order 13132, Federalism*

The FAA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action 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 immediately adopted final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it 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, Promoting International Regulatory Cooperation*

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

#### **VI. Additional Information**

##### *A. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);

- Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
- Accessing the Government Publishing Office's Web page at <http://www.fdsys.gov>

Copies may also be obtained by sending a request (identified by docket or amendment number of the rule) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9677.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

#### *B. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** 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/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

#### **List of Subjects in 14 CFR Part 91**

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Ukraine.

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

#### **PART 91—GENERAL OPERATING AND FLIGHT RULES**

- 1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

- 2. Amend § 91.1607 by revising paragraph (e) to read as follows:

#### **§ 91.1607 Special Federal Aviation Regulation No. 113—Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions (FIRs).**

\* \* \* \* \*

(e) *Expiration.* This SFAR will remain in effect until October 27, 2018. The FAA may amend, rescind, or extend this SFAR as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on October 21, 2016.

**Victoria B. Wassmer,**

*Acting Deputy Administrator.*

[FR Doc. 2016–25962 Filed 10–24–16; 4:20 pm]

**BILLING CODE 4910–13–P**

#### **DEPARTMENT OF THE INTERIOR**

#### **Bureau of Indian Affairs**

#### **25 CFR Part 11**

[178A2100DD/AAKC001030/A0A501010.999900 253G]

**RIN 1076–AF33**

#### **Addition of the Wind River Indian Reservation to the List of Courts of Indian Offenses**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule establishes a Court of Indian Offenses (also known as CFR Court) for the Wind River Indian Reservation until the agency can promulgate a final rule that considers comments received.

**DATES:** This interim final rule is effective on October 27, 2016. Submit comments by November 28, 2016.

**ADDRESSES:** You may submit comments by any of the following methods:

- Federal rulemaking portal [www.regulations.gov](http://www.regulations.gov). The rule is listed under the agency name “Bureau of Indian Affairs.”
- *Mail, Hand Delivery, or Courier:* Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 3642, Washington, DC 20240.

• We cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Appel, Director, Office of

Regulatory Affairs & Collaborative Action—Indian Affairs, (202) 273–4680; [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov).

#### **SUPPLEMENTARY INFORMATION:**

I. Summary of Rule

II. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

B. Regulatory Flexibility Act

C. Small Business Regulatory Enforcement Fairness Act

D. Unfunded Mandates Reform Act

E. Takings (E.O. 12630)

F. Federalism (E.O. 13132)

G. Civil Justice Reform (E.O. 12988)

H. Consultation With Indian Tribes (E.O. 13175 and Departmental policy)

I. Paperwork Reduction Act

J. National Environmental Policy Act

K. Effects on the Energy Supply (E.O. 13211)

L. Clarity of This Regulation

M. Public Availability of Comments

N. Determination To Issue an Interim Final Rule With Immediate Effective Date

#### **I. Summary of Rule**

Courts of Indian Offenses operate in those areas of Indian country where tribes retain jurisdiction over Indians exclusive of State jurisdiction, but where tribal courts have not been established to fully exercise that jurisdiction. The Eastern Shoshone Tribe and the Northern Arapaho Tribe have a joint interest in the Wind River Indian Reservation, however the current tribal court operating on the reservation, the Shoshone & Arapaho Tribal Court, is currently operating without the support of both tribes, and with such limited resources, that it may cease operations without notice. To ensure the continued administration of justice on the Reservation, the BIA is taking steps to ensure that judicial services will continue to be provided if the Shoshone & Arapaho Tribal Court ceases operations. Therefore, this rule revises a section of 25 CFR part 11 to add the Wind River Indian Reservation in Wyoming to the list of areas in Indian Country with established Courts of Indian Offenses (also known as CFR Courts). This rule inserts the Wind River Indian Reservation into a new paragraph (d) in 25 CFR 11.100.

Adding this reservation will allow for BIA to constitute a Court of Indian Offenses that can provide for the administration of justice until such time as the Northern Arapaho and Eastern Shoshone Tribes put into effect a court system that meets regulatory requirements and is capable of serving the entire reservation.

## II. Procedural Requirements

### A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order also directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule makes adjustments for inflation.

### C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

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

### D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A

statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

### E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

### F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

### G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

### H. Consultation With Indian Tribes (E.O. 13175 and Departmental policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy under the criteria in Executive Order 13175 and have consulted with the affected tribes.

(a) Tribal Summary Impact Statement: Prior to issuing this regulation the Department of the Interior and its Agencies, Bureaus, and Offices have communicated with the Eastern Shoshone Tribe and the Northern Arapaho Tribe repeatedly since 2015 regarding public safety concerns for the residents of the Wind River Indian Reservation. Following the withdrawal of the Northern Arapaho Tribe from the Joint Business Committee, the Shoshone and Arapaho Tribal Court has continued to operate, although with limited resources and without the express support of both tribes. Although the Department has continued to discuss this situation with both tribes while allowing the joint Shoshone and Arapaho Tribal Court to use funds

previously contracted to it, those funds expired on September 30, 2016, and the tribes have not been able to agree on the continued operation of the Shoshone and Arapaho Tribal Court.

The Shoshone and Arapaho Tribal Court is exercising some jurisdiction, however, it has no dedicated funding, no right to remain in its current physical location, and may cease or suspend operations at any time. To ensure there is not a lapse in public safety, if the Shoshone and Arapaho Tribal Court ceases or suspends operations, it will be necessary to establish a Court of Indian Offenses until such time as the Eastern Shoshone Tribe and the Northern Arapaho Tribe can agree on the operation and funding of a court system which is capable of serving the entire population of the Wind River Indian Reservation. Furthermore the Eastern Shoshone Business Committee has requested the Department to establish and operate a Court of Indian Offenses for the Wind River Indian Reservation.

To effectuate the immediate establishment and operation of the Court of Indian Offenses on the Wind River Reservation in the event that the Shoshone & Arapaho Tribal Court ceases or suspends operations, the Wind River Indian Reservation is hereby added to the list of jurisdictions served by the Courts of Indian Offenses.

### I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature (for further information, see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.



*K. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

*L. Clarity of This Regulation*

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

*M. Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*N. Determination To Issue an Interim Final Rule With Immediate Effective Date*

We are publishing this interim final rule with a request for comment without prior notice and comment, as allowed under 5 U.S.C. 553(b). Under section 553(b) we find that there is good cause to effectuate this rule without prior notice, and comments are unnecessary and would be contrary to the public interest. This rule is necessary to ensure that a court is immediately available to administer justice on land within the Wind River Indian Reservation. If the Tribal Court were to cease or suspend operations, this would affect, among others, child and adult protection, and supervised Individual Indian Money

account clients (vulnerable individuals). Accordingly, a gap in the provision of judicial services on the Reservation would harm the tribes and their members.

As allowed under 5 U.S.C. 553(d)(3), the effective date of this rule is the date of publication in the **Federal Register**. Good cause for an immediate effective date exists because the delay in publishing this rule would inhibit access to justice for tribal members and likely obstruct speedy trial rights for members of those tribes coming under the jurisdiction of the CFR court. We are requesting comments on this interim final rule. We will review any comments received and, by a future publication in the **Federal Register**, address any comments received.

**List of Subjects in 25 CFR Part 11**

Courts, Indians—law.

For the reason stated in the preamble the Department of the interior, Bureau of Indian Affairs amends part 11 in title 25 of the Code of Federal Regulations as follows:

**PART 11—COURTS OF INDIAN OFFENSES AND LAW AND ORDER CODE**

- 1. The authority for part 11 continues to read as follows:

**Authority:** 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

**Subpart A—Application; Jurisdiction**

- 2. In § 11.100, add paragraph (d) to read as follows:

**§ 11.100 Where are Courts of Indian Offenses established?**

\* \* \* \* \*

(d) This part applies to the Indian country (as defined in 18 U.S.C. 1151 and by Federal precedent) within the exterior boundaries of the Wind River Reservation in Wyoming.

Dated: October 17, 2016.

**Lawrence S. Roberts,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 2016–26039 Filed 10–26–16; 8:45 am]

**BILLING CODE 4337–15–P**

**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****27 CFR Part 9**

[Docket No. TTB–2016–0003; T.D. TTB–144; Ref: Notice No. 158]

**RIN 1513–AC25**

**Establishment of the Appalachian High Country Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 2,400-square mile “Appalachian High Country” viticultural area in all or portions of the following counties: Alleghany, Ashe, Avery, Mitchell, and Watauga Counties in North Carolina; Carter and Johnson Counties in Tennessee; and Grayson County in Virginia. The viticultural area is not located within any other viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective November 28, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:****Background on Viticultural Areas***TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding



Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

#### *Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

#### *Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s)

showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and

- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

#### **Appalachian High Country Petition**

TTB received a petition from Johnnie James, owner of Bethel Valley Farms, on behalf of members of the High Country Wine Growers Association, proposing the establishment of the “Appalachian High Country” AVA. The proposed AVA covers approximately 2,400-square miles in all or portions of Alleghany, Ashe, Avery, Mitchell, and Watauga Counties in North Carolina, Carter and Johnson Counties in Tennessee, and Grayson County in Virginia. There are 21 commercially-producing vineyards covering a total of approximately 71 acres distributed throughout the proposed AVA, along with 10 wineries. According to the petition, an additional 8 vineyards comprising approximately 37 acres are planned in the near future. The proposed Appalachian High Country AVA is not located within any established AVA. According to the petition, the distinguishing features of the proposed Appalachian High Country AVA are its topography, climate, and soils.

The topography of the proposed AVA, which is located within the Appalachian Mountains, is characterized by high elevations and steep slopes. Elevations within the proposed AVA range from 1,338 feet to over 6,000 feet, and most vineyards are planted at elevations between 2,290 and 4,630 feet. The high elevations expose vineyards within the proposed AVA to high amounts of solar irradiance, which promotes grape maturation and compensates for low temperatures and a short growing season. The average slope angle within the proposed AVA is 35.9 degrees, and most vineyards are planted on slopes with angles of 30 degrees or greater. Because of the steep slopes, many of the vineyards within the proposed AVA are terraced to prevent erosion, and most of the vineyards' work is done by hand rather than by machinery. The regions surrounding the proposed AVA all have lower average elevations as well as smaller average slope angles, except for the region to the southwest of the proposed AVA, which has a slightly greater average slope angle.

The proposed Appalachian High Country AVA is also characterized by a cool climate and a short growing season. The average annual temperature within the proposed AVA is 51.5 degrees

Fahrenheit. The proposed AVA accumulates an average of 2,635 growing degree days during the growing season, which is approximately 139 days long. Because of the cool climate and short growing season, the proposed AVA is suitable for growing cold-hardy grape varieties such as Marquette, Vidal Blanc, and Frontenac, which do not have a lengthy maturation time. By contrast, the regions surrounding the proposed AVA have warmer temperatures, longer growing seasons, and higher growing degree accumulations, making these regions more suitable for growing grape varieties that require warmer temperatures and a longer maturation time.

The soils of the proposed Appalachian High Country AVA are derived from igneous and metamorphic rocks such as granite and gneiss. All of the common soil series within the proposed AVA are described as deep, well-drained soils with a fine, loamy texture. The well-drained soils help reduce the risk of rot and fungus in the grapevines. Organic matter comprises up to 14 percent of the soils within the proposed AVA, providing an excellent source of nutrients for vineyards. The most prevalent soil series is the Tusquitee-Edneyville series, which covers approximately 24 percent of the proposed AVA. By contrast, in the surrounding regions, other soil series are more prominent. To the northeast of the proposed AVA, the Hayesville series is the most common soil series, and the Frederick–Carbo soil series is most commonly found in the region northwest of the proposed AVA. Southeast of the proposed AVA, the dominant soil series is the Hiwassee–Cecil association, and the Chester–Ashe series is the most common soil series to the southwest of the proposed AVA.

#### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 158 in the **Federal Register** on May 3, 2016 (81 FR 26507), proposing to establish the Appalachian High Country AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the features of the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 158.

In Notice No. 158, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on July 5, 2016. TTB received a total of 68 comments in response to Notice No. 158. During the comment period, TTB received 67 comments, including comments from local winery and vineyard owners, local residents, the president of the Tennessee Farm Winegrowers Alliance, officers from the University of Tennessee and the North Carolina State University Agricultural Extension Offices, the mayor of Johnson City (TN), the Johnson County (TN) Tourism Committee, the Johnson County Chamber of Commerce, the Appalachian Region Wine Growers Association, the Carter County (TN) Tourism Association, the Elizabethton (TN) Planning and Economic Development Department, a former mayor of Elizabethton, a former Tennessee State Representative, and the owner and publisher of the Carolina Mountain Life magazine. After the comment period closed, TTB received an additional letter of support signed by two U.S. Representatives from North Carolina, a Representative from Virginia, and a Representative from Tennessee. Sixty-seven of the 68 total comments received supported the proposed AVA, with many commenters stating their belief that an AVA designation could promote economic growth in their communities.

One comment opposed the proposed Appalachian High Country AVA. The commenter, a neighbor of one of the vineyards in the proposed AVA, states that the vineyard owner frequently uses a propane cannon to deter birds and other wildlife from eating the grapes. The commenter asserts that the noise from the cannon affects her ability to enjoy her property and that the vineyard owner has refused requests from neighbors to use alternate wildlife deterrent methods such as netting. The commenter states her belief that approval of the proposed AVA would encourage the development of new vineyards that might also use propane cannons. The commenter states that she cannot support the establishment of the proposed AVA unless TTB prohibits vineyard owners in the AVA from using propane cannons within a mile of other residences.

The prohibition or restriction of the use of wildlife deterrent devices is outside the scope of TTB's authority. The use of such devices by current or future vineyard owners is not related to the name, boundaries, or distinguishing features of the proposed area and, as a

result, is not a factor for TTB's consideration in the establishment of a proposed AVA.

#### **TTB Determination**

After careful review of the petition and the comments received, TTB finds that the evidence provided by the petitioner supports the establishment of the Appalachian High Country AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the "Appalachian High Country" AVA in portions of North Carolina, Tennessee, and Virginia, effective 30 days from the publication date of this document.

#### **Boundary Description**

See the narrative description of the boundary of the AVA in the regulatory text published at the end of this final rule.

#### **Maps**

The petitioner provided the required maps, and they are listed below in the regulatory text.

#### **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, "Appalachian High Country," will be recognized as a name of viticultural significance under § 4.39(i)(3). The text of the regulation clarifies this point. Consequently, wine bottlers using the name "Appalachian High Country" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the

product is eligible to use the AVA name as an appellation of origin.

The establishment of the Appalachian High Country AVA will not affect any existing AVA. The establishment of the Appalachian High Country AVA will allow vintners to use "Appalachian High Country" as an appellation of origin for wines made primarily from grapes grown within the Appalachian High Country AVA if the wines meet the eligibility requirements for the appellation.

#### **Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

#### **Executive Order 12866**

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

#### **Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

#### **List of Subjects in 27 CFR Part 9**

Wine.

#### **The Regulatory Amendment**

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

### **PART 9—AMERICAN VITICULTURAL AREAS**

- 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

#### **Subpart C—Approved American Viticultural Areas**

- 2. Subpart C is amended by adding § 9.260 to read as follows:

##### **§ 9.260 Appalachian High Country.**

(a) *Name.* The name of the viticultural area described in this section is "Appalachian High Country". For purposes of part 4 of this chapter, "Appalachian High Country" is a term of viticultural significance.

(b) *Approved maps.* The 46 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Appalachian High Country viticultural area are titled:

- (1) Unicoi, Tenn.–N.C., 1939; photorevised 1978;
- (2) Iron Mountain Gap, Tenn.–N.C., 1960; photorevised 1968;
- (3) Johnson City, Tenn., 1959; photorevised 1968;
- (4) Elizabethton, Tenn., 1959; photorevised 1968;
- (5) Watauga Dam, Tenn., 1960;
- (6) Carter, Tenn., 1938; photorevised 1969;
- (7) Keenbourg, Tenn., 1960;
- (8) Doe, Tenn., 1938; photorevised 1969;
- (9) Shady Valley, Tenn.–VA., 1960; photorevised 1970; photoinpected 1988;
- (10) Laurel Bloomery, Tenn.–VA., 1938; photorevised 1969;
- (11) Grayson, Tenn.–N.C.–VA., 1959; photoinpected 1976;
- (12) Park, N.C.–VA., 1959; photorevised 1978;
- (13) Whitetop Mountain, VA., 1959; photorevised 1978;
- (14) Trout Dale, VA., 1959; photorevised 1978; photoinpected 1988;
- (15) Middle Fox Creek, VA., 1959; photoinpected 1988;
- (16) Cedar Springs, VA., 1959; photorevised 1978; photoinpected 1988;
- (17) Speedwell, VA., 1968; photorevised 1979;
- (18) Cripple Creek, VA., 1968; photoinpected 1988;
- (19) Austinville, VA., 1965; photorevised 1979; photoinpected 1982;
- (20) Galax, VA., 1965; photorevised 1984;
- (21) Cumberland Knob, N.C.–VA., 1965; photorevised 1977;
- (22) Lambsburg, VA.–N.C., 1965; photorevised 1977;
- (23) Roaring Gap, N.C., 1971;
- (24) Glade Valley, N.C., 1968;
- (25) Traphill, N.C., 1968;
- (26) Whitehead, N.C., 1968;
- (27) McGrady, N.C., 1968; photoinpected 1984;
- (28) Horse Gap, N.C., 1968;
- (29) Laurel Springs, N.C., 1968;
- (30) Glendale Springs, N.C., 1967;
- (31) Maple Springs, N.C., 1966;
- (32) Deep Gap, N.C., 1967;
- (33) Buffalo Cove, N.C., 1967;
- (34) Globe, N.C., 1959;
- (35) Grandfather Mountain, N.C., 1960; photorevised 1978;
- (36) Newland, N.C., 1960; photorevised 1978;

- (37) Linville Falls, N.C., 1994;
- (38) Ashford, N.C., 1994;
- (39) Little Switzerland, N.C., 1994;
- (40) Spruce Pine, N.C., 1994;
- (41) Celo, N.C., 1994;
- (42) Micaville, N.C., 1960; photorevised 1978;
- (43) Bakersville, N.C.,–Tenn., 1960; photorevised 1978;
- (44) Burnsville, N.C., 1998;
- (45) Hunt Dale, N.C.–Tenn., 1939; and
- (46) Chestoa, Tenn.–N.C., 1939; photorevised 1978.

(c) *Boundary.* The Appalachian High Country viticultural area is located in all or portions of Alleghany, Ashe, Avery, Mitchell, and Watauga Counties in North Carolina; Carter and Johnson Counties in Tennessee; and Grayson County in Virginia. The boundary of the Appalachian High Country viticultural area is as described below:

(1) The beginning point is on the Unicoi map, at the point where the Unicoi/Mitchell County line intersects with an unnamed road known locally as Unaka Mountain Road near Beauty Spot Gap, Tennessee. From the beginning point, proceed northeasterly approximately 7.3 miles along the Unicoi/Mitchell County line, crossing onto the Iron Mountain Gap map, to the intersection of the Unicoi/Mitchell County line with the Carter County line; then

(2) Proceed northerly along the Unicoi/Carter County line approximately 9.3 miles, crossing back onto the Unicoi map and then onto the Johnson City map, to the intersection of the Unicoi/Carter County line with the 2,000-foot elevation contour, southeast of an unnamed road known locally as Whispering Pine Road; then

(3) Proceed southeasterly along the meandering 2,000-foot elevation contour, crossing onto the Unicoi map and then back onto the Johnson City map, and continuing onto the Elizabethton map for approximately 19 miles to the intersection of the elevation contour with an unnamed road known locally as Brimer Road near Bremer Hollow; then

(4) Proceed northwesterly approximately 1,500 feet along Brimer Road to an unnamed road known locally as Jenkins Hollow Road; then

(5) Proceed easterly approximately 1.4 miles along Jenkins Hollow Road, crossing the Doe River, to U.S. Route 321 in the town of Valley Forge, Tennessee; then

(6) Proceed north approximately 400 feet along U.S. Route 321 to an unnamed road known locally as Ruby Harmon Road; then

(7) Proceed northeasterly approximately 360 feet along Ruby

Harmon Road to an unnamed road known locally as Nanny Goat Hill Road; then

(8) Proceed easterly approximately 0.2 mile along Nanny Goat Hill Road to the 1,800-foot elevation contour, east of an unnamed road known locally as Gene Mathes Road; then

(9) Proceed northeasterly approximately 0.4 mile along the 1,800-foot elevation contour to an unnamed road known locally as Franklin Lane; then

(10) Proceed southerly approximately 0.3 mile along Franklin Lane to the 2,000-foot elevation contour; then

(11) Proceed northeasterly along the meandering 2,000-foot elevation contour, crossing over Hardin Branch, Clover Branch, South Pierce Branch, and North Pierce Branch, to a fifth, unnamed stream; then

(12) Proceed northerly approximately 0.47 mile along the unnamed stream to an unnamed road known locally as Wilbur Dam Road; then

(13) Proceed southeasterly approximately 0.25 mile along Wilbur Dam Road to Wilbur Dam; then

(14) Proceed northeasterly across Wilbur Dam to the marked transmission line; then

(15) Proceed northerly approximately 0.5 mile along the transmission line to the 2,000-foot elevation contour; then

(16) Proceed northeasterly approximately 19 miles along the meandering 2,000-foot elevation contour, crossing over the Watauga Dam map and onto the Carter map, and continuing along the 2,000-foot elevation contour as it crosses over State Route 91 near Sadie, Tennessee, and turns southwesterly, and continuing southwesterly for approximately 22.2 miles along the 2,000-foot elevation contour, crossing onto the Keenbourg map and circling Carter Knob, to the intersection of the 2,000-foot elevation contour with the Carter/Sullivan County line; then

(17) Proceed southeasterly, then northeasterly, approximately 7 miles along the Carter/Sullivan County line to an unnamed road known locally as National Forest Road 56, near Low Gap, Tennessee; then

(18) Proceed easterly approximately 0.75 mile along National Forest Road 56, crossing onto the Carter map, to the Carter/Sullivan County line; then

(19) Proceed easterly approximately 10.4 miles along the Carter/Sullivan County line, crossing over the Doe map (northwestern corner) and onto the Shady Valley Map, to the intersection of the Carter/Sullivan County line with the Johnson County line at Rich Knob, Tennessee; then

(20) Proceed northeasterly approximately 13.4 miles along the Johnson/Sullivan County line, crossing onto the Laurel Bloomery map, to the intersection of the Johnson/Sullivan County line with the Washington County line at the Virginia/Tennessee State line; then

(21) Proceed easterly approximately 10 miles along the Johnson/Washington County line, crossing onto the Grayson map, to the intersection of the Johnson/Washington County line with the Grayson County line; then

(22) Proceed east, then northeasterly, then southeasterly, along the Grayson County line, crossing over the Park, Whitetop Mountain, Trout Dale, Middle Fox Creek, Cedar Springs, Speedwell, Cripple Creek, Austinville, Galax, and Cumberland Knob maps and onto the Lamsburg map, to the intersection of the Grayson County line with the Surry County line and an unnamed road known locally as Fisher's Peak Road, at the Virginia/North Carolina State line; then

(23) Proceed west along the Grayson/Surry County line, crossing back onto the Cumberland Knob map, to Alleghany County line; then

(24) Proceed southerly, then northwesterly, then southwesterly along the Alleghany County line, crossing over the Roaring Gap, Glade Valley, Traphill (northeastern corner), Whitehead, McGrady (northwestern corner), Horse Gap, and Laurel Springs map, then back onto the Horse Gap map and continuing along the Alleghany County line on the Horse Gap map to the Ashe/Wilkes County line at Mulberry Gap, North Carolina; then

(25) Proceed westerly, then southwesterly along the Ashe/Wilkes County line, crossing over the Glendale Springs and onto the Maple Springs map, then back onto the Glendale Springs map, then back onto the Maple Springs map, and continuing along the Ashe/Wilkes County line on the Maple Springs map to the intersection of the Ashe/Wilkes County line and the Watauga County line at Thomkins Knob, North Carolina; then

(26) Proceed southwesterly along the Watauga/Wilkes County line, crossing over the Deep Gap map (southeastern corner) and onto the Buffalo Cove map, to the intersection of the Watauga/Wilkes County line and the Caldwell County line at White Rock Mountain, North Carolina; then

(27) Proceed west along the Watauga/Caldwell County line, crossing over the Globe map and onto the Grandfather Mountain map, to the intersection of the Watauga/Caldwell County line with the

Avery County line at Calloway Peak, North Carolina; then

(28) Proceed southeasterly approximately 1.8 miles along the Caldwell/Avery County line to the boundary of the Blue Ridge Parkway at Pilot Knob, North Carolina; then

(29) Proceed southwesterly approximately 11.6 miles along the Blue Ridge Parkway boundary, crossing over the Newland map (southeastern corner) and onto the Linville Falls map, to the intersection of the parkway boundary with the Avery/Burke County line; then

(30) Proceed northwesterly, then southwesterly, for a total of approximately 4.2 miles along the Avery/Burke County line to the McDowell County line; then

(31) Proceed southerly approximately 5 miles along the Avery/McDowell County line to the Mitchell County line; then

(32) Proceed southerly, then southwesterly, along the McDowell/Mitchell County line, crossing over the Ashford (northwestern corner) and Little Switzerland (northeastern corner) maps and onto the Spruce Pine map, then back onto the Little Switzerland map and continuing along the McDowell/Mitchell County line, crossing onto the Celo map, to the intersection of the McDowell/Mitchell County line with the Yancey County line; then

(33) Proceed west then northerly along the Mitchell/Yancey County line, crossing over the Micaville, Bakersville, Hunt Dale (southeastern corner), and Burnsville maps, then back onto the Hunt Dale map and continuing along the Mitchell/Yancey County line, crossing onto the Chestoa map, to the intersection of the Mitchell/Yancey County line with the Mitchell/Unicoi County line, which is concurrent with the Tennessee/North Carolina State line; then

(34) Proceed northeasterly along the Mitchell/Unicoi County line, crossing back over the Huntsdale (northwestern corner) map and onto the Unicoi map, returning to the beginning point.

Signed: September 14, 2016.

**John J. Manfredda,**

*Administrator.*

Approved: October 17, 2016.

**Timothy E. Skud,**

*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

[FR Doc. 2016-25970 Filed 10-26-16; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2016-0964]

#### Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the Run Because You Can 5K event. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

**DATES:** This deviation is effective from 8 a.m. to 10:30 a.m. on November 6, 2016.

**ADDRESSES:** The docket for this deviation, [USCG-2016-0964], is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, email [David.H.Sulouff@uscg.mil](mailto:David.H.Sulouff@uscg.mil).

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

The drawspan will be secured in the closed-to-navigation position from 8 a.m. to 10:30 a.m. on November 6, 2016, to allow the community to participate in the Run Because You Can 5K event. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will not be able

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

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

Dated: October 24, 2016.

**D.H. Sulouff,**

*District Bridge Chief, Eleventh Coast Guard District.*

[FR Doc. 2016–26015 Filed 10–26–16; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

#### 45 CFR Part 1329

**RIN 0985–AA10**

### Independent Living Services and Centers for Independent Living

**AGENCY:** Independent Living Administration, Administration for Community Living, HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the Rehabilitation Act as amended by the Workforce Innovation and Opportunity Act, which established an Independent Living Administration within the Administration for Community Living (ACL) of the Department of Health and Human Services (HHS). The rule helps implement changes to the administration of Independent Living Services and the Centers for Independent Living made under the current law in alignment with ACL and HHS policies and practices.

**DATES:** These final regulations are effective November 28, 2016.

**FOR FURTHER INFORMATION CONTACT:** Molly Burgdorf, Administration for Community Living, telephone (202) 795–7317 (Voice). This is not a toll-free number. This document will be made available in alternative formats upon request. Written correspondence can be sent to the Administration for Community Living, U.S. Department of Health and Human Services, 330 C St. SW., Washington, DC 20201.

## SUPPLEMENTARY INFORMATION:

### I. Discussion of Final Rule

The federal Independent Living (IL) program seeks to empower and enable individuals with disabilities, particularly individuals with significant disabilities, to exercise full choice and control over their lives and to live independently in their communities. For over 40 years, these aims have been advanced through two federal programs: Independent Living Services (ILS) and Centers for Independent Living (referred to as CILs or Centers). The Workforce Innovation and Opportunity Act (WIOA) transferred these Independent Living programs to the Administration for Community Living (ACL) and created a new Independent Living Administration within the agency, adding section 701A of the Rehabilitation Act, 29 U.S.C. 796–1. As part of the transfer, the Administrator of ACL (Administrator) drafted a Notice of Proposed Rule Making (NPRM) that was published on November 16, 2015, to implement changes made by WIOA in accordance with Section 12 of the Rehabilitation Act, as amended, 29 U.S.C. 709(e), and section 491(f) of WIOA, 42 U.S.C. 3515e(f).

ACL received over 100 comments to the NPRM, most of them expressing their support for the provisions in the proposed rule. ACL has read and considered each of the comments received. We respond here to the most commonly-received comments and to those that we believe require further discussion. We have indicated changes made between the NPRM and final rule.

Several comments raised issues that are specific to the commenter. Responding to such comments is beyond the scope of the final regulation. Nevertheless, we encourage commenters with individualized questions to contact the technical and training support center or the ILA specialist for their State for assistance with their questions. We also made a number of technical changes in the preamble, for example, to reflect that the term “704 Reporting Instruments” will no longer be used for data collection going forward, and to clarify potentially confusing references to the “State.”

#### Subpart A—General Provisions

ACL received numerous comments expressing concern about the person-centered planning language in the NPRM preamble, including the statement that person centered planning and consumer control “are not interchangeable terms.”

ACL affirms that consumer control is a guiding principle in IL. To clarify, the

NPRM did not intend to conflate person-centeredness and consumer control or other key terms in the IL purpose. The proposed regulatory language did not include person-centeredness; the language was included in the preamble to the NPRM to both highlight this requirement in the home and community-based services and supports (HCBS) settings context, and offer an opportunity to IL programs and stakeholders to help shape person-centered planning and self-direction principles in HHS-funded programs and practices that serve people with significant disabilities, as they increasingly are embedded in the work we do at ACL and across HHS. This language applies in the HCBS settings context and does not limit consumer control or anything centers do with Title VII funding.

One commenter suggested that Centers should not be penalized for hiring individuals who do not have significant disabilities when candidates who have significant disabilities do not apply, or if those who do apply are not qualified, and the CIL therefore fails to meet the requirement that the majority of staff are individuals with disabilities. The majority hiring requirement is beyond the scope of this rule; however, the ongoing requirement that a Center ensure that the majority of the staff, and individuals in decision-making positions are individuals with disabilities is consistent with the consumer directed, self-help, and self-advocacy principles in the IL Philosophy.

#### Definitions (§ 1329.4)

##### New IL Core Services Definitions

WIOA added a new fifth requirement to the Independent Living Core Services, which includes services that—

- Facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services;

- Provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community; and

- Facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to postsecondary life.

(Sec. 7(17)(E) of the Act, 29 U.S.C. 705(17)(E)).

ACL received many comments expressing concern about being able to effectively provide the new IL core services without the allocation of additional funding. We cannot address concerns about funding levels for IL programs in the final regulation. We also wish to clarify that funds for transition services allocated to other agencies are based under separate statutory authorities and appropriations.

ACL will support programs in accomplishing and reporting IL services. To add value and help enhance the work CILs are already doing in this area, ACL offers technical assistance for state and community-based aging and disability organizations (CBOs) through national partners as well as through learning collaboratives of networks of community-based aging and disability organizations, including Centers for Independent Living. ACL looks forward to engaging more of the IL community in these efforts to support and improve business acumen, which has enabled CBOs to garner funding through public-private partnerships, contracts with health-care providers and payers, and grants from private foundations. ACL's business acumen efforts are one way that CILs may enhance their resource development activities. We will also work to identify opportunities to collaborate and leverage resources for the core IL services, including the new fifth core services, across ACL, HHS, and other federal agencies.

The NPRM sought public comment on whether to include a definition of "institution" and the suitability of applying Medicare and Medicaid definitions of that term in defining the new core independent living services.

We received comments indicating that the Medicare/Medicaid definitions are not sufficiently broad to encompass the range of entities included in the term "institution." We received numerous comments recommending various terms and entities that should be included in a definition of "institution," as well as comments stating that including a regulatory definition was not necessary or could be unnecessarily limiting and could impede effective provision of services. As some commenters recommended, a broad, non-prescriptive approach allows CILs the most flexibility to determine the types of transition services they can offer with the best chance of success for individuals receiving the services based on available local resources.

Some commenters recommended a very broad definition of institution,

including "any congregate living arrangement of any size in which residents with disabilities are not in control of their own lives," a parental/guardian controlled home, or "any situation in which a person with a disability is not free to control all aspects of his or her life." ACL did not incorporate this approach, as we concluded that the suggested categories were vague and overbroad. For instance, these examples are not limited to adults, and minors are not given authority to control all aspects of their lives, including moving from a home where the person lives with a parent or guardian. Other commenters suggested narrowing the definition and excluding certain settings such as correctional facilities.

ACL has not included a specific definition of the term institution here, so that the categories will be sufficiently broad and allow flexibility to CILs. Without specifically defining the term, we identify the following examples of entities that fall within the category of "institution," which includes but is not limited to: Hospitals, nursing facilities and skilled nursing facilities, Intermediate Care Facilities for Individuals with Intellectual Disabilities, and criminal justice facilities, juvenile detention facilities, etc.

In the NPRM, we also requested comment on the need for and proposed content of definitions for "home and community-based residences" and individuals who are "at risk" of institutionalization in the new independent living core services. We received several comments requesting that we define "home and community-based residences" for the purposes of the fifth core services. Some commenters suggested we refer to Medicaid definitions, including the definitions used in the "Money Follows the Person" demonstration program and the rule related to Medicaid-funded home and community-based services published on January 16, 2014. Many commenters suggested a definition that would include any residence "with fewer than 4 people non-related in which a person with a disability is free to control all aspects of his or her life." Other commenters recommended against including size or configuration of living arrangements in the definition, explaining, "When maximum number of people in a setting or their familial relationship to each other is prescribed, it does not permit those groups of totally self-directing individuals who choose to share an apartment or house and share attendant services, for example, to be included in the service count. The

regulations should not preclude serving those individuals who, of their own volition, have chosen forms of co-housing, cooperatives, or Naturally Occurring Retirement Communities (NORCs)."

As some commenters recommended, ACL considered language in Medicaid regulations that define home and community-based settings for certain Medicaid programs. ACL encourages IL programs to consult the language in the rule defining HCBS settings for Medicaid waivers under section 1915(c) of the Social Security Act at 42 CFR 441.301(c)(4), for state plan HCBS at 42 CFR 441.710(a)(1) and (2) or for Community First Choice services at 42 CFR 441.530(a)(1) and (2). These CMS regulations provide details on the qualities of home and community-based settings, as compared with those that have the qualities of an institutional setting. However, we did not import the definition from the CMS HCBS rules into this rule. ACL seeks to encourage CILs to assist the broadest range of individuals as they transition from an institutional to a community-based setting. The Medicaid rules apply to Medicaid beneficiaries receiving home and community-based services under specific statutory provisions, and while the language is instructive to determine qualities integral to a home and community-based setting, IL serves a broader range of people and addresses a wider range of situations than those covered under the Medicaid rules. For example, the needs of the individual in 42 CFR 441.301(c)(4) are determined "as indicated in their person-centered service plan."

As some commenters recommended, to preserve wide latitude and to support consumer control, we have chosen not to include a definition for "home and community-based residences" in the final rule.

We received comments recommending that the individual should determine whether or not he or she is at-risk through self-disclosure. We received comments that emphasized the importance of the intake and goal setting processes for facilitating informed consumer choice related to self-identification. If a consumer feels he or she is at risk of institutionalization, and self-identifies as being at risk as part of the intake or goal-setting process, then he or she should be treated as being at risk. CILs in these situations conduct discussions around the person's circumstances, possibilities and risks but the designation ultimately must be informed by consumer choice. We have incorporated that recommendation in

the regulatory text as part of the definition of the independent living core services.

Some commenters recommended adding a definition of “transition process.” Since the term “transition” is not included in the second prong of the fifth core IL services, and the term “transition” has a different meaning in the third prong, we incorporated the recommended definition into the first prong regarding the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences.

WIOA defines youth with a disability to mean “an individual with a disability who is not younger than 14 years of age; and is not older than 24 years of age.” In the NPRM, ACL defined the category of “youth with a significant disability” by combining the definition of “individual with significant disability” in section 7(21), 29 U.S.C. 705(21) and “youth with a disability” in section 7(42) of the Act, 29 U.S.C. 705(42).

A commenter expressed concern that the rule uses the term “youth with a *significant* disability,” (emphasis added) as “[t]his is different than the Independent Living philosophy which is cross disability.” The language is based on WIOA language in the definition of independent living core services, 29 U.S.C. 705(17)(E), which covers services to “facilitate the transition of youth who are individuals with significant disabilities . . .” As a cross-disability agency, ACL is sensitive to this concern, but does not have the authority to change statutory language through the rulemaking process.

A commenter recommended removing the “completed their secondary education” provision from this regulation. Other commenters suggested the definition was overbroad and should be pared back. We received comments that individuals who have reached the age of 18 but are still receiving services in accordance with an individual’s education program developed under the Individuals with Disabilities Education Act (IDEA) should not be considered to have “completed their secondary education.” Because Sec. 7(17)(E)(iii) of the Act, 29 U.S.C. 705(17)(E)(iii), uses the term “completed their secondary education,” ACL does not have the authority to remove this phrase from the definition of IL core services regarding youth transition. However, we are removing from regulatory language: “has reached age 18, even if he or she is still receiving services in accordance with an individualized education program developed under the IDEA.” In agreement with comments received, we

have added to the definition of independent living core services that individuals who have reached the age of 18 and are still receiving services in accordance with an Individualized Education Program (IEP) under IDEA have not “completed their secondary education.”

Some commenters also questioned the link to eligibility under IDEA/eligibility for an IEP, or recommended a definition of “students with disabilities” be defined broadly, such as those receiving services under of Section 504 of the Rehabilitation Act (under 504 plans). Commenters also requested that the youth transition prong be extended to the youngest possible age, for example before vocational rehabilitation (VR) begins to provide services in the State. In WIOA, Congress established the prong of the new IL service to “(iii) facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to postsecondary life.” 29 U.S.C. 705(17)(E)(iii). This requirement, defined in the statute, focuses on providing independent living services to youth who are transitioning to postsecondary life after they have left school. ACL does not have the authority to redefine this category through the rulemaking process.

We acknowledge the importance of transition services for youth prior to post-secondary life in order to prepare youth for a successful transition to post-secondary life. However, we also want to emphasize that some youth transition activities not covered under the fifth core services may be included within the other four core services, Sec. 7(17)(A–D) of the Act, 29 U.S.C. 705(17)(A–D), as well as within the Independent Living Services in Sec. 7(18), 29 U.S.C. 705(18), and CILs should continue to report their work in these areas accordingly.

A commenter raised concerns that broad definitions around the youth transition component of the fifth core service could prompt school districts to shift responsibility for youth transition to the CILs. While we appreciate the concern, how school districts fulfill their responsibilities to students with disabilities is beyond the scope of this rule. We acknowledge, however, that Centers often participate as one of several entities, including schools, with an important role in supporting and facilitating youth transitions. As a promising practice, ACL recommends

continuing successful collaboration, coordination, and leveraging of resources.

Commenters noted that they are already pursuing transition work with youth that falls outside of the proposed parameters of the fifth core services. Programs may and are encouraged to continue to engage in such activities, which can be captured and credited under the other core IL services or general independent living services under Sec. 7(18), 29 U.S.C. 705(18).

Finally, in response to the NPRM, ACL received questions as to whether there are minimum levels which must be achieved in order to have met the requirements of each component of the new fifth core IL services. Each CIL must demonstrate activity under all three prongs of the definition, but the minimum levels are not further defined here. See the Regulatory Impact Analysis for further discussion. The revised data collection system will contain more information when published.

#### *Definitions of Other Terms in § 1329.4*

##### *Administrative Support Services*

ACL received comments recommending additional changes to this definition, including a request for additional clarity on the “services and supports” provided by the DSE. Others expressed support for a broad definition, with flexibility for the DSE. In order to preserve flexibility, we made no changes to the definition in the proposed rule.

##### *Advocacy*

ACL received a number of comments on the proposed definition. Some commenters expressed a concern about a perceived lack of inclusion of “systems change” in the definition, and requested that the language in the rule “revert back to the original language for advocacy that includes both self and systems change.” We note that the proposed definition of “advocacy,” identical to the prior definition from the Department of Education regulation 34 CFR 364.4, includes “systems advocacy.” Many commenters recommend that the activities described in § 1329.10(b)(5) be included in the definition, as they are part of systems advocacy. The final rule retains the proposed definition for “advocacy.” The activities described in § 1329.10(b)(5) are already required as authorized uses of funds for independent living services and including them in the definition of advocacy would be redundant. ACL will consider providing further guidance and will continue to offer training and



technical assistance to provide additional clarity on this issue.

#### Center for Independent Living

Many commenters expressed support for the proposed definition from the NPRM, though several commenters raised questions about accountability for CILs that are not recipients of Part C or Part B funding. A few commenters recommended the definition be limited to CILs that receive Part B or Part C funding. The final rule retains the proposed definition of CILs. With respect to compliance and oversight issues, the SILCs, pursuant to their duty under Section 705(c)(1)(B) to monitor, review, and evaluate implementation of the SPIL, will make the determination that entities counted as CILs eligible to sign the SPIL comply with the standards in Sections 725 (b) and the assurances in Section 725(c). The SPIL must identify 1) the eligible CILs and 2) how they were determined to meet the required standards and assurances. We will consider including corresponding assurances with some standards of evidence of documentation in the indicators of minimum compliance for the SILCs.

We received requests for clarification regarding the phrase “regardless of age or income.” This phrase is based directly on the statutory definition, Sec. 702(2) of the Act, 29 U.S.C. 796a(2). The phrase means that an agency, in addition to meeting all of the other requirements, may not categorically exclude individuals with significant disabilities on the basis of age or income. This does not preclude prioritizing services by urgency of need, nor does it preclude practical distinctions such as age-based legal restrictions.

We also received questions regarding the use of fee-for-service models for the delivery of services. The final rule does not address the use of fee-for-service models, though we encourage CILs to consider how to ensure that any application of such a model is accomplished in a way that is consistent with IL values.

#### Consumer Control

In the NPRM we proposed to add the statutory definition of consumer control at Section 702(3) of the Act, 29 U.S.C. 796a(3). Commenters requested that the definition also include individual consumer control. ACL acknowledges the importance of an individual being able to make his or her own choices and set his or her own goals, including deciding with whom and how to achieve them, and allowing for the dignity of risk, which is a critical

component of growth and true independence. The definition of “consumer control” is amended in the final rule to include: “Consumer control, with respect to an individual, means that the individual with a disability asserts control over his or her personal life choices, and in addition, has control over his or her independent living plan (ILP), making informed choices about content, goals and implementation.”

Some commenters also suggested that the definition include the requirement that a majority of staff, management and Board positions are filled by persons with disabilities. ACL did not make that change, as the composition requirements (for the SILC) and assurances (for the CILs) at issue are established separately in the statute.

#### Personal Assistance Services

The NPRM proposed that personal assistance services mean “a range of services, paid or unpaid, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual’s control in life and ability to perform everyday activities on or off the job and include but are not limited to: Getting up and ready for work or going out into the community (including bathing and dressing), cooking, cleaning or running errands.” Commenters indicated that the purpose of personal assistance services is not merely to enable a person with a disability to get a job, but to perform a myriad of social functions. Commenters also raised the point that the concept of personal assistance services should be updated to reflect “the possibilities available today.” Commenters requested additional examples of personal assistance services, to help illustrate that such services may support a variety of interdependent social functions, such as parenting, engaging in civic activities, practicing the individual’s preferred religion, engaging in a relationship with partner(s) of the individual’s choice, and more. The final rule incorporates the recommended language. Thus, personal assistance services means “a range of services, paid or unpaid, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual’s control in life and ability to

perform everyday activities including but not limited to: Getting up and ready for work or going out into the community (including bathing and dressing), cooking, cleaning or running errands, and engaging in social relationships including parenting.”

#### Service Provider

ACL received comments indicating that the DSE should not be included in the definition of “service provider.” The commenters explained that DSEs should not provide direct services because the DSE “is not consumer controlled and does not provide peer support, systems advocacy, etc.,” among other justifications. After consideration of the comments on this provision, ACL agrees with the concerns expressed, and added the clarification that a DSE is eligible to receive funds to provide independent living services only where so specified in the SPIL. We have added a corresponding clarification to the preamble language in § 1329.17.

#### Unserved and Underserved

ACL received numerous comments about the definition of unserved and underserved populations. A commenter expressed concerns about the elimination of “sensory impairments” from the definition. Others recommended that the definition should include older people with disabilities, or populations with certain types of disabilities, including individuals who are low vision, blind, deafblind or deaf, and people with traumatic brain injuries (TBI), and post-traumatic stress disorder (PTSD). Another commenter asked about other groups, including people with limited English proficiency. One commenter expressed a concern about a lack of services for black veterans. Others requested a definition for “disadvantaged individuals.”

ACL notes that the proposed definition includes “populations such as . . .” and lists a number of possible categories. As stated in the NPRM, “We recognize that unserved and underserved groups or populations will vary by service area. For example, in some service areas unserved and underserved groups may include people with disabilities from the gay, lesbian, bisexual and transgender communities.” The categories included in the definition are examples, and not an all-inclusive list. We are not including a definition of disadvantaged individuals, as that definition may vary by individuals and by community.

Commenters expressed support for the proposed definition of “youth with a significant disability.”



ACL made technical changes to the definitions of “*Center for independent living*” and “*Independent living core services*” to improve clarity.

#### Indicators of Minimum Compliance (§ 1329.5)

Commenters requested that the final rule include SILC standards and indicators. The statute requires that ACL develop and publish in the **Federal Register** SILC indicators of minimum compliance. As was stated in the NPRM, the SILC indicators of minimum compliance are currently under development, a process which includes consideration of informal stakeholder input. ACL presented the current draft SILC standards of minimum compliance at the SILC Congress in January of 2016, and the final version will be published in the **Federal Register** with an opportunity for public comment. ACL will continue to collect information on CIL compliance indicators based on the statutory standards and assurances through the data collection process. We made technical changes to the regulatory text of § 1329.5 to clarify the current requirements.

ACL also clarifies that the indicators of minimum compliance and data collection instruments are living documents. ACL will periodically engage stakeholders to make refinements and improvements.

Regarding comments expressing concern about the lack of a sufficient notice and opportunity for “substantive public comment,” ACL is committed to continued engagement with stakeholders as we develop and publish the required indicators. We also note that the **Federal Register** is the recognized means for notifying the public and offering an opportunity to submit comments. Multiple commenters requested diverse compliance measures be developed to address specific needs for indicators. ACL appreciates this input and will consider these suggestions through the established processes.

Commenters also recommended establishing a rotation for CIL reviews. As indicated in the NPRM, the statute eliminated the requirement that compliance reviews be conducted on a random basis. ACL is actively reviewing options for review criteria, including how CILs will be selected for review.

Commenters expressed concerns about “targeting” CILs and requesting a neutral process. We decline to incorporate the comment that some CILs should not be reviewed more frequently than others. On-site compliance reviews are no longer required to be conducted on a random basis and there may be

legitimate reasons why a CIL may require more frequent evaluation. ACL agrees that clear, unbiased, and legitimate criteria must be established and consistently followed.

Some commenters expressed concern about the lack of capacity at the state and federal levels to conduct the required reviews of CILs. Section 711(c), 29 U.S.C. 796d–1(c) includes a requirement that the Administrator (rather than the DSE) shall annually conduct onsite compliance reviews of at least 15 percent of the centers for independent living that receive funds under Section 722 of the Act, 29 U.S.C. 796f–1 and at least one-third of the designated state units that receive funding under Section 723 of the Act. ACL is actively evaluating the review processes, to optimize our capacity to conduct the required oversight.

#### Reporting (§ 1329.6)

A commenter objected to proposed § 1329.6(b), stating that the requirement that the DSE in each state “submit a report in a manner and at a time described by the Administrator, consistent with section 704(c)(4) of the Act,” exceeds statutory authority since the referenced statute, Section 704(c)(4), only requires the designated state entity to “submit such additional information or provide such assurances as the Administrator may require.” This commenter noted that CILs are explicitly required by statute to “submit such reports with respect to such records as the Administrator determines to be appropriate.” We appreciate the comment, but find that requiring a report is fully consistent with and authorized by the statutory requirement that the DSE submit such additional information or provide assurances that the Administrator may require. We received a comment concerning readability and accessibility of forms, materials, and links. We appreciate the comment and agree that the instructions, and any forms, links, and needed materials must be user-friendly and easily accessible. We continue to strive to meet this standard.

#### Enforcement and Appeals Procedures (§ 1329.7)

Regarding the proposed enforcement and appeals procedures in the rule, commenters asked questions about onsite compliance reviews and expressed concern about the lack of peer review. To clarify, the enforcement and appeals procedures proposed in § 1329.7 are separate from a request for technical assistance and separate and in addition to the compliance review set forth in Section 706(c)(1). Section

706(c)(2)(C), 29 U.S.C. 796d–1(c)(2)(C), requires that, for the compliance review, the Administrator must “. . . ensure that at least one of member of a team conducting such a review shall be an individual who (i) is not a government employee; and (2) has experience in the operation of centers for independent living.” The proposed regulatory text in § 1329.7 does not address or propose changes to the onsite compliance review process, including the qualifications of employees and others conducting reviews. Instead, § 1329.7 establishes the enforcement and appeals process that arises when a grantee receives notice of an action that would trigger the additional review process available through 45 CFR part 16. These determinations, set forth in appendix A, C.a.(1)–(4) are: Disallowance, termination for failure to comply with the terms of an award, denial of a noncompeting continuation award for failure to comply with the terms of a previous award, and voiding (a decision that an award is invalid because it was not authorized by statute or regulation or because it was fraudulently obtained).

For example, if after an onsite compliance review, the Director determines it necessary to terminate funds because of the grantee’s failure to comply with the terms of the award, § 1329.7 provides the affected CIL or State with the opportunity to seek additional review of that decision, consistent with HHS policies and practices. We added clarifying language regarding the onsite compliance review process as some commenters recommended. We also made technical changes to more accurately reflect established HHS processes and incorporate correct citations.

Several commenters interpreted § 1329.7 to mean that ACL would immediately terminate funding under certain circumstances, and pointed out that WIOA stipulates 90 day notice before Title VII Part C funding can be terminated. The NPRM did not propose to move more quickly than the 90 day time frame. The process that was outlined for enforcement and appeals is designed precisely to afford due process for those CILs for which expiration of the 90 day time frame and possible loss of funding is imminent. Since nothing in the regulation changes the statutory deadlines, no changes to the regulatory text are required.

With regard to § 1329.7(b), one commenter questioned whether the Administrator has the authority to terminate Title VII B funding. We refer the commenter to 45 CFR part 75, Uniform Administrative Requirements,

Cost Principles, and Audit Requirements for HHS Awards, which is included in § 1329.3, applicability of other regulations. For more information regarding remedies for non-compliance and termination, please see 45 CFR 75.371 and 75.372, which, address these issues. We also remind stakeholders that Section 704(a)(1) requires the submission of a SPIL which is approved by the Administrator in order to be eligible for funding. Thus, the Administrator has the authority to withhold or terminate funding if a SPIL is not submitted in accordance with the requirements of Section 704, or if the Administrator does not approve a SPIL that is submitted.

ACL thanks commenters for embracing the opportunity to work with ACL on developing sub-regulatory guidance to provide additional detail in this area.

Commenters state that the time frame for notice should be clear and specific. The regulation describes that written notice shall be provided “within a timely manner.” In the absence of a recommendation for a specific length of time, we retain the language of the proposed rule, with the clarification that the standard is a reasonable determination of a “timely manner.” We will consider whether to designate a specific time period in any sub-regulatory guidance that we develop.

#### *Subpart B—Independent Living Services*

##### *Authorized Use of Funds for Independent Living Services (§ 1329.10)*

Commenters requested a change to § 1329.10(a) to more accurately reflect the language and intention of the statute. Commenters were correct in stating that the Administrator reserves the funds under Section 711A for SILC training and technical assistance, before the State receives funding under this part. ACL incorporated the requested change, and revised § 1329.10 to include the correction.

##### *DSE Eligibility and Application (§ 1329.11)*

Regarding § 1329.11, commenters recommended including language that “[a]ny designated State entity (DSE) identified in the SPIL and agreed to by the State is eligible to apply for assistance under this part in accordance with Section 704 of the Act, 29 U.S.C. 796c.”

We decline to make these changes, because, as explained in the FAQs that accompanied the DSE Guidance document,<sup>1</sup> the DSE is a governmental

State entity that carries out the functions described in the statute in Section 704(c) of the Act, 29 U.S.C. 796c(c). “If the DSE does not carry out those functions, the State is legally responsible.”

However, in response to these comments, and with the understanding that the State plan shall “designate” the “designated State entity” as the agency that, on behalf of the State, shall accomplish the listed responsibilities in the law and comply with the specified funding limits (and acknowledging that the chairperson of the Statewide Independent Living Council and the directors of the CILs in the State, after receiving public input from individuals with disabilities and other stakeholders throughout the State, develop the State plan) ACL modified the proposed definition to clarify the reference to a DSE “identified by the State and included in the signed SPIL . . . .”

Commenters also requested that ACL identify the body that is responsible to submit the SPIL. Section 1329.17(b)(4) indicates that the SPIL “must be submitted . . . in the time frame and manner prescribed by the Administrator.” For developing the FY 2017–2019 State Plan for Independent Living (SPIL), ACL refers stakeholders to the State Plan for Independent Living (SPIL) instructions, issued on February 19, 2016, which specify that the Statewide Independent Living Council shall submit the State Plan for Independent Living (SPIL).

##### *Role of the Designated State Entity (§ 1329.12)*

Commenters requested additional language to clarify the role of the DSE and the allocation of funds in accordance with the approved SPIL. ACL incorporated suggested language to make clear in § 1329.12(a)(2) the DSE’s role to provide administrative support services for a program under Part B, as directed by the approved SPIL, and for relevant CILs under Part C. We also revised the language in § 1329.12(b) to state that the DSE must also carry out its other responsibilities under the Act, including, but not limited to—

- Allocating funds for the delivery of IL services under Part B of the Act as directed by the SPIL; and
- Allocating the necessary and sufficient resources needed by the SILC to fulfill its statutory duties and authorities under section 705(c), consistent with the approved State Plan.

While the regulatory text in the new § 1329.12(b)(i) focuses on the delivery of

IL services, Sec. 713(b) of the Act identifies six (6) additional activities that remain authorized uses of funding under this Section, and are encompassed in the “including, but not limited to” language in § 1329.12(b).

Some commenters were concerned that the 5% was not sufficient given the scope of the administrative responsibilities of the DSE, and that some entities may choose not to serve as a DSE. The 5% is a statutory cap and therefore not subject to change in this regulation.

For the sake of consistency we made formatting changes to § 1329.12(b).

##### *Allotment of Federal Funds for State Independent Living (IL) Services (§ 1329.13)*

Many commenters requested that the proposed regulatory language of § 1329.13(c) be deleted or amended to permit only a single DSE. A few commenters expressed support for a second DSE and stressed the importance of certain programs that have been funded by State agencies for the blind. Upon consideration of the comments in the context of the language in WIOA, we agree that it is consistent with the statute to permit only one DSE. Accordingly, in addition to revising the regulatory text in § 1329.13(c) to permit only a single DSE, § 1329.17(e) is deleted.

Nineteen (19) States have been operating with more than one body taking on these responsibilities. One body in those States provides services to the general disability population and the other provides services to individuals who are blind. Under the language we are finalizing, the SPIL must identify one DSE in the State, and that DSE will sign the SPIL as discussed above. Specific funding to address the needs of consumers in the State who are blind may be allocated through the SPIL process.

Regarding proposed § 1329.13(d), commenters also requested that ACL not reserve funds to directly provide training and technical assistance to SILCs, and others recommended an increase in funding to the current technical assistance provider. ACL retained the language from the proposed rule, which is required by section 711A of the Act (29 U.S.C. 796e–0).

Commenters also recommended that the SILCs be involved in the process for determining the type of training and technical assistance that is offered and how the funding is utilized. We did not add additional regulatory language, as the Act requires in Sec. 711A(b) that the Administrator conduct surveys of SILCs regarding training and technical

<sup>1</sup> Guidance: ILA PI–15–01 Selection of the Designated State Entity (DSE), rev. Oct. 28, 2015;

available at <http://www.acl.gov/Programs/AoD/ILA/Index.aspx#dse>.

assistance needs in order to determine funding priorities for such training and technical assistance.

#### Establishment of a SILC (§ 1329.14)

Commenters expressed support for the proposed language in the NPRM. Some commenters also requested “direction or guidance on what constitutes ‘autonomous.’” ACL did not make changes to the language of the proposed rule. To better understand what autonomous means, we refer commenters to pertinent statutory provisions at Sec. 705 of the Act, 29 U.S.C. 796d, including Sec. 705(a) and (b) on the establishment, composition and appointments to the SILC. These include the requirement at Sec. 705(a) providing that “The Council shall not be established as an entity within a State agency,” and the conflict of interest policy at Sec. 705(e)(3), precluding staff and other personnel of the SILC from being assigned duties by the DSE or other agencies of the state that would create a conflict. We also note that the Council and voting members of the Council are to be comprised of members meeting the qualifications under Sec. 705(b)(4), including state-wide representation, a broad range of individuals with disabilities from diverse backgrounds, knowledge about centers for independent living and independent living services, and a majority of whom are individuals with disabilities per 29 U.S.C. 705(20)(B) and not employed by any State agency or center for independent living. We will continue to consult with stakeholders on the need for additional guidance, including providing more detail about the SILC standards and indicators that are under development.

Many commenters indicated they could not identify any relevant CIL-Tribal relationships that met the definition under Section 705 of the Act. However, other commenters indicated that there are currently 83 American Indian Vocational Rehabilitation Services (AIVRS) programs located on Federal and State Reservations providing IL-complementary services to American Indians/Alaska Natives (AI/ANs) with disabilities. Some commenters also expressed support for the effort to ensure that American Indians are part of SILC leadership. As a promising practice, we recommend that in each State where there are Federal and State-recognized Tribal Governments, the SILC include a Tribal Representative on the SILC, and conduct outreach to the AIVRS program(s) in the State, as available, or other relevant organizations to foster Tribal participation on the SILC.

#### Duties of the SILC (§ 1329.15)

Commenters clarified that the SILC resource plan is an integral part of the three-year SPIL. We acknowledge that this is the correct interpretation. Since the language incorrectly describing the resource plan as “separate from the SPIL” was preamble language attempting to clarify the new requirement regarding the allocation of funds for this plan as distinct from the SPIL, no changes to the regulatory text are needed.

Regarding § 1329.15(c)(2) on Innovations and Expansion (I&E) funds, commenters recommended revised language consistent with Section 101(a)(18) of the Act to make clear that resources for SILCs include I&E funds consistent with the statute. ACL made the requested change to the regulatory text. ACL will work with the Department of Education and stakeholders to develop appropriate guidance on this matter.

Commenters expressed support for the proposed language in § 1329.15(c)(4) and we have included it without change.

Commenters requested additional detail on what constitutes “necessary and sufficient” funds to carry out the functions of the SILC for the purpose of the SILC resource plan. Other commenters indicated that additional information was not needed. In the interest of clarity, ACL adopted the recommended additions to § 1329.15(c)(6), with a final category for other appropriate costs. A description of the SILC’s resource plan must be included in the State plan.

The plan should include:

- Staff/personnel
- Operating expenses
- Council compensation and expenses
- Meeting expenses, including public hearing expenses, such as meeting space, alternate formats, interpreters, and other accommodations
- Resources to attend and/or secure training for staff and Council members
- Other costs as appropriate.

A commenter asked “how will it be determined that the funding within the 30% cap for resource planning to carry out SILC functions has been well spent.” As discussed, the resource plan is agreed to as part of the SPIL. As noted above, ACL has added some additional required elements to the regulatory language. It will be up to the entities in the State to determine how the funds are spent, as reflected in the resource plan and the SPIL.

To minimize potential confusion, we removed duplicative requirements from § 1329.15(d).

#### Authorities of the SILC (§ 1329.16)

Commenters requested some additional terms be defined in the final rule, such as “in conjunction with.” ACL chose not to include several of these requested definitions, with the understanding that these words and phrases are given their plain meaning.

A commenter raised concerns about whether the prohibition against providing services directly or “managing” services would preclude SILCs from securing funding to allow CILs to accomplish specific goals. We clarify here our interpretation that securing funding is distinct from “managing” services. Rather, a practice such as applying for and receiving grant funding in these circumstances is a legitimate exercise of SILCs’ newly statutorily authorized resource development authority.

We received several comments regarding SILCs that were pertinent to a particular state. Individual state concerns are beyond the scope of the regulations. However, we suggest that SILCs that raised such concerns consult with the SILC technical assistance and training center and their respective ILA specialist.

Regarding § 1329.16(b)(3), commenters stated that the proposed regulation “fails to provide a reference to the statute or regulation that prohibits lobbying . . .” along with other listed perceived omissions. For information on the relevant prohibition, please consult 45 CFR part 93—New Restrictions on Lobbying, which was included in § 1329.3(i), along with the other provisions on applicability of other regulations, that was included in the proposed rule and retained in the final rule.

#### General Requirements for a State Plan (§ 1329.17)

Commenters expressed support for the SPIL development and approval process in the NPRM, as required under the changes implemented by WIOA. Some commenters discussed the ways successful collaboration is already underway, that the new SPIL development process will result in a better State Plan; and ultimately have a positive impact for people with disabilities. We appreciate this information.

As discussed in § 1329.4 regarding the definition of “service provider,” ACL has added a clarification that the DSE may provide IL services directly only when so specified in the SPIL. The

DSE's role as a service provider, where applicable, must be explicitly identified as part of the description of how and to whom funds will be dispersed under § 1329.17(a).

In discussing the new requirements of the SPIL in the summary in the preamble, with respect to a phrase describing collaboration between CILs and other entities performing similar work, ACL received a comment requesting that we define "similar work." That term refers to the requirement in the statute in Sec. 704(a)(3)(c) that the SPIL address working relationships and collaboration between centers for independent living and:

- Entities carrying out programs that provide independent living services, including those serving older individuals;
- other community-based organizations that provide or coordinate the provision of housing, transportation, employment, information and referral assistance, services, and supports for individuals with significant disabilities; and
- entities carrying out other programs providing services for individuals with disabilities.

The term "similar work" is not in the regulatory text, and we did not add a definition because the statutory language provides sufficient clarity.

Some commenters requested clarification that § 1329.17(d)(2)(ii) specify that the signature by the director of the DSE signifies agreement to execute the responsibilities of the DSE identified in section 704(c) of the Act. ACL incorporated this clarification in the final rule.

Regarding § 1329.17(d)(2), a commenter made the point that Centers with service areas (and grants) within multiple states should have sign off authority for each SPIL that affects them, where they meet the other applicable requirements. ACL agrees, and we have added language to so clarify in § 1329.17(d)(2)(iii). ACL also received many comments supporting our analysis that the number of CILs be based on the number of "legal entities," not the number of grants, and we retain that provision from the proposed rule.

As a technical correction, we renumbered new § 1329.17(e)–(h). Regarding proposed § 1329.17(g)(2), commenters indicated that the proposed language is not consistent with section 704(a)(2)(A) of the Act, which requires that public input be received prior to development of the State plan. The proposed provision included an option to provide a preliminary draft State plan for comment at the public meetings as

an option for meeting the requirement for public input. ACL agrees that this language, adapted from the previous regulations in 34 CFR 364.20(g), does not reflect the requirement of the statute that the State plan be developed "after receiving public input from individuals with disabilities and other stakeholders throughout the State," and we have modified the regulatory text of § 1329.17(f)(1) (formerly proposed § 1329.17(g)(2)) accordingly. This means that the public input requirement may be satisfied by a public meeting to get input prior to development of the SPIL, and then an opportunity for public comment before the SPIL is submitted, for instance through another public meeting where a preliminary draft is provided in advance, or by offering some other meaningful and accessible opportunity for the public to comment prior to SPIL submission. ACL also made technical changes to renumber the section.

#### Continuation Awards to Entities Eligible for Assistance Under the CIL Program (§ 1329.21)

Regarding § 1329.21(g), commenters suggested that the SILCs and the CILs, rather than the DSE and SILC, must jointly agree on the order of priorities. ACL agrees that SILCs and CILs, rather than the DSE, must agree to priorities as set forth in the SPIL as it is jointly developed, after receiving public input from individuals with significant disabilities and other stakeholders. Section 1329.21, however, addresses priority for funding centers in States that receive funding under Section 723 of the Act, 29 U.S.C. 796f–2. Currently, only two States, Massachusetts and Minnesota, qualify as Section 723 States. Under Section 723(e), priorities for funding centers are set by the designated State unit<sup>2</sup> and the SILC. ACL therefore has determined to keep the language as proposed in accordance with the statutory language in Section 723(e).

#### Competitive Awards to New Centers for Independent Living (§ 1329.22)

This section establishes the process for competitive awards to new Centers for Independent Living in unserved or underserved regions. We received comments requesting the authority to modify existing Part C Center service areas if the majority of the Center

<sup>2</sup> We note that WIOA did not change the term "designated State unit" in Section 723 to designated State entity, as in other sections throughout this Subpart of the Rehabilitation Act. ACL has determined to refer to the body as the designated State entity in the rule for consistency purposes.

Directors, the SILC Chair, and the Center/s in question agree. While ACL is sensitive to the issue raised, we are not addressing that issue in this final regulation. We will take under advisement the need to address service area adjustments in the future. We made a technical correction to § 1329.22(b), to read "location" rather than "allocation," and technical change in § 1329.22(c) to clarify that "bordering" means "contiguous."

#### Compliance Reviews (§ 1329.23)

ACL received the comment that, regarding "guidance or guidelines as determined by the Administrator," "[i]t is unclear if the guidance will include additional requirements and if the public will have an opportunity to comment on this guidance and guidelines." ACL may issue guidance consistent with statutory requirements, and the content and process may vary depending on the information conveyed.

A commenter proposed that ACL consider alternative entities to conduct federal reviews of the CILs and suggested longer time periods between reviews of a single CIL. WIOA establishes the requirement that the Administrator must conduct annual compliance reviews of CILs and DSEs in 29 U.S.C. 796d–1(c)(1), so ACL does not have the authority to alter the requirements established in the statute in this regulation. However, as noted above, ACL is actively evaluating the review processes, to optimize our capacity to conduct the required oversight, incorporating alternative approaches where permitted and appropriate.

#### Training and Technical Assistance to Centers for Independent Living (§ 1329.24)

Commenters pointed out that WIOA does not authorize ACL to retain funds for the direct provision of training and technical assistance to CILs. We agree that this is the correct interpretation. Since the inconsistent language was included only in the preamble text, no changes have been made to the regulatory text.

## II. Impact Analysis

### A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in Executive Order 12866. The Department has determined that this rule is consistent with these priorities and principles. The rule implements the Workforce

Innovation and Opportunity Act of 2014. Executive Order 12866 encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. In developing the final rule, we considered input we received from the public, including stakeholders.

#### *B. Regulatory Flexibility Analysis*

The Secretary certifies under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are States and Centers receiving Federal funds under these programs. However, the regulations would not have a significant economic impact on States or Centers affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The final regulations implement statutory changes that impose new requirements to ensure the proper expenditure of program funds.

The ILS Program provides formula grants to States for the purpose of funding a number of activities, directly and/or through grant or contractual arrangements. To be eligible for financial assistance, States are required to establish a designated State entity, State Independent Living Council and to submit an approvable three-year State Plan for Independent Living (SPIL) jointly developed by the chairperson of the SILC and the directors of the CILs in the State, after receiving public input, and signed by the chairperson of the SILC acting on behalf of and at the direction of the Council; not less than 51 percent of the directors of the CILs in the State, and the director of the designated State entity (DSE). The signature requirement of not less than 51 percent of CIL directors is a new requirement under WIOA. While this requirement does increase the amount of time a State may need to prepare an approvable SPIL, the statute provides no flexibility in implementing the new requirement. We are not able to estimate the amount of additional time the 51 percent signatory requirement will add to the SPIL development and approval process at the State level given that this is a new requirement. We solicited comments from affected States on this

issue, but beyond a few comments touching on general difficulty, did not receive any comments that clarify the amount of additional time required to meet the 51 percent signatory requirement.

The CIL program provides grants to consumer-controlled, community-based, cross disability, nonresidential, private nonprofit agencies for the provision of IL services to individuals with significant disabilities. WIOA expanded the previous definition of core IL services, specified in Section 7(17) of the Act, to include an additional, fifth category of core services. Specifically, Centers funded by the program must now provide services that facilitate transition from nursing homes and other institutions to the community, provide assistance to those at risk of entering institutions, and facilitate transition of youth to postsecondary life. Currently there are 354 CILs that receive federal funding under this program.

WIOA did not include any additional funding for the provision of this new fifth core service, necessitating that CILs would reallocate existing grant money to ensure the appropriate provision of all services required under Title VII of the Rehabilitation Act. Many commenters requested additional funding to carry out program responsibilities under the law. A number of commenters recommended that “ACL should seek to obtain additional funding for the 5th Core Transition Service.” Commenters also stated that “HHS should make CILs the mandatory receiver of all funding for transition services.”

Funding issues are beyond the scope of this rule. However, it might be useful to note that some resources currently funded by HHS related to transition services reside in other agencies within the Department and ACL lacks the authority to direct how these transition funds are disbursed.

With those facts in mind, we recommend that interested CILs note that ACL offers technical assistance for state and community-based aging and disability organizations through national partners as well as through learning collaboratives of networks of community-based aging and disability organizations, including Centers for Independent Living. These networks assist many CILs with leveraging their Federal funds and conducting resource

development, and with building their business capacity for generating sustainable revenue streams for programs and services. ACL looks forward to engaging more of the IL community in these efforts. ACL will actively endeavor to identify further funding opportunities for CILs fifth core services transition work and will strive to raise awareness about CILs unique statutory mandate and successes with our sister agencies across HHS and the broader federal community.

ACL stated in the NPRM that, since successful transition is a process that requires sustained efforts and supports over a long-term period, and the CILs were aware of the changes under the law before officially tracking these efforts as core services, we do not currently have a clear picture of the impact of the changes under WIOA on the programs. In developing the NPRM we therefore applied the closest applicable data to the estimates in the analysis. For purposes of the analysis, we looked at three specific categories of data currently captured in the 704 Annual Performance Report that we believe most accurately match the three components of the fifth core services.<sup>3</sup> We believe that the “Relocation from a Nursing Home or Institution” category most closely matches the first component of the new fifth core services: Facilitate transitions from nursing homes and other institutions to the community. We believe that the “Community-Based Living” category matches the second component of the new fifth core service: Provide assistance to those at risk of entering institutions. We believe the “Youth/Transition Services” category captures some relevant information for the third component of the new fifth core service: Facilitate transition of youth to postsecondary life. For FY 2014, 281 CILs reported nursing home transition goals established for at least one consumer, 343 CILs reported community-based living goals established for at least one consumer, and 224 CILs reported youth transition services provided to at least one consumer under the “Youth/Transition Services” category of the 704 Annual Performance Report.

<sup>3</sup> The current 704 Report was not designed to incorporate the fifth core services, so current data roughly corresponds with the categories.

5th Core service	704 Annual performance report category	Percentage of CILs*	Number of CILS
Facilitate Transitions from Nursing Homes and Other Institutions to the Community.	Relocation from a Nursing Home or Institution.	83	281
Provide Assistance to Those at Risk of Entering Institutions .....	Community-Based Living .....	99	343
Facilitate Transition of Youth to Postsecondary Life .....	Youth/Transition Services .....	66	224

\* Percentage of CILs reporting a goal set for at least one consumer. The Youth/Transition Services sub-category represents the percentage of CILs reporting service provision to at least one consumer.

Based on this analysis, we believe that many CILs currently have staff capable of providing the new fifth core services. However, due to the lack of additional funding, compliance with this statutory change may require CILs to re-examine their individual budgets, staffing plans, and consumer needs in order to reallocate funding to ensure the appropriate provision of services as required by the Rehabilitation Act. We estimated that this analysis will require approximately 10–15 hours of time for each CIL director. We proposed to use the upper end of the time estimate (15 hours) for purposes of estimating the total impact of this statutory requirement. Therefore, we estimated the amount of compliance analysis time for CIL directors to total 5,310 hours.

To estimate the average hourly wage for a CIL director, we examined data compiled by the IL Net (a collaborative project of Independent Living Research Utilization (ILRU), the National Council on Independent Living (NCIL), and the Association of Programs for Rural Independent Living (APRIL)) and Bureau of Labor Statistics (BLS) data. According to a 2003 National Survey of Salaries and Work Experience of Center for Independent Living Directors, compiled by IL Net, the most common annual salary range for CIL directors in 2002 was between \$41,000 and \$45,000. This equates to an average hourly salary range of \$19.71 to \$21.63. The Bureau of Labor Statistics (BLS) provided more recent salary information.

According to 2012 BLS data, the average hourly wage for a social and community manager (a BLS occupational classification for managers who coordinate and supervise social service programs) was \$28.83. We proposed using the more recent BLS data to calculate the total estimated impact of this statutory requirement. In order to estimate the benefits and overhead associated with this hourly wage, we assume that these costs equal 100 percent of pre-tax wages, for a total hourly cost of \$57.66. Therefore, we estimated the total dollar impact of this additional CIL director time to be \$306,174.60.

As noted previously, we have interpreted recent 704 Reports as

indicating that many CILs currently have staff capable of providing the new fifth core services. We received comments that some CILs which currently provide fifth core services do so using other sources of funding, including Medicaid dollars and contracts with managed care organizations. However, as shown in the table above, a substantial number of CILs do not yet provide the newly required services and therefore would potentially incur costs in order to comply with this rule.<sup>4</sup> We received several comments confirming that some CILs do not yet provide the new fifth core services, and doing so may impose a burden upon such CILs, particularly a diminution of services provided in other areas. These commenters were not able to give us a more detailed estimate of calculating the burden other than to ask for a substantial increase in funding for CILs. As noted above, increasing funding for CILs is beyond the scope of this regulation.

We also received questions as to whether there are minimum levels which must be achieved in order to have met the requirements of each component of the new fifth core IL services; the responses to these questions relate to and may impact the burden analysis. Each CIL must demonstrate activity under all three prongs of the definition, but the minimum levels are not further defined in this regulation. The revised data collection system will contain more information when it is published. We note that we do not establish a minimum number of services, beyond that there must be some service (at least one activity) accomplished and reported in each category and sub-category, for any of the core services, and we do not intend to establish a minimum number for the new fifth core services. The amount of services provided will depend on the needs of the individuals seeking services, the social dynamics of

<sup>4</sup> Costs of new actions are included in a regulatory impact analysis even when budgets or grant amounts do not change. If CILs are reallocating grant funds to these newly required services, then they are doing some other worthwhile activity to a lesser extent, and the value of that alternative activity represents the opportunity cost of the new requirements.

the community served by each CIL, and the approach each CIL takes to address the needs of individuals under the fifth core service. In addressing the comments related to burden, we also note that CILs can fulfill their obligation to provide fifth core services in a number of ways that may reduce the burden associated with the service. For example, services that CILs already provide may count towards this category rather than other core services.

Nevertheless, we recognize that the addition of the fifth core services may place more of a burden on CIL directors to re-examine their individual budgets, staffing and strategic plans, and consumer needs in order to reallocate funding to ensure the appropriate provision of services as required by the Rehabilitation Act. We therefore are increasing our initial estimate of 15 hours of time for each CIL director to 30 hours of time to account for the additional burden. In the final rule we estimate the amount of compliance analysis time for CIL directors to total 10,620 hours. We received several comments with different estimates. However, the comments did not provide sufficient detail or explain how the estimates were calculated. They did not include a breakdown of the costs of wages, benefits and overhead; nor did they include an estimate of the hours used in the calculation. Thus, we continue to assume that the costs of wages, benefits and overhead to be a total hourly cost of \$57.66, and use that figure in determining the dollar impact based on an increased number of hours, as discussed above. We increase our estimate in the final rule of the total dollar impact of this additional CIL director time to be \$612,349.20.

WIOA continues to require annual onsite compliance reviews of at least 15 percent of CILs that receive funding under section 722 of the Act and at least one-third of designated state units that receive funds under section 723 of the Act. The only change made by WIOA was to eliminate the requirement that CILs subject to compliance reviews be selected randomly. ACL is not proposing any changes to the compliance review process in this regulation. We do not anticipate any

additional burden on grantees as a result of the compliance and review process, including the development of additional corrective action plans in response to such reviews.

While the final rule establishes a new appeals process for States, we anticipate that the process will be utilized infrequently based on past experience of the Independent Living Services programs. The process is designed to provide additional protection against the termination of funding. We received no specific comments on the burden analysis. Therefore, we do not expect that funds will be terminated more or less frequently.

The allocation of 1.8 to 2 percent of Part B funds to training and technical assistance for SILCs is a new requirement under WIOA. We have limited available data regarding the impact on programs of this provision and requested comment on this aspect of the analysis. We received no comments related to burden analysis for this provision.

The 5 percent administrative cap on the DSE is a new statutory requirement under WIOA, as is the 30 percent ceiling on the SILC resource plan (unless the SPIL specifies that a greater percentage of funds is needed for to carry out the functions of the SILC). The rule makes final the NPRM's narrow interpretation of the 5 percent administrative cap, limiting its application to "Part B" funds only, rather than applying the 5 percent cap on administrative funds allocated to the DSE to all federal funds supporting the Independent Living Services. Additional funding sources include Social Security reimbursements, Vocational Rehabilitation program funds, and other public or private funds.

The rule avoids a broader application of the cap in an attempt to avoid creating too great a disincentive to State agencies to serve as DSEs, given the more limited role of the DSEs in decision-making (as they no longer have a statutory role in the development of the SPIL). Our intent is to effectuate the limitation as required under the law, while helping ensure retention of DSEs for the Part B programs. Some commenters indicated that the 5 percent administrative cap on the DSE may result in reduced funding for independent living services; they did not discuss the specific burden associated with implementation of this statutory requirement.

### C. Alternative Approaches

Although we believe that the approach of the rule best serves the purposes of the law, we considered a regulatory scheme requiring an

alternative treatment of the Part B State matching funds. In the final rule, as in the proposed rule, funds used to meet the required 10 percent State match are treated the same as funds "received by the State" under Part B.

To better understand the implications of this decision, consider the five percent administrative cap on the DSE's use of Part B funds for administrative purposes in § 1329.12(a)(5). For example, the proposed regulatory language mandates that WIOA's 5 percent cap on funds for DSE administrative expenses applies only to the Part B funds allocated to the State and to the State's required 10 percent Part B match. It does not apply to other program funds, including, but not limited to, payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, any other federal funds, or to other funds allocated by the State for IL purposes. Treating the issue in this way makes more Part B funds available for IL services and SPIL activities, while retaining sufficient funds to permit the DSE to accomplish its responsibilities and oversight requirements for ILS program funds under the law. One key advantage of this approach is minimizing disruptions to the ILS program from potential DSE decisions to relinquish the program due to insufficient resources to fulfill the WIOA-related fiscal oversight/administrative support responsibilities. For context, on average, 10–15 percent of DSE funding was spent on administrative costs prior to WIOA, though this must be considered along with the more limited role the DSE now plays under the law as amended.

A narrower interpretation of this provision would be to apply it to Part B funds only, without the State match. Not only would this approach severely limit the funds available for fulfillment of DSE responsibilities under the law, it would also create some potential accounting burdens for programs, as State funds provided as a result of the ILS program's State matching requirement have traditionally been treated similarly to Federal Part B funds. It would also be inconsistent with prior accounting practices regarding the 10% State match for Part B funding, which existed prior to WIOA.

The broadest interpretation would include all federal funds supporting the ILS program, including Social Security reimbursements and funds from the Title I (Vocational Rehabilitation) program in the cap, which would broaden the pot of monies allocated for

administrative costs of the DSE, which on its face seems counter to the change in the law capping the available percentage for these purposes at a relatively low amount. Commenters supported this approach.

We also considered alternative approaches regarding implementation of the new fifth core services based on comments regarding lack of funding to provide the new services. We have chosen not to establish minimum number of services to be provided for any of the core services, including the fifth core service, and to allow CILs flexibility in determining how to meet the requirements of the act. We believe that this approach, discussed above, satisfies the requirements of WIOA that CILs provide services in all five core service areas. It also gives CILs the greatest amount of flexibility to determine how to use their limited federal funds to meet the needs of individuals in their service area.

### D. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, requires certain actions before an agency can adopt or revise a collection of information. Under the PRA, we are required to provide notice in the **Federal Register** and solicit public comment before an information collection request is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, Section 3506(c)(2)(A) of the PRA requires that we solicit comments on new or revised information collections, which in the case of this rule, includes the new SPIL development requirements. The law is also intended to ensure that stakeholders can fully analyze the impact of the rule, which includes the associated reporting burden. We are not introducing any new information collections in the final rule however, it does revise process requirements. As discussed earlier, WIOA changed the requirements regarding SPIL development and who must sign the SPIL.

This final rule makes no revisions to existing 704 reporting requirements, the Section 704 Annual Performance Report (Parts I and II). ACL is currently convening workgroups to recommend and implement changes regarding data collection. These changes will be subject to the public comment process under the PRA before they are finalized.



## 1. State Plans for Independent Living (SPIL)

The SPIL encompasses the activities planned to achieve the specified independent living objectives and reflects the commitment to comply with all applicable statutory and regulatory requirements during the three years covered by the plan. A SPIL has already been approved in each State through fiscal year 2016. (State Plan for Independent Living and Center for Independent Living Programs, OMB Control Number 1820–0527.) The law remains unchanged that the SPIL continues to govern the provision of IL services.

Any amendments to the SPIL, reflecting either a change based on the WIOA amendments or any material change in State law, organization, policy, or agency operations that affect the administration of the SPIL, must be developed in accordance with Section 704(a)(2) of the Rehabilitation Act, as amended. SPIL amendments must be submitted to ACL for approval.

WIOA changed the content of the SPIL to the extent that the SPIL must describe how the independent living services will promote full access to community life for individuals with significant disabilities and describe strategies for providing independent living services on a statewide basis, to the greatest extent possible. The SPIL must also include a justification for any funding allocation of Part B funds above 30% for the SILC's resource plan.

We anticipate that such changes may, on average, increase the amount of time to develop the SPIL by five (5) hours. There are 57 SPILs, one for each State, the District of Columbia, and the six territories. Assuming the same hourly cost of \$57.66 discussed in the Regulatory Impact Analysis above, we therefore estimate the cost of the changes to be \$16,433.1 (57 SPILs × \$57.66/hour × 5 hours). We did not receive any comments on these calculations.

## 2. 704 Reporting Requirements

The Section 704 Annual Performance Report (Parts I and II) are the Reporting Instruments used to collect information required by the Act,<sup>5</sup> as amended by WIOA, related to the use of Part B and Part C funds. This regulation simply transfers the statutorily required annual reporting from the Department of Education Regulations to the Department of Health and Human Services (HHS) regulations. No additional reporting requirements are

being added to the current OMB approved 704 report at this time. (Section 704 Annual Performance Report (Parts I and II), OMB Control Number 1820–0606).

Prior to WIOA, an effort was underway to make formal changes to the 704 Reporting Instruments. The passage of WIOA in July 2014 put those efforts on hold until late 2014. ACL is currently convening workgroups to recommend and implement changes in data collection, and these changes will be subject to the public comment process under the PRA before they are finalized. Key steps in ACL's current and projected timeline on the process include an external workgroup webinar, held April 1, 2015, to share the status of data collection efforts and invite feedback on specific issues. It is anticipated that additional external stakeholder engagement will occur during summer of 2016. The SILC indicators of minimum compliance will also be published in the **Federal Register** as part of this process. It is ACL's goal to publish the revised data collection proposals for comment in **Federal Register** in September 2016. According to this projected timeline, in October 2017, programs will begin collecting information for the FY 18 reporting period using the new data collection system. In December 2018, the FY18 704 data collection system reflecting the new reporting requirements will be due.

Updating data collection will require changes to include the new fifth core services under WIOA. We make final definitions for some of the terms in the fifth core services in this rule, and have made changes based on comments received. Assuming revised data collection requirements will include reporting on the new fifth core services, we estimate that providing the information will take approximately 1 hour per data report. Based on the total number of 704 Reports filed annually in past years,<sup>6</sup> we estimate that the total number of additional hours to be 412.<sup>7</sup>

Assuming the same hourly cost of \$57.66 discussed in the regulatory impact analysis above, we estimate the cost of the changes to be \$23,755.92. We received no comments on these estimates. In summary, future proposed changes to the Section 704 Annual Performance Report (Parts I and II) will be published in the **Federal Register** with opportunity for public comment.

Section 706 of the Rehabilitation Act continues to require reviews of CILs funded under Section 722 and reviews of State entities funded under Section 723 of the Rehabilitation Act. Therefore, ACL will continue to conduct compliance reviews and make final decisions on any proposed corrective actions and/or technical assistance related to compliance reviews of a CIL's grants.

In Section 706(b), 29 U.S.C. 796d–1(b), the Act, as amended by WIOA, requires the Administrator to develop and publish in the **Federal Register** new indicators of minimum compliance for Statewide Independent Living Councils. The SILC Standards and Indicators of minimum compliance are currently under development. ACL shared a draft for informal stakeholder review in January 2016 and continues to take stakeholder feedback. The CIL indicators of minimum compliance (consistent with the standards set forth in Section 725) are awaiting the addition of the fifth core services, which requires input in response to this proposed rule.

## E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million, adjusted for inflation, or more in any one year.

If a covered agency must prepare a budgetary impact statement, Section 205 further requires that it select the most cost-effective and least burdensome alternatives that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, Section 203 requires a plan for informing and advising any small government entities that may be significantly or uniquely impacted by a rule.

ACL has determined that this rulemaking does not result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector of more than \$100 million in any one year. The total FY 2016 budget for the Independent Living Services and Centers for Independent Living programs authorized under Chapter 1, Title VII of the Rehabilitation Act of 1973 (Rehabilitation Act or Act), as amended by WIOA (Pub. L. 113–128) is \$101,183,000. We do not anticipate that the rule will impact the majority of the budget for these programs.

<sup>5</sup> See Sections 704(c)(3) and (4), 704(m)(4)(D), 706(d), and 725(c) of the Act.

<sup>6</sup> See, 79 FR 23960 (April 29, 2014); information collection approved June 4, 2014 through June 30, 2017. [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201404-1820-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201404-1820-001).



*F. Congressional Review*

This rule is not a major rule as defined in 5 U.S.C. Section 804(2).

*G. Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations do not have an impact on family well-being as defined in the legislation.

*H. Executive Order 13132*

Executive Order 13132 on "federalism" was signed August 4, 1999. The purposes of the Order are to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act.

The Department certifies that this rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. ACL is not aware of any specific State laws that would be preempted by the adoption of the regulation in subchapter C of 45 CFR part 1329.

**List of Subjects in 45 CFR Part 1329**

Centers for independent living, Compliance, Enforcement and appeals, Independent living services, Persons with disabilities, Reporting.

Dated: October 18, 2016.

**Edwin Walker,**

*Acting Administrator, Administration for Community Living.*

Approved: October 19, 2016.

**Sylvia M. Burwell,**

*Secretary, Department of Health and Human Services.*

■ For the reasons stated in the preamble, the, Administration for Community Living, U.S. Department of Health and Human Services, amends 45 CFR subchapter C by adding part 1329 to read as follows:

**PART 1329—STATE INDEPENDENT LIVING SERVICES AND CENTERS FOR INDEPENDENT LIVING****Subpart A—General Provisions**

Sec.

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**Authority:** 29 U.S.C. 709; 42 U.S.C. 3515e.

**Subpart A—General Provisions****§ 1329.1 Programs covered.**

This part includes general requirements applicable to the conduct of the following programs authorized under title VII, chapter 1 of the Rehabilitation Act of 1973, as amended:

(a) Independent Living Services (ILS), title VII, chapter 1, part B (29 U.S.C. 796e to 796e-3).

(b) The Centers for Independent Living (CIL), title VII, chapter 1, part C (29 U.S.C. 796f to 796f-6).

**§ 1329.2 Purpose.**

The purpose of title VII of the Act is to promote a philosophy of independent living (IL), including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and to promote the integration and full inclusion of individuals with disabilities into the mainstream of American society by:

(a) Providing financial assistance to States for providing, expanding, and improving the provision of IL services;

(b) Providing financial assistance to develop and support statewide networks of Centers for Independent Living (Centers or CILs);

(c) Providing financial assistance to States, with the goal of improving the independence of individuals with disabilities, for improving working relationships among—

(1) State Independent Living Services;  
(2) Centers for Independent Living;  
(3) Statewide Independent Living Councils (SILCs or Councils) established under section 705 of the Act (29 U.S.C. 796d);

(4) State vocational rehabilitation (VR) programs receiving assistance under Title 1 of the Act (29 U.S.C. 720 *et seq.*);

(5) State programs of supported employment services receiving assistance under Title VI of the Act (29 U.S.C. 795g *et seq.*);

(6) Client assistance programs (CAPs) receiving assistance under section 112 of the Act (29 U.S.C. 732);

(7) Programs funded under other titles of the Act;

(8) Programs funded under other Federal laws; and

(9) Programs funded through non-Federal sources with the goal of improving the independence of individuals with disabilities.

**§ 1329.3 Applicability of other regulations.**

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR part 46—Protection of Human Subjects.

(c) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

(d) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

(e) 45 CFR part 81—Practice and Procedure for Hearings under Part 80 of this Title.

(f) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs Activities Receiving Federal Financial Assistance.

(g) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

(h) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(i) 45 CFR part 93—New Restrictions on Lobbying.

(j) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(k) 2 CFR part 382—Requirements for Drug-Free Workplace (Financial Assistance).

#### § 1329.4 Definitions.

For the purposes of this part, the following definitions apply:

*Act* means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended. *Part B* refers to part B of chapter 1 of title VII of the Act (29 U.S.C. 796e to 796e-3). *Part C* refers to part C of chapter 1 of title VII, of the Act (29 U.S.C. 796f to 796f-6).

*Administrative support services* means services and supports provided by the designated State entity under Part B, and to Part C CILs administered by the State under section 723 of the Act in support of the goals, objectives and related activities under an approved State Plan for Independent Living (SPIL). Such support includes any costs associated with contracts and subgrants including fiscal and programmatic oversight, among other services.

*Administrator* means the Administrator of the Administration for Community Living (ACL) of the Department of Health and Human Services.

*Advocacy* means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may—

(1) Involve representing an individual—

(i) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(ii) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(2) Be on behalf of—

(i) A single individual, in which case it is individual advocacy;

(ii) A group or class of individuals, in which case it is *systems advocacy*; or

(iii) Oneself, in which case it is *self advocacy*.

*Attendant care* means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

*Center for independent living* (“*Center*”) means a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency for individuals with significant disabilities (regardless of age or income) that—

(1) Is designed and operated within a local community by individuals with disabilities;

(2) Provides an array of IL services as defined in section 7(18) of the Act, including, at a minimum, independent living core services as defined in this section; and

(3) Complies with the standards set out in Section 725(b) and provides and complies with the assurances in section 725(c) of the Act and § 1329.5.

*Completed their secondary education* means, with respect to the Independent Living Core Services that facilitate the transition of youth who are individuals with significant disabilities in section 7(17)(e)(iii) of the Act, that an eligible youth has received a diploma; has received a certificate of completion for high school or other equivalent document marking the completion of participation in high school; or has exceeded the age of eligibility for services under IDEA.

*Consumer control* means, with respect to a Center or eligible agency, that the Center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services, in terms of the management, staffing, decision making, operation, and provision of services. Consumer control, with respect to an individual, means that the individual with a disability asserts control over his or her personal life choices, and in addition, has control over his or her independent living plan (ILP), making informed choices about content, goals and implementation.

*Cross-disability* means, with respect to services provided by a Center, that a Center provides services to individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of unserved or underserved populations by programs under Title VII. Eligibility for services shall be determined by the Center, and shall not be based on the presence of any one or more specific significant disabilities.

*Designated State entity (DSE)* is the State agency designated in the State Plan for Independent Living (SPIL) that acts on behalf of the State to provide the functions described in title VII, chapter 1 of the Act.

*Eligible agency* means a consumer-controlled, community-based, cross-

disability, nonresidential, private, nonprofit agency.

*Independent living core services* mean, for purposes of services that are supported under the ILS or CIL programs—

(1) Information and referral services;

(2) Independent Living skills training;

(3) Peer counseling, including cross-disability peer counseling;

(4) Individual and systems advocacy;

(5) Services that:

(i) Facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services. This process may include providing services and supports that a consumer identifies are needed to move that person from an institutional setting to community based setting, including systems advocacy required for the individual to move to a home of his or her choosing;

(ii) Provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community. A determination of who is at risk of entering an institution should include self-identification by the individual as part of the intake or goal-setting process; and

(iii) Facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to postsecondary life. Individuals who have reached the age of 18 and are still receiving services in accordance with an Individualized Education Program (IEP) under IDEA have not “completed their secondary education.”

*Independent living service* includes the independent living core services and such other services as described in section 7(18) of the Act.

*Individual with a disability* means an individual who—

(1) Has a physical or mental impairment that substantially limits one or more major life activities of such individual;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment, as described in section 3(3) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(3)).

*Individual with a significant disability* means an individual with a severe physical or mental impairment whose ability to function independently in the

family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.

*Majority* means more than 50 percent.

*Minority group* means American Indian, Alaskan Native, Asian American, Black or African American (not of Hispanic origin), Hispanic or Latino (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), and Native Hawaiian or other Pacific Islander.

*Nonresidential* means, with respect to a Center, that the Center does not operate or manage housing or shelter for individuals as an IL service on either a temporary or long-term basis unless the housing or shelter is—

(1) Incidental to the overall operation of the Center;

(2) Necessary so that the individual may receive an IL service; and

(3) Limited to a period not to exceed eight weeks during any six-month period.

*Peer relationships* mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

*Peer role models* mean individuals with significant disabilities whose achievements can serve as a positive example for other individuals with significant disabilities.

*Personal assistance services* mean a range of services, paid or unpaid, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities and include but are not limited to: Getting up and ready for work or going out into the community (including bathing and dressing), cooking, cleaning or running errands, engaging in social relationships including parenting.

*Service provider* means a Center for Independent Living that receives financial assistance under Part B or C of chapter 1 of title VII of the Act, or any other entity or individual that provides IL services under a grant or contract from the DSE pursuant to Section 704(f) of the Act. A designated State entity (DSE) may directly provide IL services to individuals with significant

disabilities only as specifically authorized in the SPIL.

*State* includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*State plan* means the State Plan for Independent Living (SPIL) required under Section 704 of the Act.

*Unserved and underserved groups or populations* include populations such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, and individuals from underserved geographic areas (rural or urban).

*Youth with a significant disability* means an individual with a significant disability who—

(1) Is not younger than 14 years of age; and

(2) Is not older than 24 years of age.

#### **§ 1329.5 Indicators of minimum compliance.**

To be eligible to receive funds under this part, a Center must comply with the standards in section 725(b) and assurances in section 725(c) of the Act, with the indicators of minimum compliance, and the requirements contained in the terms and conditions of the grant award.

#### **§ 1329.6 Reporting.**

(a) A Center must submit a performance report in a manner and at a time described by the Administrator, consistent with section 704(m)(4)(D) of the Act, 29 U.S.C. 796c(m)(4)(D).

(b) The DSE must submit a report in a manner and at a time described by the Administrator, consistent with section 704(c)(4) of the Act, 29 U.S.C. 796c(c)(4).

(c) The Administrator may require such other reports as deemed necessary to carry out the responsibilities set forth in section 706 of the Act, 29 U.S.C. 796d–1.

#### **§ 1329.7 Enforcement and appeals procedures.**

(a) *Process for Centers for Independent Living.* (1) If the Director of the Independent Living Administration (Director) determines that, as the result of the Onsite Compliance Review process defined in section 706(c)(2), or other review activities, any Center receiving funds under this part, other than a Center that is provided Part C funding by the State under section 723 of the Act, is not in compliance with the

standards and assurances in section 725 (b) and (c) of the Act and of this part, the Director must provide notice to the Center pursuant to guidance determined by the Administrator.

(2) The Director may offer technical assistance to the Center to develop a corrective action plan or to take such other steps as are necessary to come into compliance with the standards and assurances.

(3) The Center may request a preliminary appeal to the Director in a form and manner determined by the Administrator. The Director shall review the appeal request and provide written notice of the determination within a timely manner.

(4) Where there is a determination that falls within 45 CFR part 16, appendix A, C.a.(1)–(4), the Center may appeal an unfavorable decision by the Director to the Administrator within a time and manner established by the Administrator. The Administrator shall review the appeal request and provide written notice of the determination within a timely manner.

(5) The Administrator may take steps to enforce a corrective action plan or to terminate funding if the Administrator determines that the Center remains out of compliance.

(6) Written notice of the determination by the Administrator shall constitute a final determination for purposes of 45 CFR part 16. A Center that receives such notice of a determination that falls within 45 CFR part 16, appendix A, C.a.(1)–(4), may appeal to the Departmental Appeals Board pursuant to the provisions of 45 CFR part 16.

(7) A Center that is administered by the State under Section 723 of the Act must first exhaust any State process before going through the process described in paragraphs (a)(1) through (6) of this section.

(b) *Process for States.* (1) If the Director of the Independent Living Administration determines that a State is out of compliance with sections 704, 705, 713 or other pertinent sections of the Act, the Director must provide notice to the State pursuant to guidance determined by the Administrator.

(2) The Director may offer technical assistance to the State to develop a corrective action plan or to take such other steps as are necessary to ensure that the State comes in to compliance.

(3) Where there is a determination that falls within 45 CFR part 16, appendix A, C.a.(1)–(4), the State may seek an appeal consistent with the steps set forth in paragraphs (a)(3) and (4) of this section.

(4) The Administrator may take steps to enforce statutory or regulatory requirements or to terminate funding if the Administrator determines that the State remains out of compliance.

(5) Written notice of the determination by the Administrator shall constitute a final determination for purposes of 45 CFR part 16 with regard to the types of determinations set forth in 45 CFR part 16, appendix A, C.a.(1)–(4). A State that receives such notice may appeal to the Departmental Appeals Board pursuant to the provisions of 45 CFR part 16.

### **Subpart B—Independent Living Services**

#### **§ 1329.10 Authorized use of funds for Independent Living Services.**

(a) The State:

(1) May use funds received under this part to support the SILC resource plan described in section 705(e) of the Act but may not use more than 30 percent of the funds unless an approved SPIL so specifies pursuant to § 1329.15(c);

(2) May retain funds under section 704(c)(5) of the Act; and

(3) Shall distribute the remainder of the funds received under this part in a manner consistent with the approved State plan for the activities described in paragraph (b) of this section.

(b) The State may use the remainder of the funds described in paragraph (a)(3) of this section to—

(1) Provide to individuals with significant disabilities the independent living (IL) services required by section 704(e) of the Act, particularly those in unserved areas of the State;

(2) Demonstrate ways to expand and improve IL services;

(3) Support the operation of Centers for Independent Living (Centers) that are in compliance with the standards and assurances in section 725 (b) and (c) of the Act;

(4) Support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing IL services;

(5) Conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to Federal, State, and local policy makers in order to enhance IL services for individuals with significant disabilities;

(6) Train individuals with disabilities and individuals providing services to individuals with disabilities, and other persons regarding the IL philosophy; and

(7) Provide outreach to populations that are unserved or underserved by programs under title VII of the Act, including minority groups and urban and rural populations.

#### **§ 1329.11 DSE eligibility and application.**

(a) Any designated State entity (DSE) identified by the State and included in the signed SPIL pursuant to section 704(c) is eligible to apply for assistance under this part in accordance with section 704 of the Act, 29 U.S.C. 796c.

(b) To receive financial assistance under Parts B and C of chapter 1 of title VII, a State shall submit to the Administrator and obtain approval of a State plan that meets the requirements of section 704 of the Act, 29 U.S.C. 796c.

(c) Allotments to states are determined in accordance with section 711 of the Act, 29 U.S.C. 796e.

#### **§ 1329.12 Role of the designated State entity.**

(a) A DSE that applies for and receives assistance must:

(1) Receive, account for, and disburse funds received by the State under Part B and Part C in a State under section 723 of the Act based on the State plan;

(2) Provide administrative support services for a program under Part B, as directed by the approved State plan, and for CILs under Part C when administered by the State under section 723 of the Act, 29 U.S.C. 796f–2;

(3) Keep such records and afford such access to such records as the Administrator finds to be necessary with respect to the programs;

(4) Submit such additional information or provide such assurances as the Administrator may require with respect to the programs; and

(5) Retain not more than 5 percent of the funds received by the State for any fiscal year under Part B, for the performance of the services outlined in paragraphs (a)(1) through (4) of this section. For purposes of these regulations, the 5 percent cap on funds for administrative expenses applies only to the Part B funds allocated to the State and to the State's required 10 percent Part B match. It does not apply to other program income funds, including, but not limited to, payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, any other federal funds, or to other funds allocated by the State for IL purposes.

(b) The DSE must also carry out its other responsibilities under the Act, including, but not limited to:

(1) Allocating funds for the delivery of IL services under Part B of the Act as directed by the SPIL; and

(2) Allocating the necessary and sufficient resources needed by the SILC to fulfill its statutory duties and authorities under section 705(c), consistent with the approved State Plan.

(c) Fiscal and accounting requirements: The DSE must adopt fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting for federal funds provided to CILs, SILCs, and/or other services providers under the ILS program. The DSE must comply with all applicable federal and State laws and regulations, including those in 45 CFR part 75.

#### **§ 1329.13 Allotment of Federal funds for State independent living (IL) services.**

(a) The allotment of Federal funds for State IL services for each State is computed in accordance with the requirements of section 711(a)(1) of the Act.

(b) Notwithstanding paragraph (a) of this section, the allotment of Federal funds for Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands is computed in accordance with section 711(a)(2) of the Act.

(c) The Administrator shall reserve between 1.8 percent and 2 percent of appropriated funds to provide, either directly or through grants, contracts, or cooperative agreements, training and technical assistance to SILCs. Training and technical assistance funds shall be administered in accordance with section 711A of the Act.

#### **§ 1329.14 Establishment of a SILC.**

(a) To be eligible to receive assistance under this part, each State shall establish and maintain a SILC that meets the requirements of section 705 of the Act, including composition and appointment of members.

(b) The SILC shall not be established as an entity within a State agency, including the DSE. The SILC shall be independent of and autonomous from the DSE and all other State agencies.

#### **§ 1329.15 Duties of the SILC.**

(a) The duties of the SILC are those set forth in section 705(c), (d), and (e) of the Act.

(1) The SILC shall develop the SPIL in accordance with guidelines developed by the Administrator;

(2) The SILC shall monitor, review and evaluate the implementation of the SPIL on a regular basis as determined by the SILC and set forth in the SPIL;

(3) The SILC shall meet regularly, and ensure that such meetings are open to

the public and sufficient advance notice of such meetings is provided;

(4) The SILC shall submit to the Administrator such periodic reports as the Administrator may reasonably request, and keep such records, and afford such access to such records, as the Administrator finds necessary to verify the information in such reports; and

(5) The SILC shall, as appropriate, coordinate activities with other entities in the State that provide services similar to or complementary to independent living services, such as entities that facilitate the provision of or provide long-term community-based services and supports.

(b) In carrying out the duties under this section, the SILC may provide contact information for the nearest appropriate CIL. Sharing of such information shall not constitute the direct provision of independent living services as defined in section 705(c)(3) of the Act.

(c) The SILC, in conjunction with the DSE, shall prepare a plan for the provision of resources, including staff and personnel that are necessary and sufficient to carry out the functions of the SILC.

(1) The resource plan amount shall be commensurate, to the extent possible, with the estimated costs related to SILC fulfillment of its duties and authorities consistent with the approved State Plan.

(2) Available resources include: Innovation and Expansion (I&E) funds authorized by 29 U.S.C. 721(a)(18); Independent Living Part B funds; State matching funds; other public funds (such as Social Security reimbursement funds); and private sources.

(3) In accordance with § 1329.10(a)(1), no more than 30 percent of the State's allocation of Part B and Part B State matching funds may be used to fund the resource plan, unless the approved SPIL provides that more than 30 percent is needed and justifies the greater percentage.

(4) No conditions or requirements may be included in the SILC's resource plan that may compromise the independence of the SILC.

(5) The SILC is responsible for the proper expenditure of funds and use of resources that it receives under the resource plan.

(6) A description of the SILC's resource plan must be included in the State plan. The plan should include:

- (i) Staff/personnel;
- (ii) Operating expenses;
- (iii) Council compensation and expenses;
- (iv) Meeting expenses, including public hearing expenses, such as

meeting space, alternate formats, interpreters, and other accommodations;

(v) Resources to attend and/or secure training for staff and Council members; and

(vi) Other costs as appropriate.

(d) The SILC shall carry out the activities in paragraph (a), to better serve individuals with significant disabilities and help achieve the purpose of section 701 of the Act.

(e) The SILC shall, consistent with State law, supervise and evaluate its staff and other personnel as may be necessary to carry out its functions under this section.

#### **§ 1329.16 Authorities of the SILC.**

(a) The SILC may conduct the following discretionary activities, as authorized and described in the approved State Plan:

(1) Work with Centers for Independent Living to coordinate services with public and private entities to improve services provided to individuals with disabilities;

(2) Conduct resource development activities to support the activities described in the approved SPIL and/or to support the provision of independent living services by Centers for Independent Living; and

(3) Perform such other functions, consistent with the purpose of this part and comparable to other functions described in section 705(c) of the Act, as the Council determines to be appropriate and authorized in the approved SPIL.

(b) In undertaking the foregoing duties and authorities, the SILC shall:

(1) Coordinate with the CILs in order to avoid conflicting or overlapping activities within the CILs' established service areas;

(2) Not engage in activities that constitute the direct provision of IL services to individuals, including the IL core services; and

(3) Comply with Federal prohibitions against lobbying.

#### **§ 1329.17 General requirements for a State plan.**

(a) The State may use funds received under Part B to support the Independent Living Services program and to meet its obligations under the Act, including the section 704(e) requirements that apply to the provision of independent living services. The State plan must stipulate that the State will provide IL services, directly and/or through grants and contracts, with Federal, State or other funds, and must describe how and to whom those funds will be disbursed for this purpose.

(b) In order to receive financial assistance under this part, a State shall

submit to the Administrator a State plan for independent living.

(1) The State plan must contain, in the form prescribed by the Administrator, the information set forth in section 704 of the Act, including designation of an Agency to serve as the designated State entity, and such other information requested by the Administrator.

(2) The State plan must contain the assurances set forth in section 704(m) of the Act.

(3) The State plan must be signed in accordance with the provisions of this section.

(4) The State plan must be submitted 90 days before the completion date of the proceeding plan, and otherwise in the time frame and manner prescribed by the Administrator.

(5) The State plan must be approved by the Administrator.

(c) The State plan must cover a period of not more than three years and must be amended whenever necessary to reflect any material change in State law, organization, policy, or agency operations that affects the administration of the State plan.

(d) The State plan must be jointly—

(1) Developed by the chairperson of the SILC, and the directors of the CILs, after receiving public input from individuals with disabilities and other stakeholders throughout the State; and

(2) Signed by the—

(i) Chairperson of the SILC, acting on behalf of and at the direction of the SILC;

(ii) The director of the DSE, signifying agreement to execute the responsibilities of the DSE identified in section 704(c) of the Act; and

(iii) Not less than 51 percent of the directors of the CILs in the State. For purposes of this provision, if a legal entity that constitutes the "CIL" has multiple Part C grants considered as separate Centers for all other purposes, for SPIL signature purposes, it is only considered as one Center. CILs with service areas in more than one State that meet the other applicable requirements are eligible to participate in SPIL development and sign the SPIL in each of the relevant States.

(e) The State plan must provide for the review and revision of the plan, not less than once every three years, to ensure the existence of appropriate planning, financial support and coordination, and other assistance to meet the requirements of section 704(a) of the Act.

(f) The public, including people with disabilities and other stakeholders throughout the State, must have an opportunity to comment on the State plan prior to its submission to the

Administrator and on any revisions to the approved State plan. Meeting this standard for public input from individuals with disabilities requires providing reasonable modifications in policies, practices, or procedures; effective communication and appropriate auxiliary aids and services for individuals with disabilities, which may include the provision of qualified interpreters and information in alternate formats, free of charge.

(1) The requirement for public input in this section may be met by holding public meetings before a preliminary draft State plan is prepared and by providing a preliminary draft State plan for comment prior to submission.

(2) To meet the public input standard of this section, a public meeting requires:

(i) Accessible, appropriate and sufficient notice provided at least 30 days prior to the public meeting through various media available to the general public, such as Web sites, newspapers and public service announcements, and through specific contacts with appropriate constituency groups.

(ii) All notices, including notices published on a Web site, and other written materials provided at or prior to public meetings must be available upon request in accessible formats.

(g) The State plan must identify those provisions that are State-imposed requirements. For purposes of this section, a State-imposed requirement includes any State law, regulation, rule, or policy relating to the DSE's administration or operation of IL programs under Title VII of the Act, including any rule or policy implementing any Federal law, regulation, or guideline that is beyond what would be required to comply with the regulations in this part.

(h) The State plan must address how the specific requirements in the Act and in paragraph (f) of this section will be met.

### **Subpart C—Centers for Independent Living Program**

#### **§ 1329.20 Centers for Independent Living (CIL) program.**

State allotments of Part C, funds shall be based on section 721(c) of the Act, and distributed to Centers within the State in accordance with the order of priorities in sections 722(e) and 723(e) of the Act.

#### **§ 1329.21 Continuation awards to entities eligible for assistance under the CIL program.**

(a) In any State in which the Administrator has approved the State plan required by section 704 of the Act,

an eligible agency funded under Part C in fiscal year 2015 may receive a continuation award in FY 2016 or a succeeding fiscal year if the Center has—

(1) Complied during the previous project year with the standards and assurances in section 725 of the Act and the terms and conditions of its grant; and

(2) Submitted an approvable annual performance report demonstrating that the Center meets the indicators of minimum compliance referenced in in § 1329.5.

(b) If an eligible agency administers more than one Part C grant, each of the Center grants must meet the requirements of paragraph (a) of this section to receive a continuation award.

(c) A designated State entity (DSE) that operated a Center in accordance with section 724(a) of the Act in fiscal year (FY) 2015 is eligible to continue receiving assistance under this part in FY 2016 or a succeeding fiscal year if, for the fiscal year for which assistance is sought—

(1) No nonprofit private agency submits and obtains approval of an acceptable application under section 722 or 723 of the Act to operate a Center for that fiscal year before a date specified by the Administrator; or

(2) After funding all applications so submitted and approved, the Administrator determines that funds remain available to provide that assistance.

(d) A Center operated by the DSE under section 724(a) of the Act must comply with paragraphs (a), (b), and (c) of this section to receive continuation funding, except for the requirement that the Center be a private nonprofit agency.

(e) A designated State entity that administered Part C funds and awarded grants directly to Centers within the State under section 723 of the Act in fiscal year (FY) 2015 is eligible to continue receiving assistance under section 723 in FY 2016 or a succeeding fiscal year if the Administrator determines that the amount of State funding earmarked by the State to support the general operation of Centers during the preceding fiscal year equaled or exceeded the amount of federal funds allotted to the State under section 721(c) of the Act for that fiscal year.

(f) A DSE may apply to administer Part C funds under section 723 in the time and in the manner that the Administrator may require, consistent with section 723(a)(1)(A) of the Act.

(g) Grants awarded by the DSE under section 723 of the Act are subject to the requirements of paragraphs (a) and (b) of this section and the order of priorities

in section 723(e) of the Act, unless the DSE and the SILC jointly agree on another order of priorities.

#### **§ 1329.22 Competitive awards to new Centers for Independent Living.**

(a) Subject to the availability of funds and in accordance with the order of priorities in section 722(e) of the Act and the State Plan's design for the statewide network of Centers, an eligible agency may receive Part C funding as a new Center for Independent Living in a State, if the eligible agency:

(1) Submits to the Administrator an application at the time and manner required in the funding opportunity announcement (FOA) issued by the Administrator which contains the information and meets the selection criteria established by the Administrator in accordance with section 722(d) of the Act;

(2) Proposes to serve a geographic area that has been designated as a priority unserved or underserved in the State Plan for Independent Living and that is not served by an existing Part C-funded Center; and

(3) Is determined by the Administrator to be the most qualified applicant to serve the designated priority area consistent with the State plan setting forth the design of the State for establishing a statewide network of Centers for independent living.

(b) An existing Part C-funded Center may apply to serve the designated unserved or underserved areas if it proposes the establishment of a separate and complete Center (except that the governing board of the existing center may serve as the governing board of the new Center) at a different geographic location, consistent with the requirements in the FOA.

(c) An eligible agency located in a bordering, contiguous State may be eligible for a new CIL award if the Administrator determines, based on the submitted application, that the agency:

(1) Is the most qualified applicant meeting the requirements in paragraphs (a) and (b) of this section; and

(2) Has the expertise and resources necessary to serve individuals with significant disabilities who reside in the bordering, contiguous State, in accordance with the requirements of the Act and these regulations.

(d) If there are insufficient funds under the State's allotment to fund a new Center, the Administrator may—

(1) Use the excess funds in the State to assist existing Centers consistent with the State plan; or

(2) Reallot these funds in accordance with section 721(d) of the Act.

**§ 1329.23 Compliance reviews.**

(a) Centers receiving Part C funding shall be subject to periodic reviews, including on-site reviews, in accordance with sections 706(c), 722(g), and 723(g) of the Act and guidance set forth by the Administrator, to verify compliance with the standards and assurances in section 725(b) and (c) of the Act and the grant terms and conditions. The Administrator shall annually conduct reviews of at least 15 percent of the Centers.

(b) A copy of each review under this section shall be provided, in the case of section 723(g), by the director of the DSE to the Administrator and to the SILC, and in the case of section 722(g), by the Administrator to the SILC and the DSE.

**§ 1329.24 Training and technical assistance to Centers for Independent Living.**

The Administrator shall reserve between 1.8% and 2% of appropriated funds to provide training and technical assistance to Centers through grants, contracts or cooperative agreements, consistent with section 721(b) of the Act. The training and technical assistance funds shall be administered in accordance with section 721(b) of the Act.

[FR Doc. 2016–25918 Filed 10–26–16; 8:45 am]

BILLING CODE 4150–04–P

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Part 391**

[Docket No. FMCSA–2012–0178]

**Physical Qualifications and Examinations: Medical Examination Report and Medical Examiner's Certificate Forms**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of decision on use of Medical Examination Report and Medical Examiner's Certificate Forms.

**SUMMARY:** FMCSA announces its decision to allow certified Medical Examiners (MEs) to use the Medical Examination Report (MER) Form, MCSA–5875, and Medical Examiner's Certificate (MEC), Form MCSA–5876, with October, November, and December, 2015 revision dates that are located in the top left corner of the forms until existing stocks are depleted. For MEs in an office where these forms have been programmed into an electronic system

that will require IT programming, the current approved versions of the forms should be programmed as soon as practicable. FMCSA published sample versions of the forms in October and November 2015 prior to posting fillable Portable Document Format (PDF) versions in December 2015. Based on the fact that the October and November 2015 forms contain minor differences yet collect the same information as the fillable PDF version, FMCSA determined the October and November versions are acceptable. In addition, MEs are also allowed to continue to use the versions of the MER Form, MCSA–5875, that include the Privacy Act Statement on page one until stocks are depleted. For MEs in an office where these forms have been programmed into an electronic system that will require IT programming, the current approved versions of the forms should be programmed as soon as practicable. The versions of the forms currently posted by FMCSA include nonsubstantive changes that were approved by the Office of Management and Budget (OMB) on April 7, 2016 and September 6, 2016, and no longer include the Privacy Act Statement or a revision date in the top left corner. State Driver's Licensing Agencies (SDLAs) should not accept versions of the MEC that have not been approved by OMB, and do not display both the FMCSA form number (MCSA–5876) and the OMB expiration date of August 31, 2018.

**DATES:** This decision is in effect on October 27, 2016.

**ADDRESSES:** You may search background documents or comments to the docket for this rule, identified by docket number FMCSA–2012–0178, by visiting the:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for reviewing documents and comments. *Regulations.gov* is available electronically 24 hours each day, 365 days a year; or
- *DOT Docket Management Facility (M–30):* U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–4001; [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov). If you have questions about viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:****I. Background**

On April 23, 2015, FMCSA published a final rule adopting regulations to facilitate the electronic transmission of MEC information from FMCSA's National Registry system to SDLAs for holders of Commercial Driver's Licenses (CDL) and Commercial Learner's Permits (CLP). The final rule also requires the use of the prescribed MER Form, MCSA–5875, in place of the MER and the prescribed MEC, Form MCSA–5876, in place of the MEC. *Medical Examiner's Certification Integration* (80 FR 22790, April 23, 2015). On August 5, 2015, FMCSA received approval from OMB, for use of the MER Form, MCSA–5875, and MEC, Form MCSA–5876, in a fillable Adobe Acrobat™ format.

FMCSA published sample versions of the MER Form, MCSA–5875, and MEC, Form MCSA–5876, with October and November, 2015 revision dates on the National Registry Web site with the intent and purpose of educating MEs regarding the use of new categories on the forms and assisting MEs in programming electronic medical records prior to the Agency's posting of the fillable Adobe Acrobat™ versions. At that time, at least one company that produces regulatory compliance publications and forms began printing and selling the MER Form, MCSA–5875, and MEC, Form MCSA–5876, with October and November, 2015 revision dates. On December 14, 2015, FMCSA posted the fillable Adobe Acrobat™ versions of the MER Form, MCSA–5875, and MEC, Form MCSA–5876, with December 2015 revision dates on the FMCSA and National Registry Web sites. Based on the fact that the October and November, 2015 forms contain minor differences yet collect the same information as the fillable Adobe Acrobat™ versions posted by FMCSA on December 14, 2015, FMCSA made the decision to allow MEs to use any previously purchased existing stock of the MER Form, MCSA–5875, and MEC, Form MCSA–5876, with October or November, 2015 revision dates until stocks are depleted. For MEs in an office where these forms have been



programmed into an electronic system that will require IT programming, the current approved versions of the forms should be programmed as soon as practicable.

On December 21, 2015, FMCSA published guidance providing a 120-day grace period during which MEs were allowed to use either the old MER and MEC or the newly prescribed MER Form, MCSA-5875, and MEC, Form MCSA-5876, until April 20, 2016 (80 FR 79273).

Subsequently, after receiving OMB approval for nonsubstantive changes to the forms, FMCSA posted the current versions of the MER Form, MCSA-5875, and MEC, Form MCSA-5876, on the FMCSA and National Registry Web sites on April 13, 2016. The current versions include several OMB approved nonsubstantive and functional changes but no longer include a revision date in the top left corner. The specific OMB approved non-substantive and functional changes can be found on the Office of Information and Regulatory Affairs Web site by selecting the following link, [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201604-2126-006](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201604-2126-006), and then selecting the link for "Justification of Nonmaterial/Non-substantive Change."

On June 7, 2016, the Department of Transportation's Chief Privacy Officer and Office of General Counsel reviewed the requirements of the rulemaking and determined that the collection of information maintained and held by MEs does not constitute information protected by the Privacy Act. Therefore, FMCSA submitted to OMB for approval a request for additional nonsubstantive changes including removal of the Privacy Act statement on page one of the MER Form, MCSA-5875, and the

addition of disclaimer language regarding the protection of sensitive information that was approved on September 6, 2016. FMCSA has posted the current versions of the MER Form, MCSA-5875 and MEC, Form MCSA-5876 on the FMCSA and National Registry Web sites. The additional OMB-approved non-substantive changes can be found on the Office of Information and Regulatory Affairs Web site by selecting the following link [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201604-2126-006](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201604-2126-006), and then selecting the link for "Justification of Nonmaterial/Non-substantive Change."

## II. Acceptable Versions of Forms

All changes to the MER and MEC forms since the August 5, 2015, date on which OMB provided approval for use of the forms were nonsubstantive in nature. Therefore, MEs are allowed to use MER Form, MCSA-5875, and MEC, Form MCSA-5876, with October, November, and December, 2015 revision dates until existing stocks are depleted. This includes forms produced by the private sector with October or November, 2015 revision dates that FMCSA never intended to be published for use by the public and fillable forms posted on the FMCSA and National Registry Web sites on December 14, 2015, as well as the MER Form, MCSA-5875, that includes the Privacy Act Statement on page one. For MEs in an office where these forms have been programmed into an electronic system that will require IT programming, the current approved versions of the forms should be programmed as soon as practicable. MEs are also encouraged to use the current versions of the forms that no longer include the Privacy Act

Statement or a revision date in the top left corner, and can be found on the FMCSA and National Registry Web sites.

Under the provisions of 49 CFR 383.71(h), until June 22, 2018, commercial motor vehicle (CMV) drivers operating vehicles that require a CDL or CLP are required to provide SDLAs with an original or a copy of the MEC, Form MCSA-5876, for entry of the medical certification status on the driver record. FMCSA has learned that some SDLAs are refusing to accept from CMV drivers the MEC, Form MCSA-5876, with an October or November, 2015 revision date. In view of the clarification in this document of the status of the MEC, Form MCSA-5876, with various revision dates, FMCSA is directing SDLAs to accept the MEC, Form MCSA-5876, with October, November, and December, 2015 revision dates until existing stocks are depleted. SDLAs should also be accepting the versions that were posted on April 13, 2016, on the FMCSA and National Registry Web sites that no longer include a revision date in the top left corner and the current version of the MER Form, MCSA-5875, that is posted on the FMCSA and National Registry Web sites that no longer includes the Privacy Act Statement on page one. On the other hand, SDLAs should not accept versions of the MEC that have not been approved by OMB and do not display both the FMCSA form number (MCSA-5876) and the OMB expiration date of August 31, 2018. The final versions of the forms published on the FMCSA and National Registry Web sites are shown below for your reference.


**BILLING CODE 4910-EX-P**



## Medical Examination Report Form, MCSA-5875 Posted September 20, 2016

Form MCSA-5875

OMB No. 2126-0006 Expiration Date: 8/31/2018

 <p>U.S. Department of Transportation Federal Motor Carrier Safety Administration</p>	<p><b>Public Burden Statement</b></p> <p>A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0006. Public reporting for this collection of information is estimated to be approximately 25 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-FRA, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.</p>
	<p align="center"><b>Medical Examination Report Form</b> (for Commercial Driver Medical Certification)</p>

MEDICAL RECORD #

(or sticker)

**SECTION 1. Driver Information** (to be filled out by the driver)

<b>PERSONAL INFORMATION</b>					
Last Name: _____	First Name: _____	Middle Initial: _____	Date of Birth: _____	Age: _____	
Street Address: _____		City: _____	State/Province: _____	Zip Code: _____	
Driver's License Number: _____		Issuing State/Province: _____	Phone: _____	Gender: <input type="radio"/> M <input type="radio"/> F	
E-mail (optional): _____		CLP/CDL Applicant/Holder*: <input type="radio"/> Yes <input type="radio"/> No			
Driver ID Verified By**: _____					
Has your USDOT/FMCSA medical certificate ever been denied or issued for less than 2 years? <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not Sure					

\*CLP/CDL Applicant/Holder: See instructions for definitions.

\*\*Driver ID Verified By: Record what type of photo ID was used to verify the identity of the driver, e.g., CDL, driver's license, passport.

<b>DRIVER HEALTH HISTORY</b>	
Have you ever had surgery? If "yes," please list and explain below. <span style="float: right;"><input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not Sure</span>	
Are you currently taking medications (prescription, over-the-counter, herbal remedies, diet supplements)? <span style="float: right;"><input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not Sure</span>	
If "yes," please describe below.	

(Attach additional sheets if necessary)

\*\*This document contains sensitive information and is for official use only. Improper handling of this information could negatively affect individuals. Handle and secure this information appropriately to prevent inadvertent disclosure by keeping the documents under the control of authorized persons. Properly dispose of this document when no longer required to be maintained by regulatory requirements.\*\*

Form MCSA-5875

OMB No. 2126-0006 Expiration Date: 8/31/2018

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ DOB: \_\_\_\_\_ Exam Date: \_\_\_\_\_

**DRIVER HEALTH HISTORY** (continued)

Do you have or have you ever had:	Not				Not		
	Yes	No	Sure		Yes	No	Sure
1. Head/brain injuries or illnesses (e.g., concussion)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	16. Dizziness, headaches, numbness, tingling, or memory loss	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. Seizures, epilepsy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	17. Unexplained weight loss	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Eye problems (except glasses or contacts)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	18. Stroke, mini-stroke (TIA), paralysis, or weakness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Ear and/or hearing problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	19. Missing or limited use of arm, hand, finger, leg, foot, toe	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Heart disease, heart attack, bypass, or other heart problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	20. Neck or back problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Pacemaker, stents, implantable devices, or other heart procedures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	21. Bone, muscle, joint, or nerve problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. High blood pressure	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	22. Blood clots or bleeding problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. High cholesterol	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	23. Cancer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. Chronic (long-term) cough, shortness of breath, or other breathing problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	24. Chronic (long-term) infection or other chronic diseases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. Lung disease (e.g., asthma)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	25. Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11. Kidney problems, kidney stones, or pain/problems with urination	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	26. Have you ever had a sleep test (e.g., sleep apnea)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12. Stomach, liver, or digestive problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	27. Have you ever spent a night in the hospital?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13. Diabetes or blood sugar problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	28. Have you ever had a broken bone?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insulin used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	29. Have you ever used or do you now use tobacco?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14. Anxiety, depression, nervousness, other mental health problems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	30. Do you currently drink alcohol?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15. Fainting or passing out	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	31. Have you used an illegal substance within the past two years?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
				32. Have you ever failed a drug test or been dependent on an illegal substance?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other health condition(s) not described above:

☐ Yes ☐ No ☐ Not Sure

Did you answer "yes" to any of questions 1-32? If so, please comment further on those health conditions below.

☐ Yes ☐ No ☐ Not Sure

(Attach additional sheets if necessary)

**CMV DRIVER'S SIGNATURE**

I certify that the above information is accurate and complete. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate, that submission of fraudulent or intentionally false information is a violation of 49 CFR 390.35, and that submission of fraudulent or intentionally false information may subject me to civil or criminal penalties under 49 CFR 390.37 and 49 CFR 386 Appendices A and B.

Driver's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**SECTION 2. Examination Report** (to be filled out by the medical examiner)**DRIVER HEALTH HISTORY REVIEW**

Review and discuss pertinent driver answers and any available medical records. Comment on the driver's responses to the "health history" questions that may affect the driver's safe operation of a commercial motor vehicle (CMV).

(Attach additional sheets if necessary)

Form MCSA-5875

OMB No. 2126-0006 Expiration Date: 8/31/2018

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ DOB: \_\_\_\_\_ Exam Date: \_\_\_\_\_

**TESTING**

Pulse rate: _____		Pulse rhythm regular: <input type="radio"/> Yes <input type="radio"/> No		Height: _____ feet _____ inches		Weight: _____ pounds	
Blood Pressure	Systolic	Diastolic	Urinalysis	Sp. Gr.	Protein	Blood	Sugar
Sitting			Urinalysis is required. Numerical readings must be recorded.				
Second reading (optional)							
Other testing if indicated			Protein, blood, or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.				

**Vision**

Standard is at least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° field of vision in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

Acuity	Uncorrected	Corrected	Horizontal Field of Vision
Right Eye:	20/ _____	20/ _____	Right Eye: _____ degrees
Left Eye:	20/ _____	20/ _____	Left Eye: _____ degrees
Both Eyes:	20/ _____	20/ _____	

Applicant can recognize and distinguish among traffic control signals and devices showing red, green, and amber colors

Monocular vision

Referred to ophthalmologist or optometrist?

Received documentation from ophthalmologist or optometrist?

Yes No

☐ ☐

☐ ☐

☐ ☐

☐ ☐

☐ ☐

**Hearing**

Standard: Must first perceive whispered voice at not less than 5 feet OR average hearing loss of less than or equal to 40 dB, in better ear (with or without hearing aid).

Check if hearing aid used for test: ☐ Right Ear ☐ Left Ear ☐ Neither

**Whisper Test Results** Right Ear Left Ear

Record distance (in feet) from driver at which a forced whispered voice can first be heard

\_\_\_\_\_

**Audiometric Test Results**

Right Ear			Left Ear		
500 Hz	1000 Hz	2000 Hz	500 Hz	1000 Hz	2000 Hz

\_\_\_\_\_

Average (right): \_\_\_\_\_ Average (left): \_\_\_\_\_

**PHYSICAL EXAMINATION**

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen, or is readily amenable to treatment. Even if a condition does not disqualify a driver, the Medical Examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible, particularly if neglecting the condition could result in a more serious illness that might affect driving.

Check the body systems for abnormalities.

Body System	Normal	Abnormal	Body System	Normal	Abnormal
1. General	<input type="radio"/>	<input type="radio"/>	8. Abdomen	<input type="radio"/>	<input type="radio"/>
2. Skin	<input type="radio"/>	<input type="radio"/>	9. Genito-urinary system including hernias	<input type="radio"/>	<input type="radio"/>
3. Eyes	<input type="radio"/>	<input type="radio"/>	10. Back/Spine	<input type="radio"/>	<input type="radio"/>
4. Ears	<input type="radio"/>	<input type="radio"/>	11. Extremities/joints	<input type="radio"/>	<input type="radio"/>
5. Mouth/throat	<input type="radio"/>	<input type="radio"/>	12. Neurological system including reflexes	<input type="radio"/>	<input type="radio"/>
6. Cardiovascular	<input type="radio"/>	<input type="radio"/>	13. Gait	<input type="radio"/>	<input type="radio"/>
7. Lungs/chest	<input type="radio"/>	<input type="radio"/>	14. Vascular system	<input type="radio"/>	<input type="radio"/>

Discuss any abnormal answers in detail in the space below and indicate whether it would affect the driver's ability to operate a CMV. Enter applicable item number before each comment.

(Attach additional sheets if necessary)

Form MCSA-5875

OMB No. 2126-0006 Expiration Date: 8/31/2018

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ DOB: \_\_\_\_\_ Exam Date: \_\_\_\_\_

**Please complete only one of the following (Federal or State) Medical Examiner Determination sections:**

**MEDICAL EXAMINER DETERMINATION (Federal)**

Use this section for examinations performed in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49):

- ☐ Does not meet standards (specify reason): \_\_\_\_\_
- ☐ Meets standards in 49 CFR 391.41; qualifies for 2-year certificate
- ☐ Meets standards, but periodic monitoring required (specify reason): \_\_\_\_\_
- Driver qualified for: ☐ 3 months ☐ 6 months ☐ 1 year ☐ other (specify): \_\_\_\_\_
- ☐ Wearing corrective lenses ☐ Wearing hearing aid ☐ Accompanied by a waiver/exemption (specify type): \_\_\_\_\_
- ☐ Accompanied by a Skill Performance Evaluation (SPE) Certificate ☐ Qualified by operation of 49 CFR 391.64 (Federal)
- ☐ Driving within an exempt intracity zone (see 49 CFR 391.62) (Federal)
- ☐ Determination pending (specify reason): \_\_\_\_\_
- ☐ Return to medical exam office for follow-up on (must be 45 days or less): \_\_\_\_\_
- ☐ Medical Examination Report amended (specify reason): \_\_\_\_\_
- (if amended) Medical Examiner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_
- ☐ Incomplete examination (specify reason): \_\_\_\_\_

**If the driver meets the standards outlined in 49 CFR 391.41, then complete a Medical Examiner's Certificate as stated in 49 CFR 391.43(h), as appropriate.**

I have performed this evaluation for certification. I have personally reviewed all available records and recorded information pertaining to this evaluation, and attest that to the best of my knowledge, I believe it to be true and correct.

Medical Examiner's Signature: \_\_\_\_\_

Medical Examiner's Name (please print or type): \_\_\_\_\_

Medical Examiner's Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Medical Examiner's Telephone Number: \_\_\_\_\_ Date Certificate Signed: \_\_\_\_\_

Medical Examiner's State License, Certificate, or Registration Number: \_\_\_\_\_ Issuing State: \_\_\_\_\_

☐ MD ☐ DO ☐ Physician Assistant ☐ Chiropractor ☐ Advanced Practice Nurse

☐ Other Practitioner (specify): \_\_\_\_\_

National Registry Number: \_\_\_\_\_

Medical Examiner's Certificate Expiration Date: \_\_\_\_\_

Form MCSA-5875

OMB No. 2126-0006 Expiration Date: 8/31/2018

Last Name: _____	First Name: _____	DOB: _____	Exam Date: _____
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**MEDICAL EXAMINER DETERMINATION (State)**

*Use this section for examinations performed in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations):*

☐ Does not meet standards in 49 CFR 391.41 with any applicable State variances (specify reason): \_\_\_\_\_

☐ Meets standards in 49 CFR 391.41 with any applicable State variances.

☐ Meets standards, but periodic monitoring required (specify reason): \_\_\_\_\_

Driver qualified for: 
 ☐ 3 months 
 ☐ 6 months 
 ☐ 1 year 
 ☐ other (specify): \_\_\_\_\_

☐ Wearing corrective lenses 
 ☐ Wearing hearing aid 
 ☐ Accompanied by a waiver/exemption (specify type): \_\_\_\_\_

☐ Accompanied by a Skill Performance Evaluation (SPE) Certificate 
 ☐ Grandfathered from State requirements (State) \_\_\_\_\_

**If the driver meets the standards outlined in 49 CFR 391.41, with applicable State variances, then complete a Medical Examiner's Certificate, as appropriate.**

I have performed this evaluation for certification. I have personally reviewed all available records and recorded information pertaining to this evaluation, and attest that to the best of my knowledge, I believe it to be true and correct.

Medical Examiner's Signature: \_\_\_\_\_

Medical Examiner's Name (please print or type): \_\_\_\_\_

Medical Examiner's Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Medical Examiner's Telephone Number: \_\_\_\_\_ Date Certificate Signed: \_\_\_\_\_

Medical Examiner's State License, Certificate, or Registration Number: \_\_\_\_\_ Issuing State: \_\_\_\_\_

☐ MD 
 ☐ DO 
 ☐ Physician Assistant 
 ☐ Chiropractor 
 ☐ Advanced Practice Nurse

☐ Other Practitioner (specify): \_\_\_\_\_

National Registry Number: _____	Medical Examiner's Certificate Expiration Date: _____
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## Instructions for Completing the Medical Examination Report Form (MCSA-5875)

### I. Step-By-Step Instructions

#### Driver:

##### Section 1: Driver information

- **Personal Information:** Please complete this section using your name as written on your driver's license, your current address and phone number, your date of birth, age, gender, driver's license number and issuing state.
  - **CLP/CDL Applicant/Holder:** Check "yes" if you are a commercial learner's permit (CLP) or commercial driver's license (CDL) holder, or are applying for a CLP or CDL. CDL means a license issued by a State or the District of Columbia which authorizes the individual to operate a class of a commercial motor vehicle (CMV). A CMV that requires a CDL is one that: (1) has a gross combination weight rating or gross combination weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating (GVWR) or gross vehicle weight (GVW) of more than 10,000 pounds; or (2) has a GVWR or GVW of 26,001 pounds or more; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is used to transport either hazardous materials requiring hazardous materials placards on the vehicle or any quantity of a select agent or toxin.
  - **Driver ID Verified By:** The Medical Examiner/staff completes this item and notes the type of photo ID used to verify the driver's identity such as, commercial driver's license, driver's license, or passport, etc.
  - **Question: Has your USDOT/FMCSA medical certificate ever been denied or issued for less than two years?** Please check the correct box "yes" or "no" and if you aren't sure check the "not sure" box.
- **Driver Health History:**
  - **Have you ever had surgery:** Please check "yes" if you have ever had surgery and provide a written explanation of the details (type of surgery, date of surgery, etc.)
  - **Are you currently taking medications (prescription, over-the-counter, herbal remedies, diet supplements):** Please check "yes" if you are taking any diet supplements, herbal remedies, or prescription or over the counter medications. In the box below the question, indicate the name of the medication and the dosage.
  - **#1-32:** Please complete this section by checking the "yes" box to indicate that you have, or have ever had, the health condition listed or the "No" box if you have not. Check the "not sure" box if you are unsure.
  - **Other Health Conditions not described above:** If you have, or have had, any other health conditions not listed in the section above, check "Yes" and in the box provided and list those condition(s).
  - **Any yes answers to questions #1-32 above:** If you have answered "yes" to any of the questions in the Driver Health History section above, please explain your answers further in the box below the question. For example, if you answered "yes" to question #5 regarding heart disease, heart attack, bypass, or other heart problem, indicate which type of heart condition. If you checked "yes" to question #23 regarding cancer, indicate the type of cancer. Please add any information that will be helpful to the Medical Examiner.
- **CMV Driver Signature and Date:** Please read the certification statement, sign and date it, indicating that the information you provided in Section 1 is accurate and complete.

**Medical Examiner:****Section 2: Examination Report**

- **Driver Health History Review:** Review answers provided by the driver in the driver health history section and discuss any “yes” and “not sure” responses. In addition, be sure to compare the medication list to the health history responses ensuring that the medication list matches the medical conditions noted. Explore with the driver any answers that seem unclear. Record any information that the driver omitted. As the Medical Examiner conducting the driver's physical examination you are required to complete the entire medical examination even if you detect a medical condition that you consider disqualifying, such as deafness. Medical Examiners are expected to determine the driver's physical qualification for operating a commercial vehicle safely. Thus, if you find a disqualifying condition for which a driver may receive a Federal Motor Carrier Safety Administration medical exemption, please record that on the driver's Medical Examiner's Certificate, Form MCSA-5876, as well as on the Medical Examination Report Form, MCSA-5875.
- **Testing:**
  - **Pulse rate and rhythm, height, and weight:** record these as indicated on the form.
  - **Blood Pressure:** record the blood pressure (systolic and diastolic) of the driver being examined. A second reading is optional and should be recorded if found to be necessary.
  - **Urinalysis:** record the numerical readings for the specific gravity, protein, blood and sugar.
  - **Vision:** The current vision standard is provided on the form. When other than the Snellen chart is used, give test results in Snellen-comparable values. When recording distance vision, use 20 feet as normal. Record the vision acuity results and indicate if the driver can recognize and distinguish among traffic control signals and devices showing red, green, and amber colors; has monocular vision; has been referred to an ophthalmologist or optometrist; and if documentation has been received from an ophthalmologist or optometrist.
  - **Hearing:** The current hearing standard is provided on the form. Hearing can be tested using either a whisper test or audiometric test. Record the test results in the corresponding section for the test used.
- **Physical Examination:** Check the body systems for abnormalities and indicate normal or abnormal for each body system listed. Discuss any abnormal answers in detail in the space provided and indicate whether it would affect the driver's ability to safely operate a commercial motor vehicle.

*In this next section, you will be completing either the Federal or State determination, not both.*

- **Medical Examiner Determination (Federal):** Use this section for examinations performed in accordance with the FMCSRs (49 CFR 391.41-391.49). Complete the medical examiner determination section completely. When determining a driver's physical qualification, please note that English language proficiency (49 CFR part 391.11: General qualifications of drivers) is not factored into that determination.
  - **Does not meet standards:** Select this option when a driver is determined to be not qualified and provide an explanation of why the driver does not meet the standards in 49 CFR 391.41.
  - **Meets standards in 49 CFR 391.41; qualifies for 2-year certification:** Select this option when a driver is determined to be qualified and will be issued a 2-year Medical Examiner's Certificate.

Instructions MCSA-5875

- **Meets standards, but periodic monitoring is required:** Select this option when a driver is determined to be qualified but needs periodic monitoring and provide an explanation of why periodic monitoring is required. Select the corresponding time frame that the driver is qualified and if selecting other, specify the time frame.
  - **Determination that driver meets standards:** Select all categories that apply to the driver's certification (e.g., wearing corrective lenses, accompanied by a waiver/exemption, driving within an exempt intracity zone, etc.).
- **Determination pending:** Select this option when more information is needed to make a qualification decision and specify a date, on or before the 45 day expiration date, for the driver to return to the medical exam office for follow-up. This will allow for a delay of the qualification decision for as many as 45 days. If the disposition of the pending examination is not updated via the National Registry on or before the 45 day expiration date, FMCSA will notify the examining medical examiner and the driver in writing that the examination is no longer valid and that the driver is required to be re-examined.
  - **MER amended:** A Medical Examination Report Form (MER), MCSA-5875, may only be amended while in determination pending status for situations where new information (e.g., test results, etc.) has been received or there has been a change in the driver's medical status since the initial examination, but prior to a final qualification determination. Select this option when a Medical Examination Report Form, MCSA-5875, is being amended; provide the reason for the amendment, sign and date. In addition, initial and date any changes made on the Medical Examination Report Form, MCSA-5875. A Medical Examination Report Form, MCSA-5875, cannot be amended after an examination has been in determination pending status for more than 45 days or after a final qualification determination has been made. The driver is required to obtain a new physical examination and a new Medical Examination Report Form, MCSA-5875, should be completed.
- **Incomplete examination:** Select this when the physical examination is not completed for any reason (e.g., driver decides they do not want to continue with the examination and leaves) other than situations outlined under determination pending.
- **Medical Examiner information, signature and date:** Provide your name, address, phone number, occupation, license, certificate, or registration number and issuing state, national registry number, signature and date.
- **Medical Examiner's Certificate Expiration Date:** Enter the date the driver's Medical Examiner's Certificate (MEC) expires.
- **Medical Examiner Determination (State):** Use this section for examinations performed in accordance with the FMCSRs (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations). Complete the medical examiner determination section completely.
  - **Does not meet standards in 49 CFR 391.41 with any applicable State variances:** Select this option when a driver is determined to be not qualified and provide an explanation of why the driver does not meet the standards in 49 CFR 391.41 with any applicable State variances.
  - **Meets standards in 49 CFR 391.41 with any applicable State variances:** Select this option when a driver is determined to be qualified and will be issued a 2-year Medical Examiner's Certificate.
  - **Meets standards, but periodic monitoring is required:** Select this option when a driver is determined to be qualified but needs periodic monitoring and provide an explanation of why periodic monitoring is required. Select the corresponding time frame that the driver is qualified and if selecting other, specify the time frame.
    - **Determination that driver meets standards:** Select all categories that apply to the driver's certification (e.g., wearing corrective lenses, accompanied by a waiver/exemption, etc.).



Instructions MCSA-5875

- **Medical Examiner information, signature and date:** Provide your name, address, phone number, occupation, license, certificate, or registration number and issuing state, national registry number, signature and date.
  - **Medical Examiner's Certificate Expiration Date:** Enter the date the **driver's** Medical Examiner's Certificate (MEC) expires.
- II. If updating an existing exam, you must resubmit the new exam results, via the Medical Examination Results Form, MCSA-5850, to the National Registry, and the most recent dated exam will take precedence.**
- III. To obtain additional information regarding this form go to the Medical Program's page on the Federal Motor Carrier Safety Administration's website at <http://www.fmcsa.dot.gov/regulations/medical>.**

## Medical Examiner's Certificate, Form MCSA-5876 Posted September 20, 2016

Form MCSA-5876

OMB No. 2125-0006 Expiration Date: 8/31/2018

<b>Public Burden Statement</b> A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2125-0006. Public reporting for this collection of information is estimated to be approximately 1 minute per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Office, Federal Motor Carrier Safety Administration, 1215 New Jersey Avenue, SE, Washington, D.C. 20590.	<b>Medical Examiner's Certificate</b> (for Commercial Driver Medical Certification)
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I certify that I have examined <b>Last Name:</b> _____ <b>First Name:</b> _____ in accordance with (please check only one):	
<input type="radio"/> the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and, with knowledge of the driving duties, I find this person is qualified, and, if applicable, only when (check all that apply) OR	
<input type="radio"/> the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations), and, with knowledge of the driving duties, I find this person is qualified, and, if applicable, only when (check all that apply):	
<input type="checkbox"/> Wearing corrective lenses	<input type="checkbox"/> Accompanied by a _____ waiver/exemption
<input type="checkbox"/> Wearing hearing aid	<input type="checkbox"/> Accompanied by a Skill Performance Evaluation (SPE) Certificate
<input type="checkbox"/> Driving within an exempt intracity zone (49 CFR 391.62) (Federal)	
<input type="checkbox"/> Qualified by operation of 49 CFR 391.64 (Federal)	
<input type="checkbox"/> Grandfathered from State requirements (State)	
The information I have provided regarding this physical examination is true and complete. A complete Medical Examination Report Form, MCSA-5875, with any attachments embodies my findings completely and correctly, and is on file in my office.	
Medical Examiner's Certificate Expiration Date _____	

<b>Medical Examiner's Signature</b>	<b>Medical Examiner's Telephone Number</b>	<b>Date Certificate Signed</b>
_____	_____	_____
<b>Medical Examiner's Name (please print or type)</b>	<input type="radio"/> MD <input type="radio"/> Physician Assistant <input type="radio"/> Advanced Practice Nurse	
_____	<input type="radio"/> DO <input type="radio"/> Chiropractor <input type="radio"/> Other Practitioner (specify) _____	
<b>Medical Examiner's State License, Certificate, or Registration Number</b>	<b>Issuing State</b>	<b>National Registry Number</b>
_____	_____	_____

<b>Driver's Signature</b>	<b>Driver's License Number</b>	<b>Issuing State/Province</b>
_____	_____	_____
<b>Driver's Address</b>	<b>CLP/CDL Applicant/Holder</b>	
Street Address: _____ City: _____ State/Province: _____ Zip Code: _____	<input type="radio"/> Yes <input type="radio"/> No	

\*\*This document contains sensitive information and is for official use only. Improper handling of this information could negatively affect individuals. Handle and secure this information appropriately to prevent inadvertent disclosure by keeping the documents under the control of authorized persons. Properly dispose of this document when no longer required to be maintained by regulatory requirements.\*\*

Issued on: October 20, 2016.

T.F. Scott Darling, III,  
Administrator.

[FR Doc. 2016-25976 Filed 10-26-16; 8:45 am]

BILLING CODE 4910-EX-c

## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric  
Administration

## 50 CFR Part 216

[Docket No. 151113999-6950-02]

RIN 0648-BF55

Designating the Sakhalin Bay-Nikolaya  
Bay-Amur River Stock of Beluga  
Whales as a Depleted Stock Under the  
Marine Mammal Protection Act (MMPA)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** We, NMFS, issue a final determination to designate the Sakhalin Bay-Nikolaya Bay-Amur River Stock of beluga whales (*Delphinapterus leucas*) as a depleted stock of marine mammals

pursuant to the Marine Mammal Protection Act (MMPA). This action is being taken as a result of a status review conducted by NMFS in response to a petition to designate a group of beluga whales in the western Sea of Okhotsk as a depleted stock. The biological evidence indicates that the group is a population stock as defined by the MMPA, and the stock is depleted as defined by the MMPA.

**DATES:** This final rule is effective November 28, 2016.

**ADDRESSES:** Copies of supporting documents, including the status review, the proposed rule, and a list of references cited in the final rule, are available via the Federal e-rulemaking Portal, at [www.regulations.gov](http://www.regulations.gov) (search for Docket ID NOAA-NMFS-2015-0154), or at <http://www.fisheries.noaa.gov/pr/species/mammals/whales/beluga-whale.html>. Those documents are also available from NMFS at the following address: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226.

## FOR FURTHER INFORMATION CONTACT:

Shannon Bettridge, [Shannon.Bettridge@noaa.gov](mailto:Shannon.Bettridge@noaa.gov), Office of Protected Resources, 301-427-8402.

## SUPPLEMENTARY INFORMATION:

## Background

Section 115(a) of the MMPA (16 U.S.C. 1383b(a)) allows interested parties to petition NMFS to initiate a status review to determine whether a species or stock of marine mammals should be designated as depleted. On April 23, 2014, we received a petition from the Animal Welfare Institute, Whale and Dolphin Conservation, Cetacean Society International, and Earth Island Institute (petitioners) to “designate the Sakhalin Bay-Amur River stock of beluga whales as depleted under the MMPA.” We published a notification that the petition was available (79 FR 28879; May 20, 2014). After evaluating the petition, we determined that the petition contained substantial information indicating that the petitioned action may be warranted (79 FR 44733; August 1, 2014). Following the determination that the petitioned action may be warranted, we convened a status review team and conducted a status review to evaluate

whether the Sakhalin Bay-Amur River group of beluga whales is a population stock and, if so, whether that stock is depleted. On April 5, 2016, we published a proposed rule to designate the Sakhalin Bay-Nikolaya Bay-Amur River Stock of beluga whales as a depleted stock of marine mammals pursuant to the MMPA (81 FR 19542), and solicited comments from all interested parties including the public, other governmental agencies, the scientific community, industry, and environmental groups.

#### Authority

Although the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales does not occur in waters under the jurisdiction of the United States, we have authority to designate the stock as depleted if we find that the stock is below its optimum sustainable population (OSP). Section 115(a) of the MMPA provides NMFS with the authority to designate “a species or stock” of marine mammals as depleted and sets forth the procedures the agency must follow to make such a designation. 16 U.S.C. 1383b(a)(1). The MMPA defines “depleted” as *any case* in which: (1) NMFS determines that a species or population stock is below its optimum sustainable population; (2) a state to which authority has been delegated makes the same determination; or (3) a species or stock is listed as threatened or endangered under the Endangered Species Act (ESA). 16 U.S.C. 1362(1). These provisions draw no distinction between marine mammals based on their geographic location. Rather, NMFS’ authority to designate as depleted a species or stock occurring outside of waters under the jurisdiction of the United States is supported by the express link to the ESA found in the MMPA’s definition of “depleted.” Species of marine mammals that occur outside of waters under the jurisdiction of the United States are regularly listed as threatened or endangered under the ESA. Pursuant to the MMPA’s definition of depleted, these species are automatically designated as depleted when they are listed under the ESA. The definition of depleted, therefore, demonstrates Congressional support for depleted designations for foreign marine mammals. NMFS’ authority is also supported by the MMPA’s import prohibition, which makes it “unlawful to import into the United States any marine mammal if such mammal was . . . taken from a species or population stock which [NMFS] has, by regulation published in the **Federal Register**, designated as a depleted species or

stock.” *Id.* section 1372(b). By its plain terms, the import prohibition recognizes NMFS’ authority to designate a species or stock that occurs outside of waters under the jurisdiction of the United States as depleted.

NMFS has previously used its authority under section 115(a) to designate as depleted, two stocks of marine mammals that occur entirely outside of waters under the jurisdiction of the United States: The northeastern stock of offshore spotted dolphin and the eastern stock of spinner dolphin. *See* 58 FR 58285 (Nov. 1, 1993); 58 FR 45066 (Aug. 26, 1993). NMFS believes that the exercise of this authority is consistent with Congress’s intent in enacting the MMPA that marine mammal “species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part,” and that “they should be protected and encouraged to develop to the greatest extent feasible . . .” 16 U.S.C. 1361.

#### Status Review

A status review for the population stock of beluga whales addressed in this rule was conducted by a status review team (Bettridge *et al.*, 2016). The status review compiled and analyzed information on the stock’s distribution, abundance, threats, and historic take from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. The draft status review report was submitted to independent peer reviewers, and comments and information received from peer reviewers were addressed and incorporated as appropriate before finalizing the report.

As required by the MMPA, we consulted with the Marine Mammal Commission (Commission) related to the petition to designate the Sakhalin Bay-Amur River group of beluga whales as a depleted population stock. In a letter dated December 7, 2015, the Commission recommended we take a precautionary approach and define the Sakhalin Bay-Amur River stock to include whales in Nikolaya Bay and promptly publish a proposed rule under section 115(a)(3)(D) of the MMPA to designate this stock as depleted.

#### Sea of Okhotsk Beluga Whales

Beluga whales are found throughout much of the Sea of Okhotsk, including Shelikof Bay in the northeast and throughout the western Sea of Okhotsk including the Amur River estuary, the nearshore areas of Sakhalin Bay, in the large bays to the west (Nikolaya Bay,

Ulbansky Bay, Tugursky Bay and Udskeya Bay), and among the Shantar Islands. Use of the bays and estuaries in the western Sea of Okhotsk is limited primarily to summer months when belugas may molt (Finley 1982) and give birth to and care for their calves (Sergeant and Brodie 1969). The whales move into the ice-covered offshore areas of the western Sea of Okhotsk in the winter (Melnikov 1999). In the status review and the preamble to the proposed rule, we refer to the beluga whales found in the Amur River estuary and the nearshore areas of Sakhalin Bay during summer as the Sakhalin Bay-Amur River beluga whales.

The preamble to the proposed rule summarized additional general background information on the Sea of Okhotsk beluga whales’ natural history, range, reproduction, population structure, distribution, abundance, and threats. That information has not changed and is not repeated here.

#### Stock Determination

The MMPA defines “population stock” as “a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature” (MMPA section 3(11)). NMFS’ guidelines for assessing stocks of marine mammals (NMFS 2005) state that many different types of information can be used to identify stocks, reproductive isolation is proof of demographic isolation, and demographically isolated groups of marine mammals should be identified as separate stocks. NMFS has interpreted “demographically isolated” as “demographically independent” (see, for example, Weller *et al.*, 2013, Moore and Merrick (eds.) 2011), and recently updated the guidelines for assessing stocks of marine mammals to reflect this interpretation (NMFS 2016).

NMFS considered the following lines of evidence regarding the Sakhalin Bay-Amur River beluga whales to answer the question of whether the group comprises a stock: (1) Genetic comparisons among the summering aggregations in the western Sea of Okhotsk; (2) movement data collected using satellite transmitters; and (3) geographical and ecological separation (site fidelity). This information was discussed in detail in the preamble to the proposed rule and is not repeated here. In summary, multiple lines of evidence indicate that Sakhalin Bay-Amur River beluga whales are their own stock or are a stock that also includes whales that summer in Nikolaya Bay. The status review team’s evaluation of whether the Sakhalin Bay-Amur River stock is discrete or includes whales in

Nikolaya Bay was almost evenly divided, based on the lines of evidence reviewed. Given the currently available information, it is equally plausible that the beluga whales in Nikolaya Bay are part of the demographically independent population stock of Sakhalin Bay-Amur River beluga whales than not. Including Nikolaya Bay in the delineation and description of the stock would be a more conservative and precautionary approach, as it would provide any protection afforded under the MMPA to the beluga whales in Sakhalin Bay-Amur River to those beluga whales in Nikolaya Bay.

None of the information regarding the identification of the Sakhalin Bay-Nikolaya Bay-Amur River group of beluga whales as a population stock has changed since we published the proposed rule, and we received no new information through the public comment period that would cause us to reconsider our previous finding as reflected in the preamble to the proposed rule. Thus, all of the information contained in the preamble to the proposed rule with respect to identifying the Sakhalin Bay-Nikolaya Bay-Amur River group of beluga whales as a population stock is reaffirmed in this final action. Therefore, based on the best scientific information available as presented in the status review report, the preamble to the proposed rule, and this final rule, NMFS is identifying the Sakhalin Bay-Nikolaya Bay-Amur River group of beluga whales as a population stock.

#### Depleted Determination

Section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)) defines the term “depletion” or “depleted” to include any case in which “the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors (CSA) on Marine Mammals . . . determines that a species or a population stock is below its optimum sustainable population.” Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines “optimum sustainable population . . . with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent element.” NMFS’ regulations at 50 CFR 216.3 clarify the definition of OSP as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (*i.e.*, carrying capacity, or K) to its maximum

net productivity level (MNPL). MNPL is the population abundance that results in the greatest net annual increment in population numbers resulting from additions to the population from reproduction, less losses due to natural mortality.

A population stock below its MNPL is, by definition, below OSP and, thus, would be considered depleted under the MMPA. Historically, MNPL has been expressed as a range of values (between 50 and 70 percent of K) determined on a theoretical basis by estimating what stock size, in relation to the historical stock size, will produce the maximum net increase in population (42 FR 12010; March 1, 1977). In practice, NMFS has determined that stocks with populations under the mid-point of this range (*i.e.*, 60 percent of K) are depleted (42 FR 64548, December 27, 1977; 45 FR 72178, October 31, 1980; 53 FR 17888, May 18, 1988; 58 FR 58285, November 1, 1993; 65 FR 34590, May 31, 2000; 69 FR 31321, June 3, 2004). For stocks of marine mammals, including beluga whales, K is generally unknown. NMFS, therefore, has used the best estimate available of maximum historical abundance as a proxy for K (64 FR 56298, October 19, 1999; 68 FR 4747, January 30, 2003; 69 FR 31321, June 3, 2004).

One technique NMFS has employed to estimate maximum historical abundance is the back-calculation method, which assumes that the historic population was at equilibrium, and that the environment has not changed greatly. The back-calculation approach looks at the current population and then calculates historic carrying capacity based on how much the population has been reduced by anthropogenic actions. For example, the back-calculation approach was applied in the management of the subsistence hunt of the Cook Inlet beluga whale stock (73 FR 60976, October 15, 2008). The status review team concluded, and NMFS agrees, that the back-calculation technique is the most appropriate to use in determining the abundance of the stock relative to OSP. Therefore, the status review team analyzed the status of the stock relative to carrying capacity using a back-calculation method.

The best available estimate of abundance beluga whales in the Sakhalin Bay-Amur River area is 3,961 (Reeves *et al.*, 2011). The best available removal data for these whales are a time series of removals by hunt and live capture since 1915 (Shpak *et al.*, 2011). It was not feasible to develop an estimate of any additional anthropogenic mortality on this population, however there is evidence

that there are ongoing threats that continue to impact this population (Reeves *et al.*, 2011). These removal data, plus an estimate of the population’s productivity, allow back-calculation of the historical carrying capacity (*i.e.*, K) that probably existed prior to the beginning of the catch history. A population model was used to perform the necessary calculations. This analysis was presented in the status review report and in the preamble to the proposed rule. The analysis has not changed and is not repeated here. In summary, based on this analysis, we found that the population of whales in the Sakhalin Bay-Amur River area is between 25.5 percent and 35 percent of its carrying capacity and therefore below its OSP (Bettridge *et al.*, 2016).

As noted above, in its OSP analysis, the status review team used a 2009–2010 abundance estimate from only the Sakhalin Bay-Amur River area because there was no current abundance estimate of the Nikolaya Bay region. However, because few animals are thought to be in Nikolaya Bay in the survey period compared to the Sakhalin Bay-Amur River, the estimate accounts for nearly all of the population (Shpak *et al.*, 2011). To conduct an OSP analysis for the combined group of Sakhalin Bay-Amur River and Nikolaya Bay whales, the team added 500 to the abundance estimate to account for Nikolaya Bay, and re-ran the model. The team determined that including Nikolaya Bay whales in the analysis would not change the estimate of K significantly; it would result in a slightly higher percentage of K (*i.e.*, less depleted), but the population is still below OSP (*i.e.*, less than 60% of K).

None of the information presented in the preamble to the proposed rule regarding the abundance of the Sakhalin Bay-Nikolaya Bay-Amur River stock relative to its carrying capacity or OSP has changed since we published the proposed rule, and we received no new information through the public comment period that would cause us to reconsider our previous analysis or finding as reflected in the preamble to the proposed rule. Thus, all of the information contained in the preamble to the proposed rule with respect to the depleted determination is reaffirmed in this final action. As such, based upon the best scientific information available as presented in the status review report, the preamble to the proposed rule, and this final rule, we find that the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales is below its OSP level, and designate the stock as a depleted stock under the MMPA. The depletion designation applies to all biological

members of the stock, regardless of whether those individuals are in the wild or in captivity.

### Summary of Comments Received and Responses

With the publication of the proposed rule for the designation of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales as depleted under the MMPA on April 5, 2016 (81 FR 19542), we announced a 60-day public comment period that closed on June 6, 2016. During the public comment period we received a total of 125 written comments on the proposed rule. Commenters included the Commission, non-governmental organizations (Environmental Investigation Agency, Defenders of Wildlife and the Humane Society of the United States, Center for Biological Diversity, Animal Welfare Institute, Orca Rescues Foundation, Orca Network, and Georgia Aquarium); eight organizations or businesses (Northwest Biotechnology Company, Perkins Coie, Alliance of Marine Mammals Parks and Aquariums, Oceans of Fun, Gulfworld Marine Park, Zoomarine Italy, and Marineland Dolphin Adventure), and 111 interested individuals (the majority of whom submitted variations of a form letter supportive of our proposed determination). We fully considered all comments received on the proposed rule in developing this final depleted determination of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales.

Summaries of the substantive comments that we received concerning our proposed determination, and our responses to all of the significant issues they raise, are provided below. Comments of a similar nature were grouped together, where appropriate. In addition to the specific comments detailed below relating to the proposed determination, we also received comments expressing general support for or opposition to the proposed rule and comments conveying peer-reviewed journal articles, technical reports, and references to scientific literature regarding threats to the species and stock determination. Unless otherwise noted in our responses below, after thorough review, we concluded that the additional information received was either considered previously or did not alter our determinations regarding the status of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales.

*Comment 1:* Numerous commenters, including the Commission, voiced support that the Sakhalin Bay-Nikolaya Bay-Amur River beluga whale stock clearly meets the MMPA standards and

urged NMFS to promptly finalize its proposal to designate the stock as “depleted.” The majority of these commenters noted that the depletion status would afford further protection to the belugas as the MMPA would prohibit the importation of these animals into the United States for the purposes of public display.

*Response:* We acknowledge this comment and are finalizing the depleted designation for this stock as proposed. See the response to Comment 14 regarding additional protections afforded under this depleted designation.

*Comment 2:* Some commenters were opposed to designating the Sakhalin Bay-Nikolaya Bay-Amur River beluga whale stock as depleted under the MMPA. They noted that each year millions of people visit public display facilities to view marine mammals and these experiences provide a unique opportunity for conservation education that include increasing the awareness of the unique ecosystem where beluga whales are found and the many obstacles they face to survive in their natural environment, and provided several citations in support of their position. In addition, commenters stated that these facilities support scientific studies that would not be possible by studying the animals in the wild.

*Response:* We recognize the value of public display of marine mammals for conservation education. However, in accordance with section 3(1)(A) of the MMPA, we determine whether a stock is depleted based on its abundance relative to its OSP. Because we determined that the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales is below its OSP, we are designating the stock as depleted under the MMPA. As a result of this determination, importation of beluga whales from this population (or their progeny) into the United States for the purpose of public display will now be prohibited.

*Comment 3:* A number of commenters stated that NMFS does not have the authority to designate a foreign marine mammal population as a depleted stock under the MMPA, and thus does not have the authority to proceed with the proposed designation. These commenters further stressed that NMFS does not provide any legal or regulatory support to whether NMFS may designate foreign stocks as depleted. Other commenters asserted that the MMPA does grant NMFS the authority to designate stocks as depleted, even if they occur outside of waters under the jurisdiction of the United States, and that the original legislative intent

further supports the conservative or precautionary policy that is at the heart of the MMPA. Commenters on both sides of the jurisdiction issue argued that the plain language of the MMPA, case law, precedent, and Congressional intent support their position.

*Response:* The plain language of the MMPA and the regulatory framework it establishes for protecting marine mammals provide NMFS with the authority to designate any marine mammal stock or species as depleted, regardless of where the species or stock occurs. NMFS therefore agrees with those commenters who assert that NMFS has the authority to designate a foreign stock of marine mammals as depleted, and disagrees with those commenters who assert that the agency does not have that authority. NMFS refers commenters to the “Authority” section, above, for an explanation of its authority. Following are responses to specific arguments raised by commenters with respect to this issue.

One commenter stated that “[i]t is well established that the MMPA does not apply extraterritorially,” citing *U.S. v. Mitchell*, 553 F.2d 996 (5th Cir. 1977). *U.S. v. Mitchell* held that the MMPA’s prohibition on taking extends to the high seas but does not extend to the territorial waters of a foreign sovereign state; the opinion did not address the scope of NMFS’ authority to designate a species or stock of marine mammals as depleted under section 115(a) of the Act. Although NMFS believes that it has the authority to designate any marine mammal stock or species as depleted regardless of geographic location, to the extent that commenters are arguing that NMFS’ authority applies only up to the boundary of a foreign nation’s territorial seas, NMFS notes that telemetry data from whales tagged in Sakhalin Bay and biological information about the whales’ migratory behavior demonstrate that beluga whales from this stock travel hundreds of kilometers offshore, well beyond the territorial seas of Russia (Shpak *et al.*, 2010, 2011, 2012).

Some commenters also asserted that the plain language of the ESA and the MMPA indicate that Congress intended the ESA—and not the MMPA—to be the regulatory system through which foreign marine mammals are protected. NMFS disagrees. The MMPA and the ESA are separate statutes with distinct frameworks for protecting and conserving marine mammals and threatened and endangered species, respectively. NMFS has the authority to list foreign species as threatened or endangered under the ESA, and NMFS also has the authority to designate foreign species or stocks as depleted

under the MMPA. For example, NMFS' authority under the MMPA is evident from the import prohibition, which makes it "unlawful to import into the United States any marine mammal if such mammal was . . . taken from a species or population stock which [NMFS] has, by regulation published in the **Federal Register**, designated as a depleted species or stock." *Id.* section 1372(b)(3). By its plain terms, the import prohibition recognizes NMFS' authority to designate a species or stock that occurs outside of waters under the jurisdiction of the United States as depleted. Commenters' assertion that the MMPA's import prohibition applies only to marine mammals that are designated as depleted by virtue of an ESA listing is contrary to the plain meaning of this provision. *See In re Polar Bear Endangered Species Act Listing & Section 4(d) Rule Litigation*, 720 F.3d 354, 360 (D.C. Cir. 2013) (determining that the protections of 16 U.S.C. 1372(b)(3) apply "to all depleted species, regardless of how they achieve their depleted status").

Finally, with respect to precedent, NMFS has previously used its authority under section 115(a) to designate as depleted two stocks of dolphins that occur entirely outside of waters under the jurisdiction of the United States: The northeastern stock of offshore spotted dolphin and the eastern stock of spinner dolphin. *See* 58 FR 58285 (Nov. 1, 1993); 58 FR 45066 (Aug. 26, 1993). Some commenters argued that NMFS' authority to designate these stocks as depleted was rooted in the "extreme and unique circumstances surrounding the regulatory structure in place with respect to these stocks" in the eastern tropical Pacific Ocean (ETP). NMFS acknowledges that Congress amended the MMPA to include provisions specifically relating to the ETP. However, NMFS designated these stocks as depleted pursuant to section 115(a) of the Act, and not pursuant to any provision of the MMPA applicable only to the ETP. The depletion designations of these two stocks of dolphins therefore provide precedent for the current action.

**Comment 4:** One commenter suggested that designating a foreign species as depleted under the MMPA ". . . would set a harmful precedent that potentially establishes a dual-track regulation of imperiled species," and recommended that NMFS retract the proposed rule and instead consider any future petition brought under the ESA concerning the Sakhalin Bay-Nikolaya Bay-Amur River aggregation.

**Response:** Section 115(b) of the MMPA outlines the steps that NMFS is required to take when petitioned to

designate a species or stock as depleted. We have followed those steps, and concluded that a depleted designation is warranted for the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales. This final rule is being promulgated under the MMPA and we are not taking any action under the ESA at this time, but this does not preclude us from responding to any future petition to list the population under the ESA.

Regarding the "dual track" regulation referenced by the commenter, a species that is listed as threatened or endangered under the ESA is automatically considered depleted under MMPA, but the converse is not true. Therefore, this MMPA depleted designation does not automatically result in any ESA protections. This depleted designation is not unprecedented; there are several species or stocks of marine mammals that have been determined to be depleted under the MMPA but are not listed under the ESA, such as the AT1 group of killer whales (69 FR 31321, June 3, 2004) and the Pribilof Island population of North Pacific fur seals (53 FR 17888, May 18, 1988).

**Comment 5:** A number of commenters stated that NMFS has not satisfied its obligation to review and/or evaluate the best available scientific information with respect to the Sakhalin Bay-Nikolaya Bay-Amur River population of beluga whales. Conversely, a number of commenters reiterated the Commission's comments that NMFS' status review is "a well-written document that thoroughly analyzes the available information."

**Response:** We conducted a thorough review of the status of beluga whales in the Sea of Okhotsk. We reviewed all available scientific information contained in our files and in peer reviewed literature, as well as information provided by the petitioners and the public. Several commenters provided additional information during the proposed rule public comment period. The additional information received was either considered previously or did not alter our determinations regarding the status of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales. The best scientific information available supports our determination that this stock of beluga whales should be designated as depleted.

**Comment 6:** One commenter noted that the Commission and the Committee of Scientific Advisors (CSA) are ". . . both domestic groups with no knowledge or authority over foreign species or stocks." In addition, NMFS

does not provide an explanation for how the Commission formed the basis for its recommendation to designate the Sakhalin Bay-Nikolaya Bay-Amur River stock as depleted, or whether the Committee offered a similar recommendation or participated in the process at all.

**Response:** The MMPA defines the term "depleted" as including any species or population stock that NMFS, after consultation with the Commission and its CSA on Marine Mammals, determines to be below its OSP. NMFS notes that this provision requires consultation with the Commission and its CSA; it does not provide the Commission with independent authority to designate a species or stock as depleted. Further, NMFS disagrees that the Commission and its CSA have no knowledge over foreign species. *See, e.g.,* 16 U.S.C. 1402 (directing the Commission to recommend such steps as it deems necessary or desirable for the protection and conservation of marine mammals, to suggest appropriate international arrangements for the protection and conservation of marine mammals, and to recommend such revisions to the list of threatened and endangered species as may be appropriate with regard to marine mammals, among other duties).

As stated in the preamble to the proposed rule, we consulted with the Commission related to the petition to designate the Sakhalin Bay-Amur River group of beluga whales as a depleted population stock. Review of the draft status review report by the Commission, in consultation with its CSA, constituted the consultation required by section 3(1)(A). We have confirmed that the Commission consulted with its CSA in making its recommendation. We are neither required to, nor are we in a position to explain, the basis for a recommendation by another federal agency.

**Comment 7:** Some commenters claimed that NMFS has essentially changed Congress' definition of a stock. They state that the MMPA's definition of a "population stock" (*i.e.*, "a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature" (MMPA section 3(11)), is consistent with the "traditionally accepted scientific definition of a 'population' (*e.g.*, the community of potentially interbreeding individuals at a given locality, Mayr 1963)." They disagree with NMFS' interpretation of "interbreed when mature" to include a "group [that] migrates seasonally to a breeding ground where its members breed with members of the same group

as well as with members of other demographically distinct groups which have migrated to the same breeding ground from a different feeding ground.” They state that NMFS’ use of the terms demographically distinct, demographically independent, or demographically isolated groups is also scientifically incorrect and inappropriate (Cronin 2006, 2007). They argue that while whales from different feeding grounds may be spatially separated for a period of time, they are not distinct, independent, or isolated breeding (*i.e.*, demographic) groups.

*Response:* We disagree that we have improperly changed the MMPA’s definition of stock. The MMPA provides both biological and ecological guidance for defining marine mammal stocks. The biological guidance is in the definition of population stock: A group of marine mammals of the same species or smaller taxa in a common spatial arrangement that interbreed when mature (MMPA section 3(11)). The ecological guidance is addressed in the requirement that a stock be maintained as a functioning element of the ecosystem (MMPA section 2(2)). NMFS has developed guidelines for assessing marine mammal stocks (GAMMS); the most recent revision to the GAMMS was made available for public comment and finalized in February 2016 (NMFS 2016). The GAMMS provide guidance on defining population stocks consistent with the MMPA. NMFS’ approach to determining that beluga whales primarily occurring in the Sakhalin Bay-Nikolaya Bay-Amur River area is a stock is consistent with the guidance provided in the GAMMS.

For the purposes of management under the MMPA, NMFS recognizes a marine mammal stock as being a management unit that identifies a demographically independent biological population. We define demographic independence to mean that the population dynamics of the affected group is more a consequence of births and deaths within the group (internal dynamics) rather than immigration or emigration (external dynamics). Thus, the exchange of individuals between population stocks is not great enough to prevent the depletion of one of the populations as a result of increased mortality or lower birth rates (NMFS 2016). Mortality includes both natural and human-caused mortality and removals from the population.

In our definition of demographic independence and in our interpretation of “interbreed when mature” we recognize that some interchange among groups may occur (*i.e.*, demographic isolation is not required). Therefore, we

find it to be valid to define stocks in which: (1) Mating occurs primarily among members of the same demographically independent group, or (2) the group migrates seasonally to a breeding ground where its members breed with members of the same group as well as with members of other demographically distinct groups which have migrated to the same breeding ground from a different feeding ground (Bettridge *et al.*, 2016).

*Comment 8:* One commenter alleged that in its review of the scientific data, NMFS selectively used data to support its conclusion, while ignoring other relevant, highly reliable data to the contrary. Specifically, the commenter argued that NMFS inappropriately dismissed the nuclear microsatellite DNA data and overemphasized the mitochondrial DNA (mtDNA) data, thus, not considering the relevance of the nuclear DNA data to the primary issue of identification of interbreeding groups.

*Response:* We disagree with the commenter. As documented in the status review and the preamble to the proposed rule, we evaluated all available scientific literature and all lines of evidence for and against demographic independence of Sakhalin Bay-Nikolaya Bay-Amur River beluga whales (see sections 4.2.1 and 4.2.2 of the status review report). Regarding the nuclear microsatellite DNA, we acknowledged in the preamble to the proposed rule that analysis of nuclear microsatellite markers found no evidence for genetic differentiation among the bays of the western Sea of Okhotsk with the exception of a comparison of Sakhalin Bay to the distant Ulbansky Bay (Meschersky and Yazykova 2012, Meschersky *et al.*, 2013). The status review report explained that the lack of nuclear DNA differentiation among most summer feeding areas in the western Sea of Okhotsk (except between Sakhalin Bay-Amur River and the distant Ulbansky Bay; Meschersky and Yazykova 2012; Meschersky *et al.*, 2013) is consistent with interbreeding between animals that aggregate in Sakhalin Bay and the other bays, and because these animals spend some parts of the year together (*i.e.*, winter), it is plausible that recruitment into a summer aggregation could be both internal and external. However, we concluded the nuclear DNA data available to date are too weak, given the level of and design of the sampling, to assess how much internal versus external recruitment there is. Moreover, the status review team expressed concern about the adequacy of the sampling (most areas were sampled predominantly in one year, skewed

towards males) and the microsatellite data quality. Meschersky and Yazykova (2012) did not provide sufficient information on data collection and analysis methods, so it was not possible to evaluate the quality of the microsatellite data. The International Union for Conservation of Nature (IUCN) independent scientific review panel of beluga whale experts also considered the available nuclear DNA analyses and expressed concerns over the sampling design and methods (Reeves *et al.*, 2011).

Generally, significant differences in mtDNA haplotype frequencies are interpreted as sufficient evidence for demographic independence reflecting female philopatry. Stocks, including harbor seal stocks in the North Pacific (O’Corry-Crowe *et al.*, 2003) and the humpback whale stock in the western North Atlantic (Palsbøll *et al.*, 2001, IWC 2002), have been delineated based on mtDNA alone. See the response to Comment 9 regarding the strength of the mtDNA data and findings.

*Comment 9:* A number of commenters asserted that based on the combined scientific findings from genetics, telemetry, and census (abundance) data, whales in the five bays, comprising the western region of the Sea of Okhotsk, constitute one stock. Specifically, the data show that the beluga whales from all of the bays of the western Sea of Okhotsk are an interbreeding group, and therefore are a single stock. One commenter cited the genetic studies of Meschersky *et al.* (2013) and Yazykova *et al.* (2012) as evidence that the summer aggregations in the five bays in the western Sea of Okhotsk are seasonal groups that belong to one breeding population. Another commenter stated that the large inter-annual differences in population estimates of beluga whales in the Shantar and Sakhalin regions (based on 2009 and 2010 aerial survey data cited in Shpak *et al.*, 2011), “cannot be attributed to massive increases or decreases in isolated populations.” Rather, the commenter asserts that these differences indicate the beluga whales move between summering areas, following salmon or other fish runs (Berzin *et al.*, 1991, Trumble and Lajus 2008, Popov 1986). The commenter suggests, for example, that beluga whales move into the Sakhalin Bay-Amur River area in odd years (such as 2009) when the runs of the oceanic race of pink salmon are much greater, and to bays in the Shantar region in even years when the salmon are less abundant in the Sakhalin Bay-Amur River area. To support their discussion of inter-annual differences in abundance, the commenter used Shpak



*et al.*'s (2011) 2009 and 2010 aerial survey data and recalculated the abundance estimates using correction factors NMFS "typically" uses for beluga whales in Alaska (Allen and Angliss 2014).

**Response:** We disagree with the commenters' assertion that the data indicate a single stock of beluga whales in the five bays of the Western Sea of Okhotsk. Regarding the genetic data referenced by the commenters, Meschersky *et al.* (2013) examined samples from Sakhalin Bay, Nikolaya Bay, Udskeya Bay, the northeastern Sea of Okhotsk on the west coast of the Kamtchatka Peninsula, and the Anadyr Estuary in the northwestern Bering Sea. All mtDNA comparisons that were made were significant ( $p < 0.00001$ ), indicating significant haplotype frequency differences between Sakhalin Bay and Udskeya Bay (as well as between Sakhalin Bay and regions in the northern Sea of Okhotsk and western Bering Sea). The level of mtDNA differentiation found is on par with comparisons among other recognized marine mammal stocks. Yazykova *et al.* (2012) used samples from all five bays in the southwestern Sea of Okhotsk (Sakhalin, Nikolaya, Ulbansky, Tugursky, and Udskeya). The sample size from Nikolaya Bay was very small ( $n=8$ ). Sakhalin Bay showed significant mtDNA differences from all sampling locations except Nikolaya Bay. Overall, the mtDNA data in both studies indicate significant genetic differentiation between Sakhalin Bay and the other bays (except Nikolaya Bay where the sample size is very small). Thus, these data suggest that should one of these bays be depleted or locally extirpated, they are not likely to be repopulated by immigration from the remaining bays.

For the microsatellite data, Meschersky *et al.* (2013) utilized nine microsatellite loci while Yazykova *et al.* (2012) added ten additional loci for a total of 19. In addition to concerns about sampling (one year, skewed towards males) as discussed in the status review and by the IUCN scientific panel and response to Comment 8 above, it is difficult to evaluate the microsatellite analyses of these two publications because they do not present adequate information on the analytical methods used to evaluate the quality of the microsatellite data. Information on standard tests commonly applied to evaluate the quality of microsatellite data prior to running any analyses (for example, tests for linkage disequilibrium and Hardy-Weinberg equilibrium) were not presented in either publication. The status review

team discussed, for example, that Yazykova *et al.* (2012) indicate they used the microsatellite loci DlrFCB6 and DlrFCB17, yet these two loci are known to be the same. Standard data quality tests should have identified they were the same, and one of them should have been subsequently dropped from all analyses. Therefore, the microsatellite data set may contain significant errors that could lead to incorrect conclusions, and the status review team could not adequately evaluate these potential issues.

NMFS believes the telemetry (tagging) data also supports our stock delineation, although we consider them to be weaker evidence, in part, because of the small number of tags. Furthermore, while the tag data reveal where animals move, they do not indicate whether interbreeding is occurring if/when animals from different stocks may overlap. However, NMFS disagrees with the commenters' assertion that "[t]he telemetry data show there is significant movement of belugas among bays in the Sea of Okhotsk in autumn and other times of the year." Beluga whale movements from Sakhalin Bay to the Shantar region, mainly Nikolaya Bay, were recorded primarily in the fall and interpreted as the beginning of migration westward and then northwest into offshore waters for the winter. Shpak *et al.* (2010) reported that the four tagged whales moved from Sakhalin Bay to Nikolaya Bay, with a few detections in the very far southeastern edge of Ulbansky Bay adjacent to Nikolaya Bay, in the fall just prior to migrating further north into the open water of the Sea of Okhotsk (see Figure 3 of Shpak *et al.*, 2010). Tagging efforts to date do not present any evidence that the animals move farther west than that within the other bays (*i.e.*, into Tugursky Bay or Udskeya Bay). As discussed in the preamble to the proposed rule, although not very many whales have been tagged, the data available to date suggest whales present in the summer in Sakhalin Bay also use Nikolaya Bay, but there is little evidence for movement between Sakhalin Bay and the other bays further to the west during spring and summer.

Regarding census (abundance) data, one commenter speculated that the inter-annual differences in population estimates in the Shantar and Sakhalin-Amur regions are not a result of increases (or decreases) in isolated populations, but, rather, indicate that beluga whales move from one region to another. In support of their argument, the commenter recalculated Shpak *et al.*'s (2011) abundance estimates from the 2009 and 2010 aerial surveys by using correction factors NMFS

"typically" uses for beluga whales in Alaska (Allen and Angliss 2014). However, NMFS does not apply any "typical" correction factor to estimate beluga abundance. The corrections, to account for animals during surveys that were missed either because the animals are submerged or too small to be seen, are dependent on the survey conditions (such as altitude, air speed, ice conditions, and water clarity) and therefore vary. The correction factors used by the commenter, 2.62 (to account for diving animals) and 1.18 (to account for newborns and yearlings not observed due to their small size and dark coloration), were developed respectively, for Bristol Bay (Frost and Lowry 1995) and Cumberland Sound, Baffin Island (Brodie 1971). In cases when conditions were similar, NMFS has used these correction factors for other areas in Alaska (*e.g.*, Eastern Chuckchi Sea and Eastern Bering Sea), while in other cases we have used correction factors of 2 (*e.g.*, the Beaufort Sea), or have used an analysis of video tape or regression of counts to correct for availability and sightability (*e.g.*, Cook Inlet) (Allen and Angliss 2015). The commenter has not demonstrated that the survey conditions in this region were sufficiently similar to those in Bristol Bay or Cumberland Sound. Further, both Shpak *et al.* (2011) and Reeves *et al.* (2011) considered using a correction factor of 2 to be appropriate.

The commenter also discussed the relative abundance of beluga whales in the Sakhalin-Amur and Shantar regions. Regardless of which correction factors are used, the Sakhalin-Amur aggregation represents 59 percent of the total estimated number of beluga whales in the two regions in 2009 and 33 percent in 2010. The commenter asserted that the inter-annual differences in abundance are due to shifting of belugas from one region to another, which it states may be in large part due to the variation in salmon or other fish runs. The commenter cited Berzin *et al.* 1991, Trumble and Lajus 2008, and Popov 1986 in support, but did not include a copy of these papers with the comment letter. We searched but were unable to obtain copies of Berzin *et al.* (1991) and Popov (1986). However, we reviewed Trumble and Lajus (2008) and the commenter's description of the findings from the two unavailable papers.

As stated in the status review, we acknowledge that summer aggregations of beluga whales often focus on seasonally available fish runs, like salmon runs. However, we do not agree that the abundance data indicate a single stock of beluga whales moving between regions. We evaluated the



abundance information, including the information provided by the commenters. Based on the estimates of abundance and associated statistical error presented in Shpak and Glazov (2013, Table 4), there is a 31 percent difference between the abundance in 2009 and the lower of the two abundance estimates in 2010 in the Sakhalin-Amur aggregation. We conclude that the difference can be explained by the statistical uncertainty of the abundance estimates. Thus, the difference between the estimates can be attributed to sampling error between surveys and NMFS finds no reason, based on our analysis of the abundance information, to reject the status review team's conclusion that the population in the Sakhalin Bay-Amur River area is a distinct stock.

Based upon the above, we cannot conclude that all beluga whales from the five western bays in the Sea of Okhotsk belong to a single demographically independent population; the best scientific information available supports our conclusion that the Sakhalin Bay-Nikolaya Bay-Amur River population of beluga whales is a stock. Multiple lines of evidence support this conclusion, including mtDNA differentiation, movement data, geographical/ecological separation, and similarity to other examples of MMPA stock designations outlined in the status review report (e.g., beluga whales in Alaska). Our conclusion is largely consistent with that of the 2011 IUCN independent scientific review panel (Reeves *et al.*, 2011) regarding the unit to conserve.

*Comment 10:* Many commenters supported the Commission's recommendation for NMFS to take a precautionary approach to include Nikolaya Bay and designate the Sakhalin Bay-Nikolaya Bay-Amur River distinct stock of beluga whales as depleted under the MMPA.

*Response:* We acknowledge this comment and are including beluga whales in Nikolaya Bay in the stock being designated as depleted.

*Comment 11:* Several commenters asserted that comparable inferences from the better studied beluga whale populations of Canada's Hudson Bay support NMFS' conclusions on mtDNA and geographic and ecological separation along maternal lines to delineate the Sakhalin Bay-Nikolaya Bay-Amur River population as a stock.

*Response:* We acknowledge this comment but clarify that we relied on multiple lines of evidence to identify the stock, including genetic, telemetry, and movement data.

*Comment 12:* A number of commenters argued that designating the

Sakhalin Bay-Nikolaya Bay-Amur River stock as depleted would be perceived by Russia that the United States does not approve of its management of the species, and would actually impede efforts to conserve beluga populations in Russian waters.

*Response:* We were petitioned under section 115 of the MMPA to evaluate whether the beluga whales in the Sakhalin Bay-Amur River region are depleted. We do not have the discretion to consider political factors in the analysis of whether a stock is below its OSP level and a depleted designation is warranted.

*Comment 13:* Several commenters asserted that the Sakhalin Bay-Amur River stock is below its OSP level and clearly depleted, and including Nikolaya Bay does not change NMFS' depletion finding.

*Response:* We acknowledge this comment and are finalizing the designation of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales as depleted.

*Comment 14:* Many commenters claimed that the depleted finding would provide the stock greater protection against further decline. One noted that a depleted designation would help promote the goals of the MMPA by helping to recover the population thereby protecting the health and stability of the marine ecosystem.

*Response:* NMFS notes that although we do not manage this foreign stock directly, this depleted designation prohibits importation of whales from this stock into the United States for the purpose of public display, which may partially address the threat of the live-capture trade by reducing demand. This is consistent with our 2013 denial of the Georgia Aquarium's application for a permit to import 18 beluga whales from this population into the United States, in which we found that ongoing, legal marine mammal capture operations in Russia are expected to continue, and issuance of the permit would have contributed to the demand to capture belugas from this stock for the purpose of public display worldwide, resulting in the future taking of additional belugas from this stock.

The MMPA requires NMFS to prepare a conservation plan and restore any stock designated as depleted to its OSP level, unless NMFS determines that such a plan would not promote the conservation of the stock. We have determined that a conservation plan would not further promote the conservation of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales given that NMFS does not manage the stock, and therefore do

not plan to implement a conservation plan. However, as noted above, by prohibiting the importation of Sakhalin Bay-Nikolaya Bay-Amur River beluga whales into the United States for the purpose of public display, this depleted designation will provide intrinsic conservation benefits that may reduce the impacts of live captures to this stock.

*Comment 15:* Some commenters recommended additional genetic and environmental research in the Sea of Okhotsk, to better define and manage the population's recovery.

*Response:* We agree that such research would be beneficial. Such research was also recommended by the Commission in its consultation with us, and by the IUCN panel (Reeves *et al.*, 2011).

*Comment 16:* One commenter noted that according to new data from the United Nations Environment Programme's World Conservation Monitoring Center, at least 37 live beluga whales, likely from the Sakhalin Bay-Nikolaya Bay-Amur River stock, were exported from Russia in 2014, and emphasized that the level of these live exports alone continues to exceed its potential biological removal level (PBR).

*Response:* We recognize that live captures are a continuing threat to this stock, but our evaluation of the stock's status did not consider PBR. Rather, we evaluated the stock's abundance relative to carrying capacity to determine whether the population was below its OSP level.

*Comment 17:* Some commenters cited new information documenting that unsustainable live removals for public display, mortality incidental to these captures, and pollution continue to contribute to the population's depletion. Other commenters noted that beluga whales from this population face threats from vessel strikes, entanglement and drowning, subsistence harvest, oil and gas development, and climate change.

*Response:* We appreciate the updated information provided by the commenters regarding live captures, measurements of persistent organic pollutants in tissue collected from beluga whales in the Sea of Okhotsk, and oil and gas development in the Sakhalin region. As we noted in the preamble to the proposed rule, information on potential sources of serious injury and mortality is limited for the Sea of Okhotsk beluga whales. The IUCN panel identified subsistence harvest, death during live capture for public display, entanglement in fishing gear, vessel strike, climate change, and pollution as human activities that may result in serious injury or mortality to Sea of Okhotsk beluga whales (Reeves *et*

*al.* 2011). The greatest amount of available information is from the estimates of annual take from the commercial hunt. As noted in the petition, the IUCN review, and the preamble to the proposed rule, monitoring of other types of mortality in the Sea of Okhotsk is low, if existent at all, and information on possible threats and sources of mortality in Sea of Okhotsk beluga whales is highlighted by a lack of substantiated data, and is largely anecdotal.

As noted above, a direct result of this depleted designation is that importation of whales from this stock into the United States for purposes of public display is prohibited. This may reduce the impacts of live captures, but does not directly address the remaining threats to this population.

#### Classification

This rule has been determined to be not significant for the purposes of Executive Order 12866.

Similar to ESA listing decisions, which are based solely on the best scientific and commercial information available, depleted designations under the MMPA are determined “solely on the basis of the best scientific information available.” 16 U.S.C. 1533(b)(1)(A) and 16 U.S.C. 1383b(a)(2). Because ESA listings are thus exempt from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 (*see* NOAA Administrative Order 216–6.03(e)(1)), NMFS has determined that MMPA depleted designations are also exempt from the requirements of the National Environmental Policy Act. Thus, an environmental assessment or environmental impact statement is not required and none has been prepared for the depleted designation of this stock under the MMPA.

When the proposed rule was published, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant impact on a substantial number of small entities. (81 FR 19546, April 5, 2016). This rule designates a group of beluga whales in Russian waters (known as the Sakhalin Bay-Nikolaya Bay-Amur River group) as depleted; however, this rule would not, by itself, directly regulate the public, including any small entities. The MMPA authorizes NMFS to take certain actions to protect a stock that is designated as depleted. For example, a stock that is designated as depleted

meets the definition of a strategic stock under the MMPA. Under provisions of the MMPA, a take reduction team must be established and a take reduction plan developed and implemented within certain time frames if a strategic stock of marine mammals interacts with a Category I or II commercial fishery. However, NMFS has not identified any interactions between commercial fisheries and this group of beluga whales that would result in such a requirement. In addition, under the MMPA, if NMFS determines that impacts on areas of ecological significance to marine mammals may be causing the decline or impeding the recovery of a strategic stock, it may develop and implement conservation or management measures to alleviate those impacts. However, NMFS has not identified information sufficient to make any such determination for this group of beluga whales. The MMPA also requires NMFS to prepare a conservation plan and restore any stock designated as depleted to its OSP, unless NMFS determines that such a plan would not promote the conservation of the stock. NMFS has determined that a conservation plan would not promote the conservation of the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales and therefore does not plan to implement a conservation plan. In summary, this final rule will not directly regulate the public. If any subsequent restrictions placed on the public to protect the Sakhalin Bay-Nikolaya Bay-Amur River stock of beluga whales are included in separate regulations, appropriate analyses under the Regulatory Flexibility Act would be conducted during those rulemaking procedures.

The MMPA prohibits the importation of any marine mammal designated as depleted for purposes of public display (*see* 16 U.S.C. 1371(a)(3)(B) and 1372(b)). Therefore, this rule will have the indirect effect of prohibiting the future importation of any marine mammal from this stock into the United States for purposes of public display. There are 104 facilities in the United States that house marine mammals for the purposes of public display. Of these, only six facilities house beluga whales. There are currently twenty-seven beluga whales at these facilities. None of these beluga whales were taken in the wild from the Sakhalin Bay-Nikolaya Bay-Amur River stock; three whales are progeny of animals taken in the wild from this stock. NMFS receives very few requests to import beluga whales into the United States for purposes of public display and has no pending requests to

import beluga whales for public display. NMFS notes the small number of U.S. entities that house beluga whales and the small number of beluga whales from this stock that are currently permitted for public display in the United States. Because this rule will not prevent an entity from requesting to import a beluga whale from a non-depleted stock for purposes of public display, NMFS found that this rule would not result in a significant economic impact on a substantial number of small entities. NMFS invited comment from members of the public to provide any additional information on NMFS determination that the rule will not result in a significant economic impact on a substantial number of small entities. NMFS did not receive any comment on this issue. As a result, no regulatory flexibility analysis for this final rule has been prepared.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

#### List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: October 24, 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 216 is amended as follows:

#### PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. In § 216.15, add paragraph (j) to read as follows:

##### § 216.15 Depleted species.

\* \* \* \* \*

(j) Sakhalin Bay-Nikolaya Bay-Amur River beluga whales (*Delphinapterus leucas*). The stock includes all beluga whales primarily occurring in, but not limited to, waters of Sakhalin Bay, Nikolaya Bay, and Amur River in the Sea of Okhotsk.

[FR Doc. 2016–25984 Filed 10–26–16; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register

Vol. 81, No. 208

Thursday, October 27, 2016

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2016–0005]

RIN 0579–AE28

#### Importation of Orchids in Growing Media From Taiwan

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations governing the importation of plants for planting to add orchid plants of the genus *Dendrobium* from Taiwan to the list of plants that may be imported into the United States in an approved growing medium, subject to specified growing, inspection, and certification requirements. We are taking this action in response to a request from the Taiwanese Government and after determining that the plants could be imported, under certain conditions, without resulting in the introduction into, or the dissemination within, the United States of a plant pest or noxious weed.

**DATES:** We will consider all comments that we receive on or before December 27, 2016.

**ADDRESSES:** You may submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0005>.

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0005, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0005> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street

and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lydia E. Colón, Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (301) 851–2302.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds. The regulations in “Subpart—Plants for Planting,” §§ 319.37 through 319.37–14 (referred to below as the regulations) contain, among other things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation.

Paragraph (a) of § 319.37–8 of the regulations requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate that plant pest risk. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37–8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media, inspections, and other requirements (paragraph (e)).

Paragraph (e) of § 319.37–8 provides conditions under which certain plants established in growing media may be imported into the United States. In addition to specifying the types of plants that may be imported § 319.37–8(e) also:

- Specifies the types of growing media that may be used;
- Requires plants to be grown in accordance with written agreements between the Animal and Plant Health Inspection Service (APHIS) and the national plant protection organization

(NPPO) of the country where the plants are grown and between the foreign NPPO and the grower;

- Requires the plants to be rooted and grown for a specified period in a greenhouse that meets certain requirements for pest exclusion and that is used only for plants being grown in compliance with § 319.37–8(e);

- Requires that the parent plants of the exported plants in growing media are produced from seed germinated in the production greenhouse or from mother plants that are grown and monitored for a specified period prior to export of the descendant plants;

- Specifies the sources of water that may be used on the plants, the height of the benches on which the plants must be grown, and the conditions under which the plants must be stored and packaged; and

- Requires that the plants be inspected in the greenhouse and found free of evidence of plant pests no more than 30 days prior to the exportation of the plants.

A phytosanitary certificate issued by the NPPO of the country in which the plants were grown that declares that the above conditions have been met must accompany the plants at the time of importation. These conditions have been used to successfully mitigate the risk of pest introduction associated with the importation into the United States of approved plants established in growing media.

Currently, orchid plants of genus *Dendrobium* spp. may only be imported into the United States from Taiwan as bare root plants, in accordance with § 319.37–2. The NPPO of Taiwan has requested that importation into the United States of those plants in growing media be allowed under the provisions of § 319.37–8.

The regulations in § 319.37–8(g) provide that requests such as the one made by the Government of Taiwan be evaluated by APHIS using a pest risk assessment (PRA) that uses specific pest risk evaluation standards that are based on pest risk analysis guidelines established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization. Such analyses are conducted to determine the plant pest risks associated with each requested plant article and to determine whether or not APHIS should propose to allow

the requested plant article established in growing media to be imported into the United States. In accordance with § 319.37–8(g), APHIS has conducted the required PRA, which can be viewed on the Internet on the *Regulations.gov* Web site or in our reading room.<sup>1</sup>

In the PRA, titled “Importation of *Dendrobium* spp. plants in Approved Growing Media From Taiwan into the United States,” APHIS determined that three quarantine pests present in Taiwan could potentially follow the import pathway:

- *Heliothrips errans* (Williams), a thrips.
- *Scirtothrips dorsalis* Hood, the chili thrips.
- *Spodoptera litura* (Fabricius), the Oriental leafworm moth.

A quarantine pest is defined in § 319.37–1 of the regulations as a plant pest of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled. Potential plant pest risks associated with the importation of *Dendrobium* spp. from Taiwan in growing media into the United States were derived by estimating the consequences and likelihood of introduction of each quarantine pest into the United States and ranking the risk potential as high, medium, or low. The PRA determined that one of these three pests—*S. dorsalis*—poses a high pest risk potential. The remaining pests—*H. errans* and *S. litura*—were rated as having a medium pest risk potential. Further, it is important to note that those plant pest risks were analyzed in the absence of the mitigative effects of the requirements in § 319.37–8(e), which are designed to establish and maintain a pest-free production environment and ensure the use of pest-free seeds or parent plants. The risk management document (RMD) concluded that the safeguards in § 319.37–8(e) would allow the safe importation of *Dendrobium* spp. from Taiwan provided that the plants are established in an approved growing medium and meet all other applicable conditions of § 319.37–8(e). This determination is based on the findings of the PRA, RMD, and the Secretary’s judgment that the application of the measures required under § 319.37–8(e) will prevent the introduction or

dissemination of plant pests into the United States.

Accordingly, we are proposing to amend the regulations in § 319.37–8(e) by adding *Dendrobium* spp. from Taiwan to the list of plants established in an approved growing medium that may be imported into the United States. The plants would have to be produced, handled, and imported in accordance with the requirements of § 319.37–8(e) and be accompanied at the time of importation by a phytosanitary certificate issued by the NPPO of Taiwan that declares that those requirements have been met.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The proposed rule would enable Taiwanese exporters to provide higher-valued, mature *Dendrobium* spp. plants directly to wholesalers and retailers. However, such a scenario is considered unlikely, given the technical challenges and marketing costs incurred when shipping finished plants in pots. A more likely scenario is for Taiwan to continue to export immature *Dendrobium* spp. plants as bare root plants or in approved growing media to U.S. nurseries to grow and sell as finished plants.

Taiwan is the world’s largest orchid exporter, with international sales in 2013 totaling \$166.3 million. That year, *Dendrobium* spp. orchids comprised less than 0.1 percent (that is, less than \$166,000) of the value of Taiwan’s orchid exports worldwide.

The United States imported more than 6,400 metric tons of live orchids valued at \$79.4 million in 2015. Orchid imports from Taiwan comprised almost 77 percent of this value, at \$61.4 million. In comparison, the value of orchid plants produced in the United States in 2014 was \$300 million, with *Dendrobium* spp. production totaling \$12.3 million. Given *Dendrobium* spp. making up such a small share of Taiwan’s orchid sales worldwide, this proposed rule is not expected to have a

significant impact on the U.S. orchid industry.

U.S. *Dendrobium* spp. producers numbered 216 in 2014, but the number of these establishments that are small entities is not known. Given *Dendrobium* spp. making up such an insignificant share of Taiwan’s exports worldwide and the fact that *Phalaenopsis* and *Oncidium* spp. orchids are already being imported from Taiwan in approved growing media, we expect the proposed rule would not significantly change the volume or value of orchids imported into the continental United States from Taiwan.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### **National Environmental Policy Act**

To provide the public with documentation of APHIS’ review and analysis of any potential environmental impacts associated with the proposed importation of *Dendrobium* spp. from Taiwan, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS’ NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the *Regulations.gov* Web site or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

<sup>1</sup> Instructions on accessing *Regulations.gov* and information on the location and hours of the reading room may be found at the beginning of this document under **ADDRESSES**. You may also request paper copies of the risk analysis by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**.

### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2016–0005. Please send a copy of your comments to: (1) Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

APHIS is proposing to amend the regulations governing the importation of plants and plant products to add orchid plants of the genus *Dendrobium* from Taiwan to the list of plants that may be imported into the United States in an approved growing medium, subject to specified growing requirements. Respondents will complete activities such as phytosanitary certificates, written agreements, and inspections.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 1.166 hours per response.

*Respondents:* Foreign government and businesses.

*Estimated annual number of respondents:* 16.

*Estimated annual number of responses per respondent:* 17.

*Estimated annual number of responses:* 271.

*Estimated total annual burden on respondents:* 316 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the *Regulations.gov* Web site or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

### PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

#### § 319.37–8 [Amended]

■ 2. In § 319.37–8(e) introductory text, amend the list of plants by adding, in alphabetical order, an entry for “*Dendrobium* spp. from Taiwan”.

Done in Washington, DC, this 24th day of October 2016.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2016–26031 Filed 10–26–16; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2016–0022]

**RIN 0579–AE29**

### Importation of Hass Avocados From Colombia

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the fruits and vegetables regulations to allow the importation of Hass avocados from Colombia into the continental United States. As a condition of entry, Hass avocados from Colombia would have to be produced in accordance with a systems approach that would include requirements for importation in commercial consignments; registration and monitoring of places of production and packinghouses; pest-free places of production; grove sanitation, monitoring, and pest control practices; lot identification; and inspection for quarantine pests by the Colombian national plant protection organization. Additionally, avocados from Colombia would be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the avocados have been produced in accordance with the proposed requirements. This action would allow for the importation of Hass avocados from Colombia into the continental United States while continuing to provide protection against the introduction of plant pests.

**DATES:** We will consider all comments that we receive on or before December 27, 2016.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2016-0022>.

- *Postal Mail/Commercial Delivery:* Send your comments to Docket No. APHIS–2016–0022, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0022> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Mr. David B. Lamb, Senior Regulatory Policy Specialist, USDA/APHIS/PPQ, 4700 River Road, Unit 133, Riverdale, MD 20737-1236; (301) 851-2103; [David.B.Lamb@aphis.usda.gov](mailto:David.B.Lamb@aphis.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–75, referred to below as the regulations or the fruits and vegetables regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

The national plant protection organization (NPPO) of Colombia has requested that we amend the regulations to allow Hass avocados (*Persea americana*) from Colombia to be imported into the continental United States.

In evaluating Colombia’s request, we prepared a pest risk assessment (PRA) and risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The PRA, titled “Importation of Fresh Fruit of Avocado, *Persea americana* Miller var. ‘Hass’, into the Continental United States from Colombia: A Pathway Initiated Risk Assessment,” analyzes the potential pest risk associated with the importation of fresh Hass avocados into the continental United States from Colombia.

The PRA identifies four pests of quarantine significance present in Colombia that could follow the pathway of Hass avocados from Colombia to the continental United States. They are:

- *Heilipus lauri* Boheman, an avocado seed weevil.

- *Heilipus trifasciatus*, an avocado seed weevil.
- *Macronellicoccus hirsutus* (Green), pink hibiscus mealybug.
- *Stenoma catenifer*, avocado seed moth.

The PRA derives plant pest risk potentials for these pests by estimating the likelihood of introduction of each pest into the continental United States through the importation of Hass avocados from Colombia, as well as the consequences of such introduction, if the avocados are not subject to mitigations to address the pests. The PRA considers three of the pests to have a high unmitigated pest risk potential (*H. lauri*, *H. trifasciatus*, and *S. catenifer*), and one (*M. hirsutus*) to have a medium unmitigated pest risk potential.

Based on the findings of the PRA, APHIS has determined that measures beyond standard port-of-entry inspection are necessary in order to mitigate the risk associated with the importation of fresh Hass avocados from Colombia into the continental United States. These measures are listed in the RMD and are used as the basis for the requirements of this proposed rule.

Therefore, we are proposing to amend the regulations to allow the importation of commercial consignments of fresh Hass avocados from Colombia into the continental United States, subject to a systems approach. Requirements of the systems approach, which would be added to the regulations as a new § 319.56–76, are discussed below.

#### Proposed Systems Approach

##### General Requirements

Proposed paragraph (a) of § 319.56–76 would set out general requirements for fresh Hass avocados from Colombia destined for export to the continental United States.

Proposed paragraph (a)(1) would require the NPPO of Colombia to provide an operational workplan to APHIS that details the systems approach activities that the NPPO of Colombia and places of production and packinghouses registered with the NPPO of Colombia would, subject to APHIS approval of the workplan, implement to meet the proposed requirements. An operational workplan is an arrangement between APHIS’ Plant Protection and Quarantine program and officials of the NPPO of a foreign government that specifies in detail the phytosanitary measures that will comply with U.S. regulations governing the import or export of a specific commodity. Other foreign parties associated with an export program, such

as producers and packinghouse operators, may also be signatories on specific operational workplans. Operational workplans apply only to the signatories and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. Operational workplans require APHIS approval.

If the operational workplan is approved, APHIS would be directly involved with the NPPO of Colombia in monitoring and auditing the systems approach implementation. Such monitoring could involve site visits by APHIS personnel.

Proposed paragraph (a)(2) would require the avocados considered for export to the continental United States to be grown by places of production that are registered with the NPPO of Colombia and that have been determined to be free from *H. lauri*, *H. trifasciatus*, and *S. catenifer* in accordance with the proposed regulations. We discuss the proposed protocol for considering a production site free from these three pests later in this document.

Proposed paragraph (a)(3) would require the avocados to be packed for export to the continental United States in pest-exclusionary packinghouses that are registered with the NPPO of Colombia.

Registration of places of production and packinghouses with the NPPO of Colombia would ensure that the NPPO exercises oversight of these locations and that the places of production and packinghouses continuously follow the provisions of the export program. It would also facilitate traceback in the event that avocados from Colombia are determined to be infested with quarantine pests.

Proposed paragraph (a)(4) would require Hass avocados from Colombia to be imported into the continental United States in commercial consignments only. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2 of the regulations, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging,

identification of place of production or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. We currently require most other fruits and vegetables imported into the United States from foreign countries to be imported in commercial consignments as a mitigation against quarantine pests of that commodity.

#### Monitoring and Oversight

The systems approach we are proposing includes monitoring and oversight requirements in paragraph (b) of proposed § 319.56–76. These requirements are to ensure that the required phytosanitary measures are properly implemented throughout the process of growing and packing of avocados for export to the United States.

Proposed paragraph (b)(1) would require the NPPO of Colombia to visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with grove sanitation requirements (discussed below) and following pest control guidelines, when necessary, to reduce quarantine pest populations. Any personnel conducting trapping and pest surveys under this section at registered places of production would have to be hired, trained, and supervised by the NPPO of Colombia. APHIS would monitor the places of production, if necessary. We may consider it necessary to monitor a place of production, for example, if a registered place of production is suspended from the export program for avocados from Colombia due to the presence of quarantine plant pests at the place of production, but is subsequently reinstated after taking appropriate remedial actions to address these pests.

Under paragraph (b)(2), in addition to conducting fruit inspections at the packinghouses, the NPPO of Colombia would be required to monitor packinghouse operations to verify that the packinghouses are complying with the packinghouse requirements for pest exclusion, safeguarding, and identification that are described later in this document.

Under paragraph (b)(3), if the NPPO of Colombia finds that a place of production or a packinghouse is not complying with the proposed regulations, no avocados from the place of production or packinghouse would be eligible for export to the United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions have been implemented.

Paragraph (b)(4) would require the NPPO of Colombia to retain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review. Such forms and documents would include (but would not necessarily be limited to) trapping and survey records for *H. lauri*, *H. trifasciatus*, and *S. catenifer*, as well as inspection records, and, if applicable, treatment records. Treatment records would be applicable when, for instance, the NPPO has required a place of production to follow pest control guidelines as a condition of registration, and these guidelines include treatment.

#### Grove Sanitation

Under paragraph (c) of proposed § 319.56–76, avocado fruit that has fallen from the trees would have to be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. This procedure would reduce the amount of material in the groves that could serve as potential host material for insect pests.

Fruit that has fallen from avocado trees to the ground may be damaged and thus more susceptible to infestation. Therefore, proposed paragraph (c) would not allow fallen avocado fruit to be included in field containers of fruit brought to the packinghouse to be packed for export.

#### Mitigation Measures for *H. lauri*, *H. trifasciatus*, and *S. catenifer*

Proposed paragraph (d) of § 319.56–76 would require either that the avocados are grown in places of production located in departments<sup>1</sup> of Colombia that are designated as free of *H. lauri*, *H. trifasciatus*, and *S. catenifer* in accordance with § 319.56–5, or are grown in places of production that have been surveyed by the NPPO of Colombia and have been determined to be free of these pests. (We discuss measures designed to remove *M. hirsutus* from the pathway of the avocados later in this document.)

Section 319.56–5 specifies that, to be determined to be free of a quarantine pest, an area must be surveyed according to a survey protocol approved by APHIS, and meet the International Plant Protection Convention's International Standards for Phytosanitary Measures (ISPM) No. 4, "Requirements for the establishment of pest-free areas." ISPM No. 4 require the NPPO to take measures to maintain the

pest-free status of the area, including, but not limited to, routine monitoring or the establishment of buffer areas.

Similarly, in order for a place of production to be determined by APHIS to be free of *H. lauri*, *H. trifasciatus*, and *S. catenifer* if it is not located in a pest-free department, the NPPO of Colombia would have to maintain a 1 kilometer buffer zone around the perimeter of the place of production, and would have to survey representative areas of the place of production and buffer zone for *H. lauri*, *H. trifasciatus*, and *S. catenifer* monthly, beginning no more than 2 months before harvest, in accordance with a survey protocol approved by APHIS.

If one or more *H. lauri*, *H. trifasciatus*, or *S. catenifer* is detected during a survey of the place of production or buffer zone, the place of production would be suspended from the export program for avocados to the continental United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions to reestablish pest freedom have been implemented.

#### Harvesting Requirements

Paragraph (e) of proposed § 319.56–76 sets out requirements for harvesting. Harvested avocados would have to be placed in field cartons or containers that are marked with the official registration number of the place of production. The place of production where the avocados were grown would have to remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. These requirements would ensure that APHIS and the NPPO of Colombia could identify the place of production where the avocados were produced if inspectors find quarantine pests in the fruit either before export or at the port of entry.

We would require the fruit to be moved to a registered packinghouse within 3 hours of harvest or to be protected from fruit fly introduction until moved. *Ceratitis capitata* and *Anastrepha* spp. fruit flies are known to exist in Colombia, but Hass avocados are only hosts of these fruit flies once they are harvested. Safeguarding or expeditious shipment to a pest-exclusionary packinghouse would help preclude harvested avocados from becoming infested with fruit flies.

For a similar reason, the fruit would also have to be safeguarded in accordance with the operational workplan while in transit to the packinghouse and while awaiting packing. This safeguarding would prevent the fruit from being infested

<sup>1</sup> Departments are the administrative unit of Colombia.



with fruit flies between harvest and packing.

#### *Packinghouse Requirements*

Proposed paragraph (f) of § 319.56–76 would contain packinghouse requirements for Hass avocados from Colombia.

Paragraph (f)(1) would require registered packinghouses to accept only avocados that are from registered places of production and that are produced in accordance with the requirements of the systems approach during the time they are in use for packing avocados for export to the United States.

Paragraph (f)(2) would require avocados to be packed within 24 hours of harvest in a pest-exclusionary packinghouse. All openings to the outside of the packinghouse would have to be screened or covered by a barrier that prevents pest from entering, as specified within the operational workplan. The packinghouse would have to have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed. These proposed requirements are designed to exclude insect pests from the packinghouse.

Paragraph (f)(3) would require the avocados to be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards would have to remain intact until arrival in the United States.

Paragraph (f)(4) would require shipping documents accompanying consignments of avocados from Colombia that are exported to the United States to specify the place of production at which the avocados were grown as well as the packing shed or sheds in which the fruit was processed and packed. The identification would have to be maintained until the fruit is released for entry into the United States.

These requirements would ensure that APHIS and the NPPO of Colombia could identify the packinghouse at which the fruit was packed if inspectors find quarantine pests in the fruit either before export or at the port of entry.

#### *NPPO of Colombia Inspection*

Proposed paragraph (g) of § 319.56–76 would require the NPPO of Colombia to visually inspect a biometric sample of fruit from each place of production at a rate determined by APHIS, following any post-harvest processing. Visual inspection should identify *M. hirsutus*, an external feeder.

However, *H. lauri*, *H. trifasciatus*, and *S. catenifer* are all internal feeders. Accordingly, we would also require the

inspector to cut a portion of the fruit to inspect for these pests.

If a single quarantine pest is detected during this inspection protocol, the consignment from which the sample was taken would be prohibited from being shipped to the United States. Additionally, if a single *H. lauri*, *H. trifasciatus*, or *S. catenifer* at any life stage is detected during this inspection, the place of production of the infested avocados would be suspended from the export program for avocados to the continental United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions to reestablish pest freedom have been implemented.

#### *Phytosanitary Certificate*

Proposed paragraph (h) of § 319.56–76 would require each consignment of Hass avocados from Colombia to be accompanied by a phytosanitary certificate issued by the NPPO of Colombia with an additional declaration that the avocados were produced in accordance with proposed § 319.56–76 and the operational workplan.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides an initial regulatory flexibility analysis that examines the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, in the reading room (see **ADDRESSES** above for more information), or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

Colombia has requested market access for commercial shipments of Hass avocado into the continental United States under a systems approach. U.S. avocado imports have increased significantly over the years. A growing U.S. population and growing Hispanic share of the population, greater awareness of the avocado's health benefits, year-round availability of fresh, affordable Hass avocados, and greater disposable income have contributed to the increased demand.

The increase in demand over the past decade has contributed to domestic

producers being able to maintain production levels despite the large increase in avocado imports. Annual U.S. avocado production, 2003/04 to 2014/15, averaged 206,368 tons, of which California accounted for 87.5 percent or over 375 million pounds. Nearly all of California's production is of the Hass variety.

Potential economic effects of this rule are estimated using a partial equilibrium model of the U.S. fresh Hass avocado sector. Colombia is expected to export 10,000 metric tons of Hass avocados annually to the United States. We estimated economic impacts for annual import levels of 10,000 and 12,000 metric tons. In addition, for the 10,000 metric ton level, we estimate impacts assuming that 20 percent of the imports would displace Hass avocado imports from other countries, yielding a net increase in imports of 8,000 metric tons.

For each import level, consumer welfare gains outweigh producer welfare losses, with positive net welfare impacts. Producer welfare losses under the three import levels range between \$4 million and \$6 million, which is equivalent to less than 1 percent of the 2014/2015 value of U.S. avocado production. Consumer welfare gains range between \$14 million and \$22 million, with net welfare gains for the United States of between \$10 million and \$16 million. The price of fresh Hass avocados is estimated to decline by less than 2 percent under all three import scenarios.

While APHIS does not have information on the size distribution of U.S. avocado producers, according to the Census of Agriculture there were a total of 93,020 Fruit and Tree Nut farms (NAICS 1113) in the United States in 2012. The average value of agricultural products sold by these farms was less than \$274,000, which is well below the Small Business Administration's small-entity standard of \$750,000. It is reasonable to assume that most avocado farms qualify as small entities. Between 2002 and 2012, the number of avocado operations in California grew by approximately 17 percent, from 4,801 to 5,602 operations.

#### **Executive Order 12988**

This proposed rule would allow Hass avocados to be imported into the continental United States from Colombia. If this proposed rule is adopted, State and local laws and regulations regarding avocados imported under this rule would be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the consuming public and would



remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), reporting and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send comments on the Information Collection Request (ICR) to OMB's Office of Information and Regulatory Affairs via email to [oir\\_submissions@omb.eop.gov](mailto:oir_submissions@omb.eop.gov), Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2016-0022. Please send a copy of your comments to the USDA using one of the methods described under **ADDRESSES** at the beginning of this document.

This proposed rule would allow the importation of Hass avocados from Colombia into the continental United States. These avocados must be produced in accordance with the requirements of a systems approach and will require information collection activities, such as an operational workplan, production site and packinghouse registration, inspection, training, monitoring, investigation, survey and survey investigation protocols, carton markings, shipping documents, post-harvest inspection and investigation, recordkeeping, and phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 3.44 hours per response.

*Respondents:* Producers, importers of Hass avocados, the NPPO of Colombia.

*Estimated annual number of respondents:* 79.

*Estimated annual number of responses per respondent:* 35.99.

*Estimated annual number of responses:* 2,843.

*Estimated total annual burden on respondents:* 9,783 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the *Regulations.gov* Web site or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

#### List of Subjects for 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

- 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

- 2. Add § 319.56–76 to read as follows:

#### § 319.56–76 Hass avocados from Colombia.

Fresh Hass variety (*Persea americana* P. Mill) avocados may be imported into the continental United States from Colombia only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Heilipus lauri* Boheman, avocado seed weevil; *Heilipus trifasciatus*, avocado seed weevil; *Macronellicoccus hirsutus* (Green), pink hibiscus mealybug; and *Stenoma catenifer*, avocado seed moth.

##### (a) General requirements. (1)

*Operational workplan.* The national plant protection organization (NPPO) of Colombia must provide an operational workplan to APHIS that details the activities that the NPPO of Colombia and places of production and packinghouses registered with the NPPO of Colombia will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the specific requirements as set forth in this section. APHIS will be directly involved with the NPPO of Colombia in monitoring and auditing implementation of the regulatory requirements in this section, including implementation of the operational workplan.

##### (2) Registered places of production.

The fresh avocados considered for export to the continental United States must be grown by places of production that are registered with the NPPO of Colombia and that have been determined to be free from *H. lauri*, *H. trifasciatus*, and *S. catenifer* in accordance with this section.

(3) *Registered packinghouses.* The avocados must be packed for export to the continental United States in pest-exclusionary packinghouses that are registered with the NPPO of Colombia.

(4) Avocados may be imported in commercial consignments only.

(b) *Monitoring and oversight.* (1) The NPPO of Colombia must visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the grove sanitation requirements of this section and following pest control guidelines, when necessary, to reduce quarantine pest populations. Any personnel conducting trapping and pest surveys under this section at registered

places of production must be hired, trained, and supervised by the NPPO of Colombia. APHIS may monitor the places of production if necessary.

(2) In addition to conducting fruit inspections at the packinghouses, the NPPO of Colombia must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of this section.

(3) If the NPPO of Colombia finds that a place of production or packinghouse is not complying with the requirements of this section, no avocados from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions have been implemented.

(4) The NPPO of Colombia must retain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(c) *Grove sanitation.* Avocado fruit that has fallen from the trees must be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. Fallen avocado fruit may not be included in field containers of fruit brought to the packinghouse to be packed for export.

(d) *Mitigation measures for *H. lauri*, *H. trifasciatus*, and *S. catenifer*.* Avocados must either be grown in places of production located in departments of Colombia that are designated as free of *H. lauri*, *H. trifasciatus*, and *S. catenifer* in accordance with § 319.56–5 of this chapter, or be grown in places of production that have been surveyed by the NPPO of Colombia and have been determined to be free of these pests. If the latter, the NPPO must maintain a buffer zone of 1 kilometer around the perimeter of the place of production, and must survey representative areas of the place of production and buffer zone for *H. lauri*, *H. trifasciatus*, and *S. catenifer* monthly, beginning no more than 2 months before harvest, in accordance with a survey protocol approved by APHIS. If one or more *H. lauri*, *H. trifasciatus*, or *S. catenifer* is detected during a survey of the place of production or buffer zone, the place of production will be suspended from the export program for avocados to the continental United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions to reestablish pest freedom have been implemented.

(e) *Harvesting requirements.* Harvested avocados must be placed in

field cartons or containers that are marked with the official registration number of the place of production. The place of production where the avocados were grown must remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. The fruit must be moved to a registered packinghouse within 3 hours of harvest or must be protected from fruit fly introduction until moved. The fruit must be safeguarded in accordance with the operational workplan while in transit to the packinghouse and while awaiting packing.

(f) *Packinghouse requirements.* (1) During the time registered packinghouses are in use for packing avocados for export to the United States, the packinghouses may only accept avocados that are from registered places of production and that are produced in accordance with the requirements of this section.

(2) Avocados must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. All openings to the outside of the packinghouse must be screened or covered by a barrier that prevents pests from entering, as specified within the operational workplan. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(3) Fruit must be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards must remain intact until arrival in the United States.

(4) Shipping documents accompanying consignments of avocados from Colombia that are exported to the United States must specify the place of production at which the avocados were grown as well as the packing shed or sheds in which the fruit was processed and packed. This identification must be maintained until the fruit is released for entry into the United States.

(g) *NPPO of Colombia inspection.* Following any post-harvest processing, inspectors from the NPPO of Colombia must visually inspect a biometric sample of fruit from each place of production at a rate to be determined by APHIS. The inspectors must visually inspect for quarantine pests, including *M. hirsutus*, and must cut a portion of the fruit to inspect for *H. lauri*, *H. trifasciatus*, and *S. catenifer*. If a single quarantine pest is detected during this inspection protocol, the consignment from which the sample was taken is prohibited from being shipped to the

United States. Additionally, if a single *H. lauri*, *H. trifasciatus*, or *S. catenifer* at any life stage is detected during this inspection, the place of production of the infested avocados will be suspended from the export program for avocados to the continental United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions to reestablish pest freedom have been implemented.

(h) *Phytosanitary certificate.* Each consignment of Hass avocados from Colombia must be accompanied by a phytosanitary certificate issued by the NPPO of Colombia with an additional declaration stating that the avocados in the consignment were produced in accordance with this section and the operational workplan.

Done in Washington, DC, this 21st day of October 2016.

**Michael C. Gregoire,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2016–26033 Filed 10–26–16; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

[Docket Number EERE–2014–BT–STD–0048]

RIN 1904–AD37

### Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps: Availability of Provisional Analysis Results

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

**ACTION:** Notice of data availability (NODA).

**SUMMARY:** The U.S. Department of Energy (DOE) has completed a provisional analysis to translate the residential central air conditioner and heat pump energy conservation standard levels recommended by the CAC/HP ECS Working Group—expressed in terms of the test procedure at the time of the Working Group negotiations—into levels consistent with the DOE test procedure proposed in the August 2016 test procedure SNOPR. At this time, DOE is not proposing any energy conservation standard for residential central air conditioners and heat pumps. However, it is publishing these analysis results and the underlining assumptions and calculations that might ultimately support a proposed standard. DOE

encourages stakeholders to provide any additional data or information that may improve the analysis.

**DATES:** DOE will accept comments, data, and information regarding this notice of data availability (NODA) no later than November 14, 2016.

Any comments submitted must identify the NODA for central air conditioners and heat pumps, and provide docket number EERE-2014-BT-STD-0048 and/or regulatory information number (RIN) number 1904-AD37. Comments may be submitted using any of the following methods:

(1) *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments. Email: [CACHeatPump2016TP0029@ee.doe.gov](mailto:CACHeatPump2016TP0029@ee.doe.gov) Include the docket number and/or RIN in the subject line of the message.

*Mail:* Ms. Ashley Armstrong, U.S. Department of Energy, Building Technologies Office, Mailstop EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

*Hand Delivery/Courier:* Ms. Ashley Armstrong, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586-6590. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For further information on how to submit a comment, review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 586-6636 or by email: [central\\_air\\_conditioners\\_and\\_heat\\_pumps@ee.doe.gov](mailto:central_air_conditioners_and_heat_pumps@ee.doe.gov).

**ADDRESSES:** The Docket Number EERE-2014-BT-STD-0048, is available for review at [www.regulations.gov](http://www.regulations.gov), including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the [www.regulations.gov](http://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-2014-BT-STD-0048>. The [www.regulations.gov](http://www.regulations.gov) Web page contains instructions on how to access all documents in the docket, including public comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Armstrong, U.S. Department of

Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-6590. Email: [central\\_air\\_conditioners\\_and\\_heat\\_pumps@ee.doe.gov](mailto:central_air_conditioners_and_heat_pumps@ee.doe.gov).

Ms. Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 287-6307. Email: [Johanna.Jochum@hq.doe.gov](mailto:Johanna.Jochum@hq.doe.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **Table of Contents**

- I. Background
- II. Summary of the Analyses Performed by DOE
- III. Issues on Which DOE Seeks Public Comment

#### **I. Background**

On June 27, 2011, DOE published in the **Federal Register** a direct final rule amending the energy conservation standard for residential furnaces and central air conditioners and heat pumps. 76 FR 37408. (The standards set forth in the June 27, 2011 DFR were confirmed in a notice of effective date and compliance dates published in the **Federal Register** on October 31, 2011. 76 FR 67037.)

DOE is amending its energy conservation standards for central air conditioners pursuant to 42 U.S.C. 6295(m)(1), which requires DOE to periodically review its already established energy conservation standards for a covered product. More specifically, the Energy Policy and Conservation Act of 1975 (EPCA), as amended by the Energy Independence and Security Act of 2007 (EISA 2007), requires that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards. As DOE's last final rule for residential central air conditioners and heat pumps energy conservation standards was issued on June 27, 2011, DOE must act by June 27, 2017.

On July 14, 2015, DOE published a notice of intent to form a working group to negotiate energy conservation standards for central air conditioners and heat pumps and requested nominations from parties interested in serving as members of that working group. 80 FR 40938. This working group ("CAC/HP ECS Working Group"), which ultimately consisted of 15 members in

addition to one member from the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC), and one DOE representative, came to a consensus on January 19, 2016 to recommend the energy conservation standard levels outlined in the ASRAC Working Group Final Term Sheet ("the Term Sheet"). (ASRAC Working Group Term Sheet, Docket No. EERE-2014-BT-STD-0048, No. 0076). On August 24, 2016, DOE published a supplemental notice of proposed rulemaking (the August 2016 SNOPR) that incorporates some of those recommendations into DOE's test procedure for central air conditioners and heat pumps. 81 FR 58164.

Several of the Term Sheet recommendations are relevant to this NODA. Recommendation #8 of the Term Sheet recommended standard levels, in terms of SEER, EER, and HSPF, based on the test procedure that was in place at the time of the CAC/HP ECS Working Group negotiations. Recommendation #9 of the Term Sheet provided translated values, in terms of SEER2 and EER2, for some of the recommended standard levels in Recommendation #8 that would be consistent with the proposed amendments to the test procedure outlined in the November 2015 test procedure SNOPR.<sup>1</sup> 80 FR 69278 (Nov. 9, 2015). The Term Sheet also provided translated values for heating efficiency of split system and single-package heat pumps, in terms of HSPF2, using an alternative test procedure favored by some of the Working Group members. Recommendation #9 of the Term Sheet stated that the energy conservation standards for small-duct high velocity and space constrained products should remain unchanged from current levels (*i.e.* that there would be no change in stringency), but did not provide translated values. (ASRAC Term Sheet, No. 76 at pp. 4-5)

Based on comments received on the November 2015 test procedure SNOPR, DOE continued work on the concurrent rulemaking to amend the CAC/HP test procedure while the CAC/HP ASRAC Working Group was negotiating the standard levels for CACs and HPS. DOE published a test procedure SNOPR on August 24, 2016 proposing revisions to the amendments of the November 2015 NOPR. 81 FR 58164. The August 2016 test procedure SNOPR included translated HSPF2 levels for split-system and single-package heat pumps, but did not include translated levels for small-

<sup>1</sup> DOE proposed similar amendments most recently in the August 2016 SNOPR published on August 24, 2016. 81 FR 58164.

duct high velocity and space constrained products.

This NODA provides provisional translations of the CAC/HP Working Group's recommended energy conservation standard levels for small-duct high velocity and space

constrained products (which are in terms of the test procedure at the time of the 2015–2016 Negotiations) into levels consistent with the test procedure proposed in the August 2016 test procedure SNOPR. As mentioned, translated values for all other product

classes can be found in the Term Sheet<sup>2</sup> or August 24, 2016 test procedure SNOPR. 81 FR 58164.

## II. Summary of the Analyses Performed by DOE

TABLE 1—PROVISIONAL TRANSLATIONS OF CAC/HP WORKING GROUP-RECOMMENDED ENERGY CONSERVATION STANDARD LEVELS

Product class	CAC/HP working group recommendation		August 2016 test procedure SNOPR translation	
	SEER	HSPF	SEER2	HSPF2
Small-Duct High-Velocity Systems .....	12	7.2	12	6.1
Space-Constrained Air Conditioners .....	.....	.....	11.6*/11.8**	.....
Space-Constrained Heat Pumps .....	12	.....	11.5*/11.9**	6.3

\* Estimated SEER2 at 0.50 in. wc.

\*\* Estimated SEER2 at 0.30 in. wc.

### A. Small-Duct High-Velocity

The August 2016 test procedure SNOPR made minor changes to the procedure for measuring SEER in SDHV systems. Specifically, rather than testing with external static pressure that varies with capacity from 1.1 to 1.2 inches water column (in. wc.), consistent with term sheet Recommendation #2, the August 2016 SNOPR proposed testing all SDHV units with 1.15 in. wc. external static pressure. 81 FR 58163 (Aug. 24, 2016). Translation of SEER for this test procedure change would involve a slight reduction for low-capacity unit, no change for medium-capacity units, and a slight increase for high-capacity units. Rather than setting three different SEER levels for these products, DOE's translated level represents an average translation, equivalent to no change in the value. Consequently, current SEER ratings would not change should DOE adopt the test procedure proposed in the August 2016 SNOPR, per the CAC/HP Working Group's Recommendation #8 to keep the current 12 SEER standard.

The August 2016 test procedure SNOPR proposes changes to the test procedure for determining heating performance, including for SDHV systems. Consequently, HSPF2 numerical values for SDHV will be different than the current HSPF numerical values. In the August 2016 test procedure, DOE interpolated between the HSPF2 values resulting from the heating load line slope factor options presented by the CAC/HP Working Group in the Term Sheet to translate current HSPF standard levels to HSPF2 levels in terms of the proposed heating load line slope factor

for split-system heat pumps. DOE found that this methodology resulted in a 15% reduction from HSPF to HSPF2 ratings. 81 FR at 58191. For SDHV heat pump products, DOE reviewed split-system heat pump test data to determine the appropriate HSPF to HSPF2 translation and found that the same 15% reduction in HSPF to HSPF2 would be appropriate to apply to SDHV heat pump products as well. Thus, to translate the CAC/HP Working Group recommendation a HSPF2 value consistent with the August 2016 test procedure SNOPR achieve the HSPF2 values presented in this NODA, DOE applied a 15% reduction to the current SDHV HSPF standard.

### B. Space-Constrained Products

For the space-constrained air conditioner SEER standard level translation, DOE reviewed existing test data, adjusted relevant measurements based on indoor fan performance data to account for the test procedure changes (e.g., increased ESP), and translated the levels based on the average impact. DOE reviewed test data for multiple blower-coil split-system space-constrained air conditioners. Because these data are for blower-coil systems tested at static pressures lower than those proposed in the August 2016 test procedure SNOPR, DOE had to adjust the data for a relevant translation. Under 10 CFR 429.16, ratings for split-system space-constrained products must include a coil-only efficiency representation of the least efficient coil-only combination. To derive a space-constrained coil-only SEER rating based on the test data, DOE replaced the tested indoor fan power with 365 W/1000 CFM, and recalculated the SEER rating. The 365 W/1000 CFM

is the default fan power value in the current test procedure, which represents indoor fan performance at the operating conditions specified in the current test procedure.

The August 2016 test procedure SNOPR proposed that split-system coil-only products be tested at a minimum external static pressure of 0.5 in. wc. To adjust for this change, DOE replaced the tested indoor fan power with 441 W/1000 CFM, and recalculated the SEER rating. The 441 W/1000 CFM is the default fan power value recommended in the CAC/HP Working Group Term Sheet and proposed in the August 2016 test procedure SNOPR to represent split-system coil-only blower power consumption at 0.5 in. wc., which reduced the space-constrained coil-only SEER value by an average of 4%. ASRAC Term Sheet, No. 76 at p. 3; 81 FR at 58185 (Aug. 24, 2016). DOE applied this 4% reduction to the SEER standard level recommended by the CAC/HP Working Group (to maintain stringency equivalent to the current space constrained air conditioner 12 SEER standard) to derive the translated SEER2 level in Table 1. DOE also evaluated the impact on SEER assuming operation at 0.30 in. wc., as recommended by the CAC/HP ECS Working Group, given that the test procedure is not finalized and DOE's proposals may change. To estimate SEER at 0.30 in. wc., DOE replaced the tested indoor fan power with 406 W/1000 CFM, and recalculated the SEER rating. The 406 W/1000 CFM is the default fan power value recommended in the CAC/HP Working Group Term Sheet and proposed in the August 2016 test procedure SNOPR to represent split-

<sup>2</sup> Available at <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0048-0076>.

system mobile home coil-only blower power consumption at 0.30 in. wc. (ASRAC Term Sheet, No. 76 at p. 3) 81 FR at 58185 (Aug. 24, 2016). The space-constrained coil-only SEER reduced by an average of 2%. DOE applied this 2% reduction to the SEER standard level recommended by the CAC/HP Working Group (to maintain stringency equivalent to the current space constrained air conditioner 12 SEER standard) to derive the translated SEER2 level in Table 1.

For the space-constrained heat pump SEER translation, DOE used a similar methodology as it used for space-constrained air conditioners, but the adjustments to blower power were slightly different. Section 429.16 requires that split-system heat pumps have blower-coil efficiency representations. In addition, the August 2016 test procedure SNOPT proposed that split-system coil-only products be tested at a minimum external static pressure of 0.5 in. wc., which is higher than the 0.1 to 0.2 in. wc. at which these products are currently. DOE replaced the tested indoor fan power with fan power at 0.5 in. wc. determined from product specification sheets and recalculated SEER. The tested SEER reduced by an average of 4% to 11.5, as listed in Table 1 of this preamble. DOE also evaluated the impact on SEER reduction, assuming operation at 0.30 in. wc., as recommended by the CAC/HP ECS Working Group, given that the test procedure is not finalized and DOE's proposals may change. DOE replaced the tested indoor fan power with fan power at 0.30 in. wc. determined from product specification sheets and recalculated SEER. The tested SEER reduced by an average of 1% to 11.9, as listed in Table 1 of this preamble.

For the space-constrained heat pump HSPF translation, DOE used the same methodology as it used for its SDHV system HSPF translation (*i.e.*, applying a 15% reduction). See section II.A.

### III. Issues on Which DOE Seeks Public Comment

DOE is interested in receiving comments and views of interested parties concerning the translation of SEER and HSPF values to SEER2 and HSPF2 values shown in Table 1 for spaced-constrained and SDHV products.

The purpose of this NODA is to notify industry, manufacturers, consumer groups, efficiency advocates, government agencies, and other stakeholders of the publication of an analysis of potential energy conservation standards for commercial and industrial fans and blowers.

Stakeholders should contact DOE for any additional information pertaining to the analyses performed for this NODA.

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

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2016-26007 Filed 10-26-16; 8:45 am]

**BILLING CODE 6450-01-P**

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1207

#### RIN 2590-AA78

### Minority and Women Inclusion Amendments

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Housing Finance Agency (FHFA or Agency) is issuing notice and providing an opportunity for the public to comment on proposed amendments to its regulations on minority and women inclusion. Those regulations, require the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, Enterprises), and the Federal Home Loan Banks (Banks or Bank System) (collectively, the regulated entities) and the Bank System's Office of Finance to promote diversity and ensure the inclusion and utilization of minorities, women, and individuals with disabilities and minority-, women-, and disabled-owned businesses in all business and activities at all levels, including management, employment, and contracting. The proposed amendments would clarify the scope of the regulated entities' obligation to promote diversity and ensure the inclusion and utilization of minorities, women, and individuals with disabilities in all business and activities; require each regulated entity to develop and adopt strategies for promoting diversity and ensuring the inclusion of minorities, women, and individuals with disabilities; and improve the usefulness and comparability of the information the regulated entities report to FHFA about their efforts to advance diversity and inclusion.

**DATES:** Written comments must be received on or before December 27, 2016.

**ADDRESSES:** You may submit your comments, identified by Regulatory

Information Number (RIN) 2590-AA78, by any of the following methods:

- **Agency Web site:** [www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input).
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by email to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by the Agency. Please include Comments/RIN 2590-AA78 in the subject line of the message.

- **Courier/Hand Delivery:** The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA78, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. to 5 p.m.

- **U.S. Mail, United Parcel Service, Federal Express or Other Mail Service:** The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA78, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219.

**FOR FURTHER INFORMATION CONTACT:** Sharron P. A. Levine, Director, Office of Minority and Women Inclusion, [Sharron.Levine@fhfa.gov](mailto:Sharron.Levine@fhfa.gov), (202) 649-3496; Eric Howard, Deputy Director, Office of Minority and Women Inclusion, [Eric.Howard@fhfa.gov](mailto:Eric.Howard@fhfa.gov), (202) 649-3009; or James Jordan, Assistant General Counsel, [James.Jordan@fhfa.gov](mailto:James.Jordan@fhfa.gov), (202) 649-3075 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

### SUPPLEMENTARY INFORMATION:

#### I. Comments

FHFA invites comments on all aspects of the proposed amendments and will take all comments into consideration before issuing a final rule. Copies of all comments received will be posted without change on the FHFA Web site at <http://www.fhfa.gov> and will include any personal information you provide, such as your name, address, email address, and telephone number. Copies of all comments received will be made available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. To make an appointment to

inspect comments, please call the Office of General Counsel at (202) 649-3804.

## II. Objectives

The objectives of the proposed amendments are to:

- Ensure that the regulated entities<sup>1</sup> fulfill the letter and spirit of their legal obligation to promote diversity and ensure the inclusion and utilization of minorities, women, and individuals with disabilities as well as minority-, women-, and disabled-owned businesses, in all their business and activities;
- Clarify that the requirement to promote diversity and inclusion applies to all the regulated entities' operational, commercial and economic endeavors, including management, employment, contracting, capital market transactions, and affordable housing and community investment programs;
- Require the regulated entities to develop a stand-alone diversity and inclusion strategic plan or incorporate diversity and inclusion into its existing strategic planning process and adopt strategies for promoting diversity and ensuring the inclusion of minorities, women, and individuals with disabilities as well as minority-, women-, and disabled-owned businesses;
- Require the regulated entities to amend their policies on equal opportunity in employment and contracting to include sexual orientation, gender identity, and status as a parent to the list of protected classifications;
- Encourage the regulated entities to expand contracting opportunities for minorities, women, and individuals with disabilities by working with prime contractors (tier 1) to provide subcontracting (tier 2) opportunities to minority-, women-, and disabled-owned businesses;
- Affirm that the regulated entities are authorized to expand the scope of their outreach and inclusion programs beyond the requirements of the Rule, which focuses on minorities, women, and individuals with disabilities; and
- Improve the usefulness and comparability of the annual reports to FHFA by requiring that the regulated entities provide information about their efforts to advance diversity and inclusion through capital market transactions, affordable housing and community investment programs,

<sup>1</sup> For readability, where the preamble refers to a "regulated entity" or the "regulated entities" the provisions apply equally to the Office of Finance, unless such application would conflict with a statute or regulation that specifically distinguishes the treatment of the Office of Finance from the regulated entities.

initiatives to improve access to mortgage credit, and strategies for promoting the diversity of supervisors and managers.

## III. Background

Section 1116 of the Housing and Economic Recovery Act of 2008 (HERA) amended section 1319A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), (12 U.S.C. 4520), to require, in part, that the regulated entities establish or designate an office to carry out the requirements of an Office of Minority and Women Inclusion (OMWI). That office is responsible for: Fulfilling the requirements of section 1116 of HERA that include all matters relating to diversity in the entity's management, employment, and business activities; developing and implementing standards and procedures to promote diversity in all business and activities of the regulated entity; and submitting an annual report to FHFA detailing the actions taken to promote diversity and inclusion. Furthermore, 12 U.S.C. 1833e,<sup>1</sup> and Executive Order 11478,<sup>2</sup> which is made applicable to FHFA and its regulated entities by 12 U.S.C. 1833e, generally require FHFA and the regulated entities to promote equal opportunity in employment.

FHFA has adopted regulations to implement section 1116 of HERA, 12 U.S.C. 1833e, and in conformance with Executive Order 11478, as amended, to set forth the minimum requirements for the affirmative program for equal opportunity and reporting requirements for the regulated entities.<sup>3</sup> Those regulations, located at 12 CFR part 1207, require each regulated entity to establish an OMWI office, or to designate another office, that would be responsible for fulfilling the entity's OMWI responsibilities under the statute and the Rule. Each of these entities must implement policies and procedures to ensure, to the maximum extent possible consistent with financially safe and sound business practices, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses in all business and activities and at all levels of the regulated entity,

<sup>1</sup> See Public Law 101-73, title XII, sec. 1216, Aug. 9, 1989, 103 Stat. 529; Public Law 102-233, title III, sec. 302(a), Dec. 12, 1991; Public Law 110-289, div. A, title II, sec. 1216(g), July 30, 2008, 122 Stat. 2793; Public Law 111-203, title III, sec. 367(9), July 21, 2010, 124 Stat. 1557.

<sup>2</sup> Executive Order 11478—Equal Employment Opportunity in the Federal Government, August 8, 1969, as amended.

<sup>3</sup> See 75 FR 1289 (January 11, 2010), 75 FR 81395 (December 28, 2010), 79 FR 35960 (June 25, 2014), and 80 FR 25209 (May 4, 2015).

including in management, employment, procurement, insurance, and all types of contracts.<sup>4</sup> Part 1207 also requires each regulated entity to submit to the FHFA Director, on or before March 1 of each year, a detailed annual report summarizing their activities during the reporting year (January 1 through December 31 of the preceding year) to comply with the OMWI regulatory requirements.<sup>5</sup>

In addition, part 1207 provides that the FHFA Director has broad enforcement authority in that he or she may enforce this Rule and standards issued under it in any manner and through any means within his or her authority, including through identifying matters requiring attention, corrective action orders, directives, or enforcement actions under 12 U.S.C. 4513b and 4514.<sup>6</sup> To that end, the FHFA Director may conduct examinations of a regulated entity's activities under, and in compliance with, this part pursuant to 12 U.S.C. 4517.<sup>7</sup>

## IV. Existing Examination Guidance and Regulatory Requirements for Strategic Planning

Strategic planning is critical to the success of any organization, including the regulated entities. As noted in FHFA's Examination Manual (EM) module entitled, *Strategic Planning*, "in its most fundamental form, strategic planning is the process of evaluating where the institution is, determining where the board would like the institution to go and which risks it is willing to accept, and developing a plan to get there."<sup>8</sup> The EM also notes that, "strategic planning is the process of establishing goals and developing a roadmap for achieving those goals."<sup>9</sup> A strategic plan serves as the primary means to communicate the board of directors' long-term vision for the organization and establish measurable goals and objectives for achieving this vision. The EM also identifies the following as components of an effective strategic planning process:

- An analysis of the regulated entity's financial and operational condition;
- An assessment of internal and external risks to the regulated entity;
- An evaluation of the regulated entity's strengths and weaknesses;

<sup>4</sup> 12 CFR 1207.21(b).

<sup>5</sup> 12 CFR 1207.23.

<sup>6</sup> 12 CFR 1207.24.

<sup>7</sup> *Id.*

<sup>8</sup> FHFA Examination Manual, Strategic Planning Module, March 2013, [http://www.fhfa.gov/SupervisionRegulation/Documents/StrategicPlanning\\_Module\\_Final\\_Version\\_1.0-508.pdf](http://www.fhfa.gov/SupervisionRegulation/Documents/StrategicPlanning_Module_Final_Version_1.0-508.pdf).

<sup>9</sup> *Id.*

- An evaluation of opportunities or potential threats facing the regulated entity;
- The financial and operational goals and realistic projections that serve as benchmarks for achieving desired results within a defined time frame;
- The process by which the regulated entity plans to reach its financial and operational goals;
- The identification of those responsible for achieving the goals; and
- A means to monitor the results on an ongoing basis.

The regulated entities are also subject to the Agency's Prudential Management and Operations Standards (PMOS) found in part 1236 of FHFA's regulations. Pursuant to the PMOS guidelines, the board of directors of each regulated entity is responsible for adopting appropriate business strategies, policies, and procedures. The PMOS guidelines also establish standards by which the board of directors is to review and approve all major strategies and policies at least annually, and make any necessary revisions to ensure consistency with the overall business plan.

FHFA regulations at 12 CFR 1239.31 provide detailed information on the strategic planning requirements for each Bank including a requirement that their board of directors have a strategic business plan in effect at all times. FHFA regulation 12 CFR 1239.31(b) requires the board of directors to (1) review the strategic business plan at least annually; (2) amend the plan as appropriate; (3) re-adopt the plan at least every three years; and (4) establish management reporting requirements and monitor implementation of the strategic business plan and the operating goals and objectives contained in it.

## V. Importance of Diversity and Inclusion Strategic Planning

A significant and growing body of research provides evidence that having a diverse and inclusive workforce and leadership team benefits an organization by increasing its ability to be creative, innovative, and solutions-oriented.<sup>10</sup> Many organizations, however, fail to

recognize that diversity and inclusion are vital components of long-term business viability and success and, as a result, have strictly limited them solely to the human resource function. Organizations that effectively manage diversity and inclusion have integrated the practice into all of their processes by developing and implementing comprehensive diversity and inclusion strategies. Their path to success starts with senior leadership's commitment to integrate diversity and inclusion into the business, at all levels, and to manage it in the same way as any other business strategy.

Effective strategic business planning, executive sponsorship, communication, change management, project management, day-to-day execution, and measurement are all regarded as business fundamentals for most functional areas in an organization. The research supports the premise that the ability to assess the current state and measure the progress of its diversity and inclusion efforts is also a fundamental and prudent business practice.

## VI. Ongoing Efforts by the Regulated Entities To Advance Diversity and Ensure Inclusion

The Rule became effective on January 27, 2011, and set forth the minimum requirements for the regulated entities' diversity and inclusion programs and reporting requirements. They responded to the new regulatory requirements by establishing an OMWI office or designating another office responsible for fulfilling the entity's OMWI responsibilities. They implemented policies, procedures, and programs to improve human resource processes for recruiting, hiring, and promoting minorities, women, and individuals with disabilities. They also focused attention on identifying diverse suppliers and improving outreach efforts to increase participation opportunities for diverse businesses. These efforts have resulted in improvements in workforce diversity and the utilization of diverse vendors. In order to advance and promote diversity and inclusion, the regulated entities currently engage in one or more of the following activities and initiatives:

- Conducting diversity and inclusion education and training sessions for their directors, managers, and employees;
- Establishing mentoring programs for employees, particularly minorities and women;
- Partnering with minority youth development organizations;
- Sponsoring internship programs for high school and college students;

- Sponsoring and/or supporting community events and celebrations;
- Establishing diversity and inclusion councils;
- Establishing and/or sponsoring employee resource or affinity groups;
- Expanding the scope of outreach activities and initiatives to target and recruit minorities, women, and individuals with disabilities for employment;
- Expanding the scope of outreach activities and initiatives to target minority-, women-, and disabled-owned businesses for contracting opportunities; and
- Marketing to diverse communities.

Many of these efforts and initiatives have enabled or enhanced the ability of the regulated entities to promote opportunities for minorities, women, and individuals with disabilities. While each has worked to build and improve the foundation for advancing diversity and inclusion within its organization, more can be done to expand the breadth, scope, and impact of its existing program. Gaps remain in the regulated entities' processes and approaches for assessing, planning, and executing diversity and inclusion programs that fulfill the letter and spirit of section 1116 of HERA.

## VII. The Proposed Amendments

The proposed amendments would revise the Rule to require each regulated entity to engage in diversity and inclusion strategic planning. They would either develop a stand-alone diversity and inclusion strategic plan or incorporate diversity and inclusion into their existing strategic planning process. Under the proposal, their board of directors must establish an organizational tone for enhanced focus on, and commitment to, diversity and inclusion. The board of director's ongoing oversight assists in creating the conditions for success by ensuring alignment with the overall strategic and operational direction of the regulated entity. Senior management teams also play an important role in the development and execution of the diversity and inclusion strategic plan.

The regulated entities have mainly focused on workforce and supplier diversity to date, largely as a result of the Rule's primary focus on requirements for establishing an OMWI, ensuring equal opportunity in employment and contracting, and developing and submitting reports on the efforts taken to promote diversity and ensure inclusion in employment and contracting. The proposed amendments emphasize the need to expand the scope of diversity and

<sup>10</sup> Page, Scott E., *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*, Princeton: Princeton UP, 2007. Print. [https://books.google.com/books?id=FAFVHnJ7uK0C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com/books?id=FAFVHnJ7uK0C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false); *Global Diversity and Inclusion Fostering Innovation Through a Diverse Workforce*, Forbes, July 2011, [http://www.forbes.com/forbesinsights/innovation\\_diversity/index.html](http://www.forbes.com/forbesinsights/innovation_diversity/index.html); and Barta, T., Kleiner, M., and Neumann, T., McKinsey Quarterly, *Is There a payoff from top-team diversity?*, April 2012, <http://www.mckinsey.com/business-functions/organization/our-insights/is-there-a-payoff-from-top-team-diversity>.



inclusion considerations to their other business and operational areas. The proposed revision would require the regulated entities to broaden the focus of their existing diversity and inclusion goals and strategies to address all aspects of their business and operations beyond workforce and supplier diversity only, consistent with section 1116 of HERA.

The proposed amendments would encourage the regulated entities to develop and implement procurement programs and initiatives that expand contracting opportunities for minorities, women, and individuals with disabilities and minority-, women-, and disabled-owned businesses beyond contracting with prime contractors (tier 1) by using subcontracting arrangements (tier 2). This could entail negotiating subcontracting opportunities for minorities, women, and individuals with disabilities in contracts between a regulated entity and prime contractors. This could also involve entering into contracts with majority-owned businesses that advance opportunities for minorities, women, and individuals with disabilities. A new annual reporting requirement would include additional information about the number of contracts and the amounts paid to prime contractors (tier 1) for subcontracts (tier 2) with minorities or minority-owned businesses, women or women-owned businesses, and individuals with disabilities or disabled-owned businesses during the reporting year and the diverse spend with non-diverse-owned businesses.

The Rule implements 12 U.S.C. 1833e and conforms with Executive Order 11478, as amended, to require the regulated entities to commit to the principles of equal opportunity in employment and prohibit discrimination on the basis of race, color, national origin, sex, religion, age, disability status, or genetic information. Executive Orders 13087 and 13152 amended Executive Order 11478 to add sexual orientation and status as a parent to the list of protected bases.<sup>11</sup> Executive Order 13672, signed on July 21, 2014, amended Executive Orders 11478 and 11246 to extend protection against discrimination in hiring and employment in the civilian federal workforce on the basis of gender

identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.<sup>12</sup> The proposed amendments would require the regulated entities to amend their policies on equal opportunity in employment and contracting to prohibit discrimination on the basis of sexual orientation, gender identity, and status as a parent.

The scope of the diversity and inclusion obligations to be satisfied by the regulated entities varies depending on the source of the authority. As previously noted, FHFA's Rule implements 12 U.S.C. 1833e, which applies the requirements of sections 1 and 2 of Executive Order 11478 to the regulated entities. Section 1 requires the regulated entities to provide equal employment opportunity for all persons, prohibit employment discrimination, and promote equal employment opportunity through a continuing affirmative program. Section 2 describes the elements of an affirmative program of equal employment opportunity, which include providing sufficient resources for administering the program in a positive and effective manner; engaging in recruitment activities that reach all sources of job candidates; fully utilizing the skills of all employees; providing employees opportunities to enhance their skills so they may perform at their fullest potential and advance in accordance with their abilities; providing training and advice to managers and supervisors to assure their understanding and implementation of the program; assuring participation at the local level with other employers, schools, and public and private groups in cooperative efforts to improve community conditions that affect employability; and providing for periodic evaluations of the effectiveness of the program.

FHFA acknowledges that diversity encompasses the broad range of demographic characteristics identified in Executive Order 11478. However, section 1116 of HERA only focuses on the responsibility of the regulated entities to promote diversity and ensure the inclusion of minorities and women. Therefore, in accordance with the statutory requirements, the primary focus of the regulatory text amendments is on advancing and promoting opportunities for minorities, women, and individuals with disabilities as well

as minority-, women-, and disabled-owned businesses. Nonetheless, FHFA affirms that each regulated entity is authorized to expand the scope of its diversity program beyond the requirements of Executive Order 11478, section 1116 of HERA, and the regulations at 12 CFR part 1207. As a result, each regulated entity is encouraged to incorporate other aspects of diversity and inclusion (*e.g.*, Lesbian, Gay, Bisexual, and Transgender (LGBT)-owned and veteran-owned businesses) into their respective OMWI outreach and inclusion programs, and in turn, their strategic planning processes as long as the broader focus does not detract from or diminish efforts to promote opportunities for minorities, women, and individuals with disabilities and minority-, women-, and disabled-owned businesses.

#### *Section 1207.1 Definitions*

FHFA proposes to add, revise, or remove several definitions in § 1207.1 to clarify the existing and new regulatory requirements under part 1207. Where FHFA proposes to add or revise terms, FHFA has reviewed several external sources in search of industry standard definitions. FHFA has determined that there is no uniformly accepted term of art or single source for the newly proposed terms, so FHFA has adapted the substance found in multiple external definitions<sup>13</sup> to account for the nature and needs of FHFA's regulated entities.

FHFA proposes to add definitions for "Applicant" and "Promotion" to clarify the scope of the information the regulated entities are required to report to FHFA under existing § 1207.23(b)(3) and § 1207.23(b)(7). FHFA is proposing a new definition of "Diversity and inclusion strategic planning" that would describe the process the regulated entities must engage in to develop strategies for promoting diversity and ensuring the inclusion of minorities, women, and individuals with disabilities.

FHFA proposes to add definitions for "Prime contractor (tier 1)" and "Subcontractor (tier 2)" to identify two types of contracting arrangements available to the regulated entities to promote diversity and the inclusion of minorities, women, and individuals with disabilities and minority-,

<sup>11</sup> Executive Order 13087—Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, May 28, 1998, <https://www.gpo.gov/fdsys/pkg/FR-1998-06-02/pdf/98-14689.pdf> and Executive Order 13152; Executive Order 13152—Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, May 2, 2000, <https://www.gpo.gov/fdsys/pkg/WCPD-2000-05-08/pdf/WCPD-2000-05-08-Pg977.pdf>.

<sup>12</sup> Executive Order 13672—Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity, July 21, 2014, <https://www.gpo.gov/fdsys/pkg/CFR-2015-title3-vol1/pdf/CFR-2015-title3-vol1-eo13672.pdf>.

<sup>13</sup> For example, the proposed definition of "Subcontractor (Tier II)" was adapted from definitions found in regulations implementing the Small Business Act, Title 41 of the CFR addressing Public Contracts and Property Management, and the Federal Acquisition Regulations as well as definitions implemented by the National Association of Women in Construction and financial institutions such as Citi and KeyBank.



women-, and disabled-owned businesses. FHFA also proposes to add a definition for “Diversity spend with non-diverse-owned businesses” to describe the dollar amount a regulated entity pays to a firm that is not owned by a minority, woman, or individual with a disability, for professional services provided by a partner, member, or other equity owner who is a minority, woman, or individual with a disability. This type of arrangement can occur when an organization bases its decision to engage a majority-owned law practice or consulting firm based upon its interactions with a specific partner(s) or non-controlling owner(s) who is also a minority, woman, or individual with a disability.

FHFA proposes to add a definition for “Minority-serving financial institution” that would be used by the regulated entities in their efforts to promote access to single- and multi-family mortgage credit, including an assessment of the challenges and impediments financial institutions that primarily serve minorities face in their efforts to access the secondary mortgage market. The proposed definition closely follows the Federal Deposit Insurance Corporation’s (FDIC) Policy Statement Regarding Minority Depository Institutions<sup>14</sup> and encompasses depository and non-depository financial institutions.

FHFA is proposing to revise the definition of “Women-owned business” by removing one of the standards used to determine whether a business qualifies as a women-owned business. The existing definitions for minority-, women-, and disabled-owned businesses include criteria for determining the diverse status of a business based on who owns or controls the business as well as who accrues the profits or losses generated by the business. The existing definition of “Women-owned business” also includes a criterion based on the percentage of senior management positions held by one or more women. FHFA believes this criterion is unnecessary due to the emphasis the existing definition places on ownership and control. The proposed removal of this criterion for women-owned businesses would bring consistency to the Rule’s standards for determining ownership and control of minority- and disabled-owned businesses. FHFA is also proposing to revise the definitions of “Disabled-owned business,” “Minority-owned business,” and “Women-owned

business” by clarifying that ownership can be direct or indirect. By revising the definition, FHFA wishes to encourage each regulated entity to develop and implement procurement programs and initiatives without regard to the distinction between businesses owned by individuals/natural persons and legal persons, such as corporations, as long as the ultimate ownership benefits are held by predominantly disabled, minority, or women owners.

Finally, FHFA is proposing to remove the definitions for “Director,” “FHFA,” “Office of Finance,” and “regulated entity” because they are now defined in 12 CFR part 1201, which defines terms that apply to all FHFA regulations.

#### *Section 1207.2 Policy, Purpose, and Scope*

FHFA proposes to revise § 1207.2(c) to address the scope of each regulated entity’s responsibility to promote diversity and ensure the inclusion and utilization of minorities, women, and individuals with disabilities and minority-, women-, and disabled-owned businesses. The proposed regulatory language would place emphasis on the requirement to promote diversity and ensure inclusion when awarding contracts for goods and services.

#### *Section 1207.3 Limitations*

FHFA is proposing to revise existing § 1207.3(b), which currently requires each regulated entity’s contracts for goods over \$10,000 to include a material clause that commits the contractor to practice the principles of equal employment opportunity and nondiscrimination and to submit demographic data reports with respect to their workforce. FHFA proposes to increase the material clause threshold to \$25,000 to alleviate administrative burdens the regulated entities encounter when routinely purchasing lower-value goods such as materials and supplies necessary for day-to-day operations. However, FHFA welcomes comments on the potential impact the proposed threshold change could have on small businesses and, specifically, on the dollar amount of the threshold.

FHFA is also proposing to add paragraphs (c) and (d) to existing § 1207.3. Proposed § 1207.3(c) would require each regulated entity to submit to FHFA within 90 days after the effective date of the amended Rule, a list of the types of contracts it considers exempt under § 1207.3(b) and any thresholds, exceptions, and limitations it establishes for implementing § 1207.21(c)(2). Proposed § 1207.3(d) would then require each regulated

entity to notify FHFA within 30 days after any additional changes to the list.

#### *Section 1207.20 Office of Minority and Women Inclusion*

FHFA is proposing to revise paragraphs (b) and (c) of § 1207.20 to clarify that a regulated entity’s board of directors has ultimate responsibility for achieving the requirements of part 1207—not the regulated entity’s OMWI (or office designated to perform the responsibilities of part 1207). The proposed revision would clarify that the OMWI is responsible for leading the regulated entity’s efforts to promote diversity and inclusion, and that any officer(s) designated to direct and oversee the diversity and inclusion programs has/have the necessary qualifications to effectively administer the requirements of part 1207.

#### *Section 1207.21 Promoting Diversity and Ensuring Inclusion in All Business and Activities*

FHFA is proposing to revise the title of existing § 1207.21 from “Equal opportunity in employment and contracting” to “Promoting diversity and ensuring inclusion in all business and activities” to accurately reflect the scope of requirements for advancing diversity and ensuring inclusion in all activities and at every level of the regulated entity, including management, employment and contracting.

FHFA is proposing to amend § 1207.21(a) to add sexual orientation, gender identity, and status as a parent to the list of bases covered under each regulated entity’s equal opportunity statement as required by 12 U.S.C. 1833e, and in conformance with Executive Order 11478.

FHFA is proposing to add a new paragraph to § 1207.21(b)(3) to address the statutory requirement in section 1116(b) of HERA that the regulated entities establish processes that give consideration to the diversity of an applicant when reviewing and evaluating contract proposals and hiring service providers. The proposed rule would require them to develop procedures it would implement for giving consideration to diversity when reviewing and considering contract proposals and hiring service providers.

Proposed § 1207.21(b)(7) would require each regulated entity to establish effective procedures for engaging in diversity and inclusion strategic planning. FHFA is also proposing to revise its allowance that the regulated entities may establish, where commercially reasonable, thresholds, exceptions, and limitations for implementing § 1207.21(b)(7) (proposed

<sup>14</sup> FDIC Policy Statement Regarding Minority Depository Institutions, April 9, 2002, <https://www.fdic.gov/regulations/resources/minority/policy.html>.

§ 1207.21(b)(9)). Under § 1207.3(b), the regulated entities would consider any negative or adverse effects the thresholds, exceptions, and limitations would likely have on contracting opportunities for minorities, women, and individuals with disabilities and minority-, women-, and disabled-owned businesses. The proposal would also ensure that the rationale used to support the thresholds, exceptions, and limitations would not be used to frustrate the intent of the statutory or regulatory requirements to promote diversity and inclusion.

Proposed § 1207.21(d) would require each regulated entity to develop and implement strategies for promoting diversity and ensuring the inclusion of minorities, women, and individuals with disabilities and minority-, women-, and disabled-owned businesses. The board-approved strategies would cover three years and be reviewed and affirmed by the board of directors annually.

Proposed § 1207.21(e)(1) through (e)(3) would establish the minimum requirements for developing a diversity and inclusion strategic plan. The requirements would complement the guidance that has been provided in FHFA's EM, *Strategic Planning*, as well as regulatory requirements and the PMOS guidelines. The proposed amendments would require the regulated entities to include the following components in their diversity and inclusion strategic plans:

- A vision and/or mission statement for fulfilling § 1207.2;
- Measurable goals and objectives for achieving the vision and/or mission statement; and
- A requirement that senior management develop and implement action plans for monitoring and achieving the measurable goals and objectives.

#### *Section 1207.23 Annual Reports—Format and Contents*

FHFA is proposing to revise § 1207.23(b)(3) and (b)(7) to substitute the word “applicants” as defined in § 1207.1 for the words “individuals applying” to clarify the scope of information the regulated entities are required to report to FHFA.

Proposed § 1207.23(b)(9) through (b)(23) revises and/or supplements the minimum requirements for the annual report submitted by each regulated entity. Proposed § 1207.23(b)(9) would require them to report on the diversity of their supervisors and managers as well as provide a description of the strategies and activities it implemented to promote diverse individuals to

supervisory or managerial roles. Proposed § 1207.23(b)(12) would require each regulated entity to provide a description of the strategies, initiatives, and activities it implemented to advance diversity and inclusion in conjunction with capital market or financial transactions, efforts to promote access to credit, and affordable housing and community investment programs. Proposed § 1207.23(b)(16) and § 1207.23(b)(17) would require each regulated entity to report the number and dollar amounts of contracts entered into during the preceding year that it considered exempt under § 1207.3(b). The proposed amendments would also require reporting on the number and dollar amounts of prime contracts and subcontracts that prime contractors had with minorities, women, and individuals with disabilities and minority-, women-, and disabled-owned businesses. Proposed § 1207.23(b)(18) would require that the regulated entity report on diversity spend with non-diverse-owned businesses. Proposed § 1207.23(b)(19) would require the regulated entity to provide the total amounts paid to prime contractors and subcontractors and the percentage that was paid to diverse vendors.

Finally, the proposed amendments would remove most references to the “Office of Finance” found in the existing regulation. The proposed change would neither alter nor reduce the Office of Finance’s responsibility to promote diversity and inclusion and would serve to streamline the text of the regulatory requirements. Therefore, FHFA is proposing to add § 1207.25 to explain that any reference to the regulated entities in part 1207 also applies to the Office of Finance, unless the Office of Finance is otherwise specifically addressed or excluded.

#### **VIII. Consideration of Differences Between the Banks and the Enterprises**

Section 1313(f) of the Safety and Soundness Act, as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks’ cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing this proposed rule, the Director has considered the differences between the Banks and the Enterprises as they relate to the above factors and has determined that the proposed rule

would not adversely affect the Banks taking into account all of the above factors.

#### **IX. Regulatory Impacts**

##### *Paperwork Reduction Act*

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

##### *Regulatory Flexibility Act*

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

##### **List of Subjects in 12 CFR Part 1207**

Disability, Discrimination, Diversity, Equal employment opportunity, Government contracts, Minority businesses, Office of Finance, Outreach, Regulated entities.

##### **Authority and Issuance**

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4526, FHFA proposes to amend part 1207 of title 12 of the Code of Federal Regulations as follows:

#### **PART 1207—MINORITY AND WOMEN INCLUSION**

- 1. The authority citation for part 1207 continues to read as follows:

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

##### **§ 1207.1 [Amended]**

- 2. Amend § 1207.1 by:
- a. Adding a definition for “Applicant” in alphabetical order;
  - b. Removing the definition of “Director”;

- c. Revising the definition of “Disabled-owned business”;
- d. Adding definitions for “Diversity and inclusion strategic planning” and “Diversity spend with non-diverse-owned businesses” in alphabetical order;
- e. Removing the definition of “FHFA”;
- f. Revising the definition of “Minority-owned business”;
- g. Adding a definition for “Minority-serving financial institution” in alphabetical order;
- h. Removing the definition of “Office of Finance”;
- i. Adding a definition for “Prime contractor (tier 1)” and “Promotion” in alphabetical order;
- j. Removing the definition of “Regulated entity”;
- k. Adding a definition for “Subcontractor (tier 2)” in alphabetical order; and
- l. Revising the definition of “Women-owned business”.

The revisions and additions read as follows:

#### § 1207.1 Definitions.

\* \* \* \* \*

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

- (1) The regulated entity acted to fill a particular position;
- (2) The individual followed the regulated entity’s standard process for submitting an application;
- (3) The individual’s expression of interest indicates that the individual possesses the basic qualifications for the position; and
- (4) The individual has not removed him or herself from consideration or otherwise indicated that he or she is no longer interested in the position.

\* \* \* \* \*

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

*Minority-serving financial institution* means a financial institution that serves minority populations primarily, including depository and nondepository institutions where fifty-one percent (51%) or more of the stock is owned by one or more minority individuals or where a majority of the members of the board of directors are minority.

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

*Promotion* means the advancement of an employee within a regulated entity and may be the result of an employee’s

proactive pursuit of a higher job ranking or a reward for good performance. A promotion is typically associated with an increase in an employee’s pay due to additional or enhanced job responsibilities.

\* \* \* \* \*

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

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

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

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

#### § 1207.2 [Amended]

■ 3. Amend § 1207.2 by:

- a. Removing from paragraphs (a) and (b) the phrase “and the Office of Finance”;
- b. Adding in paragraph (b) a comma immediately following the phrase “to the maximum extent possible”; and
- c. Revising paragraph (c).

The revision reads as follows:

#### § 1207.2 Policy, purpose, and scope.

\* \* \* \* \*

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

#### § 1207.3 [Amended]

■ 4. Amend § 1207.3 by:

- a. In paragraph (a), removing the phrase “or the Office of Finance”; and
- b. Revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

#### § 1207.3 Limitations.

\* \* \* \* \*

(b) The contract clause required by § 1207.21(b)(6) and the itemized data reporting on numbers of contracts and amounts involved required under §§ 1207.22 and 1207.23(b)(13) through (22) apply only to contracts for services in any amount and to contracts for

goods that equal or exceed \$25,000 in annual value, whether in a single contract, multiple contracts, a series of contracts or renewals of contracts, with a single vendor.

(c) Within ninety (90) days after the effective date of this regulation each regulated entity shall submit to FHFA a list of the types of contracts it considers exempt under § 1207.3(b) and any thresholds, exceptions, and limitations the regulated entity establishes for the implementation of § 1207.21(c)(2). The submission shall address the criteria identified in § 1207.21(b)(9).

(d) Each regulated entity shall notify FHFA within thirty (30) days after any change in the types of contracts it considers exempt under § 1207.3(b) or any change in the thresholds, exceptions, and limitations the regulated entity establishes for the implementation of § 1207.21(c)(2).

#### Subpart C—[Amended]

■ 5. Amend the heading of subpart C by removing “and the Office of Finance”.

#### § 1207.20 [Amended]

■ 6. Amend § 1207.20 by:

- a. Removing the phrases “and the Office of Finance” and “or the Office of Finance” wherever they appear in paragraph (a); and
- b. Revising paragraphs (b) and (c) to read as follows:

#### § 1207.20 Office of Minority and Women Inclusion.

\* \* \* \* \*

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

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

■ 6. Amend § 1207.21 by:

- a. Revising the section heading;
- b. Removing the phrases “and the Office of Finance”, “and Office of Finance”, “or the Office of Finance” and “and the Office of Finance's” wherever they appear;
- c. Revising the first sentence of paragraph (a);
- d. Revising the last sentence of paragraph (b) introductory text;
- e. Revising paragraph (b)(2);
- f. Redesignating paragraphs (b)(6) through (9) as paragraphs (b)(8) through (11), respectively;
- g. Redesignating paragraphs (b)(3) through (5) as paragraphs (b)(4) through (6), respectively;
- h. Adding new paragraphs (b)(3) and (7);
- i. Revising newly redesignated paragraphs (b)(4), (5), (9), and (10); and
- j. Adding paragraphs (d) and (e).

The revisions and additions read as follows:

#### § 1207.21 Promoting diversity and ensuring inclusion in all business and activities.

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

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

\* \* \* \* \*

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

(3) Give consideration to minority-, women-, and disabled-owned businesses when reviewing and evaluating contract proposals as required under § 1207.2(c);

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

(5) Accept, review, and grant or deny requests for reasonable accommodations of disabilities from employees or applicants for employment;

\* \* \* \* \*

(7) Develop a stand-alone diversity and inclusion strategic plan or

incorporate into its existing strategic plan a diversity and inclusion plan that proactively focuses on promoting the advancement of diversity and inclusion. The stand-alone diversity and inclusion strategic plan and the incorporated diversity and inclusion plan are hereinafter referred to as the diversity and inclusion strategic plan;

\* \* \* \* \*

(9) Identify the types of contracts the regulated entity considers exempt under § 1207.3(b) and any thresholds, exceptions, and limitations the regulated entity establishes for the implementation of § 1207.21(c)(2). The policies and procedures must describe the following:

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

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

(iii) Any negative or adverse impact the implementation of the thresholds, exceptions, or limitations would likely have on contracting opportunities for minorities, women, and individuals with disabilities, and minority-, women-, and disabled-owned businesses.

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

\* \* \* \* \*

(d) *Diversity and inclusion strategic planning.* No later than 45 days after the commencement of each calendar year, the board of directors of each regulated entity shall adopt strategies for promoting diversity and inclusion of minorities, women, and individuals with disabilities, and minority-, women-, and disabled-owned businesses for at least the succeeding three years (*i.e.*, a diversity and inclusion strategic plan). The board of directors of each regulated entity shall review and annually affirm that the diversity and inclusion strategic plan remains applicable and appropriate during the two-year period that follows the adoption of the plan.

(e) *Contents of the diversity and inclusion strategic plan.* The diversity and inclusion strategic plan shall include the following:

(1) A vision and/or mission statement that address the importance of promoting diversity and ensuring the inclusion of minorities, women, and individuals with disabilities in order to fulfill § 1207.2;

(2) Measurable strategic goals and objectives for accomplishing the agreed-upon priorities and intended outcomes developed to advance diversity and ensure the inclusion of minorities, women, and individuals with disabilities at the regulated entity in accordance with § 1207.2; and

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

#### **§ 1207.22 [Amended]**

■ 7. Amend § 1207.22 by removing the phrases “and Office of Finance”, “and the Office of Finance”, “or the Office of Finance”, and “the Office of Finance’s” from the section heading and from wherever else they appear.

#### **§ 1207.23 [Amended]**

■ 8. Amend § 1207.23 by:

■ a. Removing the phrases “and the Office of Finance”, “or the Office of Finance”, and “or the Office of Finance’s” from all paragraphs;

■ b. In paragraphs (b)(3) and (7), removing the phrase “individuals applying” and adding in its place “applicants”;

■ c. Adding “and the Office of Finance” after “each Bank” in paragraph (b)(9)(i); adding “and the Office of Finance” after “each Bank” in paragraph (b)(9)(i)(A); adding “and the Office of Finance” to the end of the sentence in paragraph (b)(9)(B)(ii); adding “and the Office of Finance” after “by the Banks” in paragraph (b)(10);

■ d. Redesignating paragraphs (b)(14) through (20) as paragraphs (b)(19) through (25), respectively;

■ e. Redesignating paragraphs (b)(11) through (13) as paragraphs (b)(13) through (15), respectively;

■ f. Redesignating paragraphs (b)(9) and (10) as paragraphs (b)(10) and (11), respectively;

■ g. Adding new paragraphs (b)(9) and (12);

■ h. Revising newly redesignated paragraphs (b)(14) and (15);

■ i. Adding new paragraphs (b)(16), (17), and (18); and

■ j. Revising newly redesignated paragraphs (b)(19) and (23).

The revisions and additions read as follows:

#### **§ 1207.23 Annual reports—format and content.**

\* \* \* \* \*

(b) \* \* \*

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

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

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

\* \* \* \* \*

(12) A description of strategies, initiatives, and activities the regulated entity implemented to advance diversity and inclusion in conjunction with its efforts to—

(i) Promote access to single- and multi-family mortgage credit by—

(A) Assessing challenges and impediments minority-serving financial institutions face in accessing the secondary mortgage market and/or providing access to single- and multi-family mortgage credit for creditworthy borrowers; and

(B) Supporting lenders who serve minority communities;

(ii) Promote diversity in capital market transactions by—

(A) Assessing challenges and impediments minority-, women-, and disabled-owned businesses face providing capital market or financial transaction services including, but not limited to, those identified in § 1201.1; and

(B) Identifying, considering, and selecting minority-, women-, and disabled-owned businesses to participate in capital market or financial transactions;

(iii) Promote diversity and inclusion in affordable housing and community investment programs;

\* \* \* \* \*

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

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

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

(i) Considered exempt under § 1207.3(b);

(ii) Prime contractors (tier 1) entered into with minorities or minority-owned businesses, women or women-owned businesses, and individuals with disabilities or disabled-owned businesses;

(iii) Subcontractor (tier 2) contracts that prime contractors (tier 1) entered

into with minorities or minority-owned businesses, women or women-owned businesses, and individuals with disabilities or disabled-owned businesses;

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

(i) Considered exempt under § 1207.3(b);

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

(iii) To subcontractors (tier 2) that are minorities or minority-owned businesses, women or women-owned businesses, and individuals with disabilities or disabled-owned businesses in place at the beginning of the reporting year;

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

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

\* \* \* \* \*

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

#### **§ 1207.24 [Amended]**

■ 9. Amend § 1207.24 by removing the phrase “or the Office of Finance’s”.

■ 10. Add § 1207.25 to read as follows:

#### **§ 1207.25 Office of Finance.**

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

Dated: October 18, 2016.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2016-25726 Filed 10-26-16; 8:45 am]

**BILLING CODE 8070-01-P**

**FEDERAL HOUSING FINANCE AGENCY****12 CFR Part 1231**

RIN 2590-AA68

**Indemnification Payments; Correction and Extension of Comment Period****AGENCY:** Federal Housing Finance Agency.**ACTION:** Proposed rule; correction and extension of comment period.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is correcting the regulatory text, and extending the comment period for, the proposed rule published in the **Federal Register** on September 20, 2016, regarding Golden Parachute and Indemnification Payments. FHFA is taking this action to correct and to extend the comment period to allow interested persons additional time to submit comments on the proposed rule.

**DATES:** The comment period for the proposed rule published September 20, 2016, at 81 FR 64357, is extended. Comments should be received on or before December 21, 2016.

**ADDRESSES:** You may submit your comments, identified by Regulatory Information Number (RIN) 2590-AA68, by any of the following methods:

- *Agency Web site:* [www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input).
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by the agency. Please include Comments/RIN 2590-AA68 in the subject line of the message.

- *Courier/Hand Delivery:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA68, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. to 5 p.m.

- *U.S. Mail, United Parcel Service, Federal Express or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA68, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219.

**FOR FURTHER INFORMATION CONTACT:**

Mark D. Laponsky, Deputy General Counsel, [Mark.Laponsky@fhfa.gov](mailto:Mark.Laponsky@fhfa.gov), (202)

649-3054 (not a toll-free number), Federal Housing Finance Center, Constitution Center, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:****Comments**

FHFA invites comments on all aspects of the 2016 proposed rulemaking and will take all comments into consideration before issuing the final rule. Copies of all comments will be posted without change, including any personal information you provide, such as your name, address, email address, and telephone number, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Constitution Center, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

**Background**

In the **Federal Register** on September 20, 2016 (81 FR 64357), FHFA published a proposed rule with a 60-day comment period to request comments on the proposal that would establish standards for identifying whether an indemnification payment by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, any of the Federal Home Loan Banks, or the Federal Home Loan Bank System's Office of Finance to an entity-affiliated party in connection with an administrative proceeding or civil action instituted by FHFA is prohibited or permissible. The proposed rule published an inadvertent clerical error in § 1231.4. FHFA is correcting that error, to clarify, just as the proposed rule did (*see* fn 7 in the Supplementary Information Section, explaining FHFA's rationale), that September 20, 2016, the date of that proposed rulemaking's publication, is the grandfathering date for individualized indemnification agreements, and is extending the comment period in order that the public may have a full 60 days to comment following this correction.

**Correction**

In proposed rule FR Doc. 2016-22483, on page 64360, in the issue of September 20, 2016, in the right column, in paragraph (b)(3) of § 1231.4, should correctly read: "Amounts due

under an indemnification agreement entered into with a named entity-affiliated party on or prior to September 20, 2016."

**Extension of Comment Period**

The proposed rule requested that the public submit comments by November, 21, 2016. FHFA hereby extends the deadline for submitting comments by an additional 30 days, to December 21, 2016.

Dated: October 21, 2016.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2016-26028 Filed 10-26-16; 8:45 am]

**BILLING CODE 8070-01-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R06-OAR-2014-0222; FRL-9954-02-Region 6]

**Approval and Promulgation of State Implementation Plans; Texas; Control of Air Emissions From Visible Emissions and Particulate Matter**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas that pertain to particulate matter standards and outdoor burning regulations. The State submitted the SIP revisions in the years 1989, 2004, 2006, and 2014. This rulemaking action is being taken under section 110 of the Federal Clean Air Act (CAA). The EPA has determined that the SIP revisions are approvable and meet the requirements established in section 110 of the CAA.

**DATES:** Written comments must be received on or before November 28, 2016.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2014-0222, at <http://www.regulations.gov> or via email to [pitre.randy@epa.gov](mailto:pitre.randy@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Randy Pitre, (214) 665-7299, [pitre.randy@epa.gov](mailto:pitre.randy@epa.gov). 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>.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy Pitre, (214) 665-7299, [pitre.randy@epa.gov](mailto:pitre.randy@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Pitre or Mr. Bill Deese at 214-665-7253.

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

### **I. Background**

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA’s National Ambient Air Quality Standards (NAAQS). These NAAQS are established under section 109 of the CAA and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The state’s air regulations are contained in its SIP, which is basically a clean air plan. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to EPA for approval and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

### **II. The EPA’s Evaluation**

As detailed in the Technical Support Document (TSD) accompanying this action, the Texas Commission on

Environmental Quality (TCEQ or “the State”) submitted revisions to 30 Texas Administrative Code (TAC) Chapter 111, Subchapters 203, 209 and 211. The TCEQ also asked that we remove from the SIP a prior version of the now repealed rule (30 TAC Section 111.155) that we previously approved into the SIP as Rule 105.2, titled “Ground Level Concentrations” that limit ground level concentrations of particulate matter emissions in Texas. See 27 FR 10842 (May 31, 1972).

In the August 21, 1989 SIP submittal, the TCEQ repealed Rule 105.2 and adopted the newly renumbered 30 TAC Section 111.155 to replace it. In an October 28, 1999 (64 FR 57983) direct final rulemaking action, we proposed to approve the newly renumbered Section 111.155 into the Texas SIP. However, we received an adverse comment on inclusion of Section 111.155 (formerly 105.2) into the SIP. We therefore withdrew that October 28, 1999 action. See 64 FR 70592 (December 17, 1999). In our final action to that rulemaking, we stated that we were no longer taking action to approve Section 111.155 into the SIP. See 80 FR 19145 (April 28, 2009). Subsequently, the TCEQ adopted the repeal of Section 111.155 from their State rules. In the State’s June 9, 2006 SIP submittal, the TCEQ asked EPA to remove from consideration a currently pending SIP request (the August 21, 1989, SIP submittal) to include 30 TAC Section 111.155 into the SIP. It also asked us to remove the former 105.2 rule from the SIP. Our analysis, available in our TSD in the rulemaking docket, finds that removal of Rule 105.2 (subsequently renumbered by the State as 111.155) is approvable. In 1971, EPA promulgated primary and secondary NAAQS for particulate matter (PM), measured as “total suspended particulate matter” or “TSP.” On July 1, 1987, (52 FR 24634) following the initial review of the standard, EPA announced its decision to replace TSP as the indicator for PM for ambient standards with particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). The NAAQS for PM have been revised three times since 1987, the most recent of which was on December 14, 2012, when we revised the primary annual PM<sub>2.5</sub> standard to 12.0 µg/m<sup>3</sup> and we retained the 24-hour PM<sub>2.5</sub> standard of 35 µg/m<sup>3</sup> (78 FR 3086).<sup>1</sup> Rather than revising the SIP each time the NAAQS are revised, the Texas SIP at 30 TAC Section 101.21 provides enforcement of the NAAQS throughout Texas (see 42 FR 27894,

June 1, 1977). Thus, removing 30 TAC Section 111.155 from the SIP would not result in any weakening of the SIP.

The State’s November 15, 2004 SIP submittal requests that EPA approve an amendment to 30 TAC Section 111.209, Exception for Disposal Fires, which allows the disposal of animal remains by veterinarians. Specifically, the November 15, 2004, SIP submittal revises 30 TAC Section 111.209(3) to authorize the use of outdoor burning of animal remains for veterinarians in accordance with Texas Occupations Code (TOC), Section 801.361, Disposal of Animal Remains. This revision to the State’s rules was necessary for TCEQ rules to be consistent with State law and to more precisely define when and where such animal remains could be burned by referencing the current state code of practice for veterinarians. The TOC, Section 801.361 addresses what can be burned (*i.e.*, animal remains and the associated medical waste, but not sharps<sup>2</sup> and the circumstances of the specific veterinarian-client-patient case.<sup>3</sup> Such burning is also subject to 30 TAC 111.219, General Requirements for Allowable Outdoor Burning, which addresses wind speeds, atmospheric temperature inversions, and other conditions, in an effort to protect, rather than adversely impact, air quality. We commented at the time of the State’s public comment period that we had no objections to these revisions. We continue to believe that under section 110(l) of the CAA, such revisions will not interfere with attainment of the NAAQS, Reasonable Further Progress or any other applicable requirement of the CAA. Therefore, this revision is approvable.

The July 18, 2006, SIP submittal revises 30 TAC Section 111.203 to prohibit the burning of household refuse in a limited demographic area on lots of less than five acres, making it a Class C misdemeanor under Texas law if someone knowingly or intentionally burns in such an area. 30 TAC Section 111.209 was amended to make a distinction between allowable burning in areas of attainment and nonattainment, and to incorporate all currently SIP-approved controls at 30 TAC Section 111.219. Additional amended regulations were included in the July 18, 2006, SIP submittal which included regulations to require signs at designated specific residential

<sup>2</sup> Sharps are defined as needles, scalpels, or other articles that could cause wounds or punctures to personnel handling them. See <http://medical-dictionary.thefreedictionary.com/sharps>.

<sup>3</sup> See TOC Section 801.361 at <http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.801.htm#801.361>.

<sup>1</sup> See 62 FR 38652, July 18, 1997 and 71 FR 61144, October 17, 2006.



properties for consolidated burning at the designated site, records to include the site description of a platted subdivision, to ensure that all waste was generated at specific residential properties for which the site is designated, and ensure that all burning at the designated site is directly supervised by an employee of a fire department who is part of the fire protection personnel, as defined by Texas Government Code, Section 419.021, and is acting in the scope of the person's employment, where the fire department employee shall notify the appropriate TCEQ regional office with a telephone or electronic facsimile notice 24 hours in advance of any scheduled supervised burn, and other advisory requirements including that TCEQ approval is not required.

The March 3, 2014 SIP submittal revises 30 TAC Section 111.211 to allow prescribed burns for the purpose of wildfire hazard mitigation. The submitted revision allows prescribed burning in other areas, such as where rural areas interface with urban areas, for the purpose of wildfire hazard mitigation in order to reduce the incidence, intensity, and spread of wildfires. The EPA submitted comments to the TCEQ during the State's public comment period. The State responded to our comments and those were included as part of the SIP submittal. We have reviewed the State's evaluation of our comments and agree that the revision is not allowing an additional activity with the addition of wildfire hazard mitigation, since the TCEQ already has the ability to allow prescribed burns for wildfire hazard mitigation purposes on a case by case basis. The purpose of the revision is to better facilitate the process of allowing prescribed burns for wildfire hazard mitigation and thereby reduce the chance of emissions of pollutants that could be emitted in an uncontrolled wildfire. Our analysis, available in our TSD in the rulemaking docket, finds that the revisions to 30 TAC Section 111.211 are not significant, are approvable and would not interfere with attainment of the NAAQS or prevent any reasonable further progress in obtaining the NAAQS or any other applicable requirement of the CAA.

### III. Proposed Action

We are proposing to approve the Texas SIP revisions dated from 1989, 2004, 2006 and 2014. Specifically, we are proposing to approve the August 21, 1989 and the June 9, 2006 submittals that repealed the Rule 105.2 (subsequently renumbered 30 TAC Section 111.155). We are proposing to

approve the November 15, 2004, submittal that revises 30 TAC Section 111.209. We are proposing to approve the July 18, 2006, submittal that adopted amendments to 30 TAC Section 111.203 and 30 TAC Section 111.209 that revises 30 TAC Subchapter B "Emissions Limits." We are also proposing to approve the March 3, 2014, submittal that adopted amendments to 30 TAC Section 111.211 with revisions to Subchapter B.

### IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the EPA Region 6 office.

### V. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: October 21, 2016.

**Ron Curry,**

*Regional Administrator, Region 6.*

[FR Doc. 2016-25983 Filed 10-26-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2015-0067; FRL-9954-56-Region 10]

### Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM<sub>2.5</sub> Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Franklin County, Idaho is a rural and sparsely populated county adjacent to Cache County, Utah. In 2009, the Environmental Protection Agency (EPA) designated Cache County, along with Franklin County, as part of the multi-state Logan, Utah-Idaho fine



particulate matter (PM<sub>2.5</sub>) nonattainment area (Logan UT-ID). On December 14, 2012, the Idaho Department of Environmental Quality (IDEQ) submitted a State Implementation Plan (2012 SIP submittal) to address attainment planning requirements for the Idaho portion of the Logan UT-ID nonattainment area. On December 24, 2014, the IDEQ submitted a supplement to the 2012 SIP submission that included additional analysis (2014 amendment). The EPA has evaluated the 2012 SIP submittal and 2014 amendment to determine whether the submissions meet the applicable Clean Air Act (CAA) requirements. Based on this evaluation, the EPA is proposing to approve certain provisions and disapprove other provisions of the 2012 SIP submittal and 2014 amendment.

**DATES:** Written comments must be received on or before November 28, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2015-0067 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, Air Planning Unit, Office of Air and Waste (AWT-150), Environmental Protection Agency, Region 10, 1200 Sixth Ave, Suite 900, Seattle, WA 98101; telephone number: (206) 553-0256; email address: [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we”, “us” or “our” are used, it is intended to refer to the EPA.

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## I. Background for the EPA’s Proposed Action

### A. History of the PM<sub>2.5</sub> Standard

On July 18, 1997, the EPA established the 1997 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS), including an annual standard of 15.0 µg/m<sup>3</sup> based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations, and a 24-hour (or daily) standard of 65 µg/m<sup>3</sup> based on a 3-year average of the 98th percentile of 24-hour concentrations (62 FR 38652). The EPA established the 1997 PM<sub>2.5</sub> NAAQS based on significant evidence and numerous health studies demonstrating the serious health effects associated with exposures to PM<sub>2.5</sub>. To provide guidance on the CAA requirements for state and tribal implementation plans to implement the 1997 PM<sub>2.5</sub> NAAQS, the EPA promulgated the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) (hereinafter, the “2007 PM<sub>2.5</sub> Implementation Rule”).

On October 17, 2006, the EPA strengthened the 24-hour PM<sub>2.5</sub> NAAQS to 35 µg/m<sup>3</sup> and retained the level of the annual PM<sub>2.5</sub> standard at 15.0 µg/m<sup>3</sup> (71 FR 61144). Following promulgation of a new or revised NAAQS, the EPA is required by the CAA to promulgate designations for areas throughout the United States; this designation process is described in section 107(d)(1) of the CAA. On November 13, 2009, the EPA designated areas as either attainment/unclassifiable or nonattainment with respect to the revised 2006 24-hour

PM<sub>2.5</sub> NAAQS (74 FR 58688). In that November 2009 action, the EPA designated Franklin County, Idaho, as part of the cross-state Logan UT-ID nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS, requiring Idaho to prepare and submit an attainment plan to meet the revised 24-hour PM<sub>2.5</sub> NAAQS. The EPA included Franklin County in the nonattainment area due to Idaho emission sources, particularly motor vehicle commuter patterns, contributing to violations of the 24-hour PM<sub>2.5</sub> NAAQS recorded at the Logan, Cache County, Utah monitor, based on 2006 to 2008 ambient air quality data.

On March 2, 2012, the EPA issued “Implementation Guidance for the 2006 24-Hour Fine Particulate (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)” to provide guidance on the development of SIPs to demonstrate attainment with the revised 24-hour standard (March 2012 Implementation Guidance). The March 2012 Implementation Guidance explained that the overall framework and policy approach of the 2007 PM<sub>2.5</sub> Implementation Rule provided effective and appropriate guidance on statutory requirements for the development of SIPs to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. Accordingly, the March 2012 Implementation Guidance instructed states to rely on the 2007 PM<sub>2.5</sub> Implementation Rule in developing SIPs to demonstrate attainment with the 2006 24-hour PM<sub>2.5</sub> NAAQS.

### B. Effect of the January 4, 2013 D.C. Circuit Court Decision Regarding PM<sub>2.5</sub> Implementation Under Subpart 4

On January 4, 2013, the D.C. Circuit Court issued a decision in *NRDC v. EPA*, 706 F.3d 428, holding that the EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS pursuant only to the general implementation requirements of subpart 1, part D of title I of the CAA, rather pursuant to the implementation requirements specific to particulate matter (PM<sub>10</sub>) in subpart 4, part D of title I of the CAA (“subpart 4”). The court reasoned that the plain meaning of the CAA requires implementation of the 1997 p.m.2.5 NAAQS under subpart 4 because PM<sub>2.5</sub> particles fall within the statutory definition of PM<sub>10</sub> and thus implementation of the PM<sub>2.5</sub> NAAQS is subject to the same statutory requirements as the PM<sub>10</sub> NAAQS. The Court did not vacate the 2007 PM<sub>2.5</sub> Implementation Rule but remanded the rule with instructions for the EPA to promulgate new implementation regulations for the PM<sub>2.5</sub> NAAQS in accordance with the requirements of subpart 4. On June 6, 2013, consistent with the Court’s remand decision, the

EPA withdrew its March 2012 Implementation Guidance which relied on the 2007 PM<sub>2.5</sub> Implementation Rule to provide guidance for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

Prior to the January 4, 2013 Court decision, states had worked towards meeting the air quality goals of the 2006 PM<sub>2.5</sub> NAAQS in accordance with the EPA regulations and guidance derived from subpart 1 of Part D of Title I of the CAA. The EPA considered this history in issuing the PM<sub>2.5</sub> Subpart 4 Nonattainment Classification and Deadline Rule (2014 Classification and Deadline Rule) (79 FR 31566, June 2, 2014) that identified the initial classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM<sub>2.5</sub> standards as Moderate. The final rule also established December 31, 2014 as the deadline for the states to submit any additional SIP elements related to attainment. On December 24, 2014, the IDEQ supplemented the 2012 SIP submission to address the Court's decision.

### C. CAA PM<sub>2.5</sub> Moderate Area Nonattainment Requirements

With respect to the requirements for attainment plans, the EPA notes that the general nonattainment area planning requirements are found in subpart 1, and the Moderate area planning requirements for particulate matter are found in subpart 4. The EPA has a longstanding general guidance document that interprets the 1990 amendments to the CAA commonly referred to as the "General Preamble" (57 FR 13498, April 16, 1992). The General Preamble addresses the relationship between subpart 1 and subpart 4 requirements and provides recommendations to states for meeting statutory requirements for particulate matter nonattainment planning. Specifically, the General Preamble explains that requirements applicable to Moderate area nonattainment SIPs are set forth in subpart 4, but such SIPs must also meet the general nonattainment planning provisions in subpart 1, to the extent these provisions "are not otherwise subsumed by, or integrally related to," the more specific subpart 4 requirements (57 FR 13538). In addition, on August 24, 2016, the EPA issued a final rule establishing requirements applicable to nonattainment areas for current and future PM<sub>2.5</sub> NAAQS in response to the vacatur of the 2007 implementation rule. *Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements*, 81 FR 58010 (August 24, 2016). While that

rule is not effective until October 24, 2016, the EPA considered the guidance contained in the final rule when evaluating the SIP submission at issue.

The requirements of subpart 1 for attainment plans include: (i) The section 172(c)(1) requirements for reasonably available control measures (RACM), reasonably available control technology (RACT) and attainment demonstrations; (ii) the section 172(c)(2) requirement to demonstrate reasonable further progress (RFP); (iii) the section 172(c)(3) requirement for emissions inventories; (iv) the section 172(c)(5) requirements for a nonattainment new source review (NSR) permitting program; and (v) the section 172(c)(9) requirement for contingency measures.

Several subpart 4 requirements for Moderate areas are comparable with subpart 1 requirements and include: (i) The section 189(a)(1)(A) NSR permit program requirements; (ii) the section 189(a)(1)(B) requirements for an attainment demonstration; (iii) the section 189(a)(1)(C) requirements for RACM; and (iv) the section 189(c) requirements for RFP and quantitative milestones. In addition, under subpart 4 the Moderate area attainment date is no later than the end of the 6th calendar year after designation.

The EPA has evaluated the 2012 SIP submittal and 2014 amendment to determine whether they meet the applicable Clean Air Act (CAA) requirements. Based on this evaluation, the EPA is proposing to approve certain provisions and disapprove other provisions of the 2012 SIP submittal and 2014 amendment.

## II. Analysis of Idaho's Submittals

The attainment plan elements that the IDEQ submitted for Franklin County included base year and attainment year emissions inventories that addressed direct particulate matter emissions and all particulate matter precursors, an analysis of RACM and RACT, contingency measures, and reasonable further progress addressed through the attainment demonstration. The attainment plan's strategy for controlling direct and precursor PM<sub>2.5</sub> emissions relied primarily on a mandatory episodic woodstove curtailment program, the change-out of uncertified woodstoves, revised road sanding practices, and expected direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor reductions from the Tier 2 Federal Motor Vehicle Emission Requirements (65 FR 6698, February 10, 2000).

### Previously Approved Attainment Plan Elements

#### A. Classifications

The applicable attainment planning requirements under subpart 4 (section 189(a) and (b)) depend on whether the nonattainment area is classified as Moderate or Serious. In response to the Court's decision in *NRDC v. EPA*, the EPA finalized on June 2, 2014, initial classifications of all current 1997 and 2006 PM<sub>2.5</sub> nonattainment areas as Moderate (79 FR 31566). Thus, the IDEQ's 2012 SIP submittal and the 2014 amendment for Franklin County is evaluated pursuant to the Moderate area requirements of subpart 4.

#### B. Emissions Inventory

On May 14, 2014, we proposed approval of the baseline emissions inventory included as part of Idaho's 2012 submittal (79 FR 27543). The emissions inventory covered direct PM<sub>2.5</sub> and precursors to the formation of PM<sub>2.5</sub> (nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOCs), ammonia (NH<sub>3</sub>), and sulfur dioxide (SO<sub>2</sub>)) to meet the comprehensive emissions inventory requirement of CAA section 172(c) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. We received no comments on our proposed rulemaking and finalized our approval on July 18, 2014 (79 FR 41904). We are not taking comments on the inventory as part of this action.

#### C. Control Measures

The December 14, 2012 attainment plan submitted by the IDEQ included permanent and enforceable Franklin County, City of Clifton, City of Dayton, Franklin City, City of Oxford, City of Preston, and City of Weston ordinances implementing the mandatory woodstove curtailment and burn ban programs. The IDEQ's Air Quality Index (AQI) program supports the local jurisdictions by instituting mandatory burn bans for uncertified woodstoves when PM<sub>2.5</sub> concentration levels are at or forecasted to reach 25.4 µg/m<sup>3</sup>. Each of the adopted ordinances ban open burning of any kind during burn ban days, ban the sale or installation of non-EPA certified devices in new or existing buildings, and prohibit the construction of any building for which a solid fuel burning device is the sole source of heat. On March 25, 2014, the EPA approved the ordinances submitted in the attainment plan because they provided important PM<sub>2.5</sub> reductions in the nonattainment area and strengthened the Idaho SIP (79 FR 16201). By including these measures in the SIP, the State has made them permanent and enforceable. With the EPA's approval of these control

measures on March 25, 2014, the measures have become federally enforceable. The EPA already provided notice and comment on the proposed approval of these ordinances into the SIP on December 26, 2013 (78 FR 78315), and we are not taking comment on those provisions.

In our March 25, 2014 action, the EPA also approved road sanding agreements between the IDEQ, Franklin County Road and Bridge, and the Idaho Transportation Department to reduce the contribution of primary PM<sub>2.5</sub> from reentrained dust on paved roads. Although the road sanding agreements were expected to reduce emissions of PM<sub>2.5</sub>, we determined that the agreements were not directly enforceable. However, the road sanding agreements are similar to agreements previously approved by the EPA as voluntary measures in the Idaho SIP (70 FR 29247), and consistently implemented by the relevant state and county governments.<sup>1</sup> Accordingly, the EPA approved the road sanding agreements as voluntary measures in accordance with existing guidance.<sup>2</sup> Lastly, in the 2012 SIP submittal and 2014 amendment, the IDEQ also quantified the emission reduction benefits from three woodstove change-out programs conducted in 2006–2007, 2011–2012, and 2013–2014 that replaced a total of 212 units, with annual estimated emissions reductions of 8.04 tons per year (tpy) PM<sub>2.5</sub>, 0.47 tpy NO<sub>x</sub>, and 18.57 tpy VOC. Further details on these control measures can be found in the docket for this action as well as in the proposed and final **Federal Register** notices approving these measures (78 FR 78315 and 79 FR 16201). The EPA is not taking comment on these approved actions.

#### *Attainment Plan Elements Proposed for Approval and Disapproval*

##### D. Attainment Date

The CAA requirements of subpart 4 include a demonstration that a nonattainment area will meet applicable NAAQS within the timeframe provided in the statute (section 189(a)(1)(B)). For the 2006 PM<sub>2.5</sub> 24-hour NAAQS, an attainment plan must show that a Moderate nonattainment area will attain the standard as expeditiously as practicable but no later than the end of the sixth calendar year after the area's

designation, which in the case of Franklin County was December 31, 2015.

##### E. Attainment Demonstration and Modeling

Section 189(a)(1)(B) requires that a Moderate area nonattainment plan contain either a demonstration that the plan will provide for attainment by the applicable attainment date, or a demonstration that attainment by such date is impracticable. Due to the multi-state nature of the shared Logan UT-ID air shed and the location of the violating monitor in Logan, Utah, the Utah Department of Air Quality (UDAQ) conducted the attainment demonstration for the entire nonattainment area with IDEQ's active participation. This attainment demonstration was included in Appendix D of IDEQ's 2012 SIP submittal. In response to the EPA's 2014 Classification and Deadline Rule, IDEQ again worked with the UDAQ to update the attainment demonstration with new modeling based on more recent emission inventory information. This updated modeling, cited in the 2014 amendment, demonstrated attainment by the subpart 4 attainment date of December 31, 2015.

The EPA is proposing to disapprove the attainment demonstration because the area did not, in fact, attain the NAAQS by December 31, 2015.

##### F. Characterization of the Franklin County Air Shed

In evaluating the 2012 SIP submission and 2014 amendment under the requirements of subpart 4, control of direct PM<sub>2.5</sub> and precursors must be considered. According to CAA section 302(g) the term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by product material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used. The provisions of subpart 4 do not define the term "precursor" for purposes of particulate matter, nor do they explicitly require the control of any specifically identified precursor. However, the EPA has long recognized the scientific basis for concluding that SO<sub>2</sub>, NO<sub>x</sub>, VOC, and ammonia are precursors to PM<sub>10</sub> and to PM<sub>2.5</sub> (81 FR 58018–19).

The EPA's interpretation of section 189(e) and section 172 indicates that consideration of all precursors is necessary for PM<sub>2.5</sub> attainment plans, and RACM/RACT requirements explicitly require the evaluation of available control measures for direct PM<sub>2.5</sub> emissions and precursor emissions from stationary, area, and mobile sources in order to attain as expeditiously as practicable. Section 189(e) requires the control of appropriate precursors from major stationary sources, unless the Administrator determines that precursor emissions from such major stationary sources do not contribute significantly to nonattainment in the area.

Subpart 4 expressly requires control of precursors from major stationary sources where direct PM from major sources is controlled unless certain conditions are met; however, other sources of precursors may also need to be controlled for the purposes of demonstrating attainment as expeditiously as practicable in a given area. Thus, the statute requires states with Moderate nonattainment areas to evaluate available control measures for all sources of direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor emissions to determine whether such measures are economically and technologically feasible, and to adopt all measures that are deemed reasonable and are necessary to demonstrate attainment as expeditiously as possible (e.g., all measures constituting RACM and RACT controls for sources located in the area). The EPA has interpreted subpart 4 to require control of precursors from all source categories in a given nonattainment area, unless there is a demonstration that controlling a precursor or precursors is not necessary for expeditious attainment of the NAAQS in the area.

As discussed in the EPA's 1992 General Preamble, in the event that a state's attainment plan includes controls on major stationary sources for PM<sub>10</sub> in order to achieve timely attainment in the area, section 189(e) requires controls of all PM<sub>10</sub> precursors for major stationary sources located within the area, unless there is a showing that such sources do not contribute significantly to violations in the area (57 FR 13541). Thus, the EPA's interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM<sub>10</sub> contemplates that states may develop attainment plans that regulate only those precursors that contribute significantly to nonattainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment

<sup>1</sup> In a letter dated February 26, 2016, included in the docket for this action, the IDEQ included an update on the continued implementation of the road sanding agreement with Franklin County Road and Bridge.

<sup>2</sup> Incorporating Emerging and Voluntary Measures in a State Implementation Plan (Sept. 2004).

purposes. *Id.*; see also *Assoc. of Irrigated Residents v. EPA, et al.*, 423 F.3d 989 (9th Cir. 2005). The EPA maintains that application of this same approach to PM<sub>2.5</sub> precursors under subpart 4 is appropriate and reasonable (81 FR 58020–22).

The General Preamble describes the assessment of precursors as specific to each nonattainment area, and acknowledges that the determination of precursor significance would likely vary based on the characteristics of the area-wide nonattainment problem. The General Preamble further provides that in making a determination regarding the significance of precursors, the EPA will rely on technical information presented in the state's submittal, including filter analysis, the relative contribution to overall nonattainment, the selected control strategies, as well as other relevant factors (57 FR 13541). The recent PM<sub>2.5</sub> Implementation Rule also discusses the types of technical analyses that states may perform to demonstrate the significance or insignificance of a particular precursor. (81 FR 58020–22); 40 CFR 51.1006.

The IDEQ's 2012 SIP submittal contained a detailed analysis of the Logan UT–ID air shed (see Appendix A, Special Air Quality Studies, PM<sub>2.5</sub> Saturation Studies—Utah State University). This study concluded that, “the Cache Valley (Logan UT–ID) PM<sub>2.5</sub> nonattainment is somewhat uniquely a wintertime problem, when low lying, persistent radiation and subsidence inversions set up, trapping pollutants in the Valley for extended periods of time, thereby allowing photochemically-derived particulate material to become elevated. Chemical analysis by researchers at Utah's Division of Air Quality and Air Monitoring Center, as well as Utah State University, have shown that 50–95% of the PM<sub>2.5</sub> collected at the Logan site is composed of ammonium nitrate (NH<sub>4</sub>NO<sub>3</sub>).” This secondary formation of ammonium nitrate is due in large part to NO<sub>x</sub> and VOC emissions from onroad motor vehicles combining with the abundant levels of ammonia from small cattle operations, agricultural fields, and natural and constructed wetlands in the greater air shed, both within and surrounding the nonattainment area. The study concluded that, “based on measurements at the Logan location, the Valley's wintertime formation of ammonium nitrate was found to be limited by the availability of nitric acid (HNO<sub>3</sub>). Furthermore, the report stated that the Cache Valley was found to be NH<sub>3</sub>-rich by a factor of approximately two. Comparisons of wintertime ambient NH<sub>3</sub> concentrations between

the Valley's urban area (Logan) and a rural location (Amalga), showed the rural area averaged ≈2.5 times the NH<sub>3</sub> of the urban site.” As a result of this analysis, all scientific precursors to PM<sub>2.5</sub>, including VOCs and ammonia, were considered as part of the 2012 SIP submittal and 2014 amendment.

#### G. Reasonably Available Control Technology/Reasonably Available Control Measures (RACT/RACM)

The general SIP planning requirements for nonattainment areas under subpart 1 include section 172(c)(1), which requires implementation of all RACM (including RACT). The CAA section 172(c) indicates that what constitutes RACM or RACT is related to what is necessary for attainment in a given area, as the provision states that nonattainment plans shall provide for attainment of the NAAQS in the area covered by the attainment plan.

The SIP requirements under subpart 4 likewise impose upon states an obligation to develop attainment plans that impose RACM and RACT on sources within a nonattainment area. Section 189(a)(1)(C) requires that states with areas classified as Moderate nonattainment areas must have SIP provisions to assure that RACM and RACT level controls are implemented by no later than four years after designation of the area. As with subpart 1, the terms RACM and RACT are not defined within subpart 4. Nor do the provisions of subpart 4 specify how states are to meet the RACM and RACT requirements. However, the EPA's longstanding guidance in the General Preamble provides recommendations for appropriate considerations for determining what control measures constitute RACM and RACT for purposes of meeting the statutory requirements of subpart 4.

The EPA's guidance for RACM under subpart 4 in the General Preamble includes: (1) A list of some potential measures for states to consider; (2) a statement of the EPA's expectation that the state will provide a reasoned explanation for a decision not to adopt a particular control measure; (3) recognition that some control measures might be unreasonable because the emissions from the affected sources in the area are *de minimis*; (4) an emphasis on state evaluation of potential control measures for reasonableness, considering factors such as technological feasibility and the cost of control; and (5) encouragement that states evaluating potential control measures imposed upon municipal or other governmental entities also include

consideration of the impacts on such entities, and the possibility of partial implementation when full implementation would be infeasible (e.g., phased implementation of measures such as road paving). 57 FR 13540.

With respect to RACT requirements, the EPA's existing guidance in the General Preamble: (1) Noted that RACT has historically been defined as “the lowest emission limit that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility;” (2) noted that RACT generally applies to stationary sources, both stack and fugitive emissions; (3) suggested that major stationary sources be the minimum starting point for a state's RACT analysis; and (4) recommended that states evaluate RACT not only for major stationary sources, but for other source categories as needed for attainment and considering the feasibility of controls. *Id.* at 13541

For both RACM and RACT, the EPA notes that an overarching principle is that if a given control measure is not needed to attain the relevant NAAQS in a given area as expeditiously as practicable, then that control measure would not be required as RACM or RACT because it would not be reasonable to impose controls that are not in fact needed for attainment purposes. In making recommendations for the subpart 4 RACM and RACT requirements, the focus is upon the process to identify emissions sources, to evaluate potential emissions controls, and to impose those control measures that are reasonable and that are necessary to bring the area into attainment as expeditiously as practicable, but by no later than the attainment date for the area. The only exception is if the economically and technically feasible measures not necessary to attain by the outermost attainment date and adopted as RACT/RACM will collectively advance attainment by at least a year. If that is the case, the additional measures must be adopted.

The new PM<sub>2.5</sub> Implementation Rule adopts a process oriented analysis similar to the approaches set forth in the General Preamble and the remanded 2007 PM<sub>2.5</sub> Implementation Rule (81 FR 58035–47); 40 CFR 51.1009.

Consistent with EPA guidance at the time, the IDEQ evaluated which measures would constitute RACM and RACT in Franklin County.

1. The IDEQ evaluated the technical and economic feasibility of establishing a motor vehicle inspection and

maintenance (I&M) program for Franklin County (Appendix C of the 2012 SIP submittal). Modeling conducted by the UDAQ, using the EPA's Motor Vehicle Emission Simulator (MOVES) model, showed expected NO<sub>x</sub> reductions of 4.6% from implementing an I&M program generally. Projecting this anticipated NO<sub>x</sub> reduction to Franklin County's share of the overall Logan UT-ID motor vehicle fleet (approximately 10%) yields a potential NO<sub>x</sub> reduction benefit of 0.46% for the air shed. The IDEQ estimated the cost of establishing an I&M program for Franklin County based on an existing I&M station in Canyon County, Idaho (population 198,871 in 2013). The IDEQ then scaled the potential costs of this program to reflect the population of Franklin (12,854 in 2013). The IDEQ found that while some variable costs may be reduced, the annual fixed costs of keeping a basic I&M station operational remained quite high (total annual estimated cost would be approximately \$300,000). The IDEQ calculated that dividing this annual cost by the expected

NO<sub>x</sub> emissions reduction for Franklin County (15 tons per year) yields an estimated cost per ton of NO<sub>x</sub> reduced of at least \$20,000 per ton. The IDEQ also calculated the cost per vehicle (approximately 8,574 vehicles) to be \$70 per vehicle based on a two year inspection cycle. Given ongoing vehicle fleet turnover with newer, cleaner Tier 2 and 3 vehicles since the IDEQ's 2012 SIP submittal, these costs relative to expected NO<sub>x</sub> reductions have likely increased as the small percentage of pre-1996 motor vehicles most likely to fail an I&M test for NO<sub>x</sub> and VOC emissions are retired from the vehicle fleet. For these reasons, the IDEQ determined that a Franklin County I&M program was not a reasonable control approach based on factors including the cost of control and economic feasibility.

2. As discussed above, the General Preamble suggests that major stationary sources be the minimum starting point for a state's RACT analysis and recommended that states evaluate RACT not only for major stationary sources, but for other source categories as needed

for attainment and considering the feasibility of controls. In developing the emissions inventories underlying the 2012 SIP submittal and 2014 amendment, the criteria of 40 CFR 51 for air emissions reporting requirements under the EPA's National Emissions Inventory (NEI) was used to establish a 100 tpy threshold for identifying stationary point sources. For Franklin County there are no point sources with the potential to emit 100 tpy of PM<sub>2.5</sub> or any PM<sub>2.5</sub> plan precursor. As described in Appendix B of the IDEQ's 2012 SIP submittal, emissions from point sources under the EPA's NEI reporting threshold of 100 tpy were included in the area source base-year emissions inventory. For Franklin County, due to its rural nature and general lack of industrial base, emissions from these industrial and commercial source categories are generally insignificant compared to other source categories. For these reasons, the IDEQ considered RACT requirements satisfied for Franklin County.

TABLE 1—FRANKLIN COUNTY 2008 WINTER EMISSIONS INVENTORY IN TONS PER EPISODE DAY

Source category	PM <sub>2.5</sub>	NO <sub>x</sub>	SO <sub>2</sub>	VOC	NH <sub>3</sub>
Agriculture, crops, and livestock .....	0.008	0	0	2.763	4.65
Gasoline, bulk, and stations .....	0	0	0	0	0
Commercial cooking .....	0	0	0	0	0
Construction dust .....	0.014	0	0	0	0
Fuel combustion, industrial .....	0.006	0.087	0.061	0.001	0.002
Fuel combustion, commercial/institutional .....	0.004	0.07	0.018	0.001	0
Fuel combustion, residential non-wood .....	0.001	0.049	0.014	0.002	0.008
Fuel combustion, residential wood .....	0.1	0.009	0.002	0.138	0
Miscellaneous Commercial/Industrial Processes .....	0.001	0.001	0	0	0.008
Solvent, commercial and consumer .....	0	0	0	0.14	0
Solvent, commercial and industrial .....	0	0	0	0.26	0
Waste disposal .....	0	0	0	0.008	0
Mobile, emissions .....	0.028	0.711	0.004	0.498	0.008
Mobile, road dust .....	0.596	0	0	0	0
Nonroad mobile .....	0.035	0.428	0.009	0.636	0
Point sources .....	0	0	0	0	0
Totals .....	0.793	1.355	0.108	4.447	4.676

3. As previously discussed in the Control Measures section, the IDEQ submitted road sanding agreements negotiated between the IDEQ, Franklin County Road and Bridge, and the Idaho Department of Transportation to reduce PM<sub>2.5</sub> emissions from re-entrained road dust. In our March 25, 2014 final approval of the road sanding agreements as voluntary measures, we explained that the agreements were not directly enforceable and could not be considered as full control measures, with full emission reduction credit under the

attainment demonstration.<sup>3</sup> As part of the 2014 amendment, the IDEQ submitted revised road sanding agreements to address the EPA's enforceability concerns. While these revised road sanding agreements improve on potential enforceability, they still do not meet our enforceability criteria to be approved as full control measures meeting RACM requirements.

4. As previously discussed in the Control Measures section, the EPA approved the permanent and enforceable Franklin County, City of Clifton, City of Dayton, Franklin City,

City of Oxford, City of Preston, and City of Weston ordinances implementing the mandatory woodstove curtailment and burn ban program (79 FR 16201, March 25, 2014). The EPA is now proposing to determine that these ordinances already approved into the Idaho SIP satisfy our criteria for RACM under subpart 1 and subpart 4. The EPA also notes that because the ordinances banned the sale or installation of non-EPA certified devices in new or existing buildings in Franklin County jurisdictions, the three woodstove change-out programs conducted in 2006–2007, 2011–2012, and 2013–2014, that replaced 212 units, can be considered to have permanent,

<sup>3</sup> Incorporating Emerging and Voluntary Measures in a State Implementation Plan (Sept. 2004).

enforceable, and lasting emission reductions in the nonattainment area, estimated to be 8.04 tpy PM<sub>2.5</sub>, 0.47 tpy NO<sub>x</sub>, and 18.57 tpy VOC.

The EPA is proposing to approve the woodstove curtailment, device restrictions and burn ban control measures discussed above, and already incorporated into the SIP, as meeting the requirements of RACM. We are proposing to approve IDEQ's determination that an I&M program for Franklin County is not economically feasible under RACM. We are also proposing to approve IDEQ's determination that RACT controls are not necessary given the lack of stationary sources in the county.

#### *Not Possible To Advance Attainment by One Year*

Under the attainment plan requirements, an area must implement all reasonable control measures that are not necessary to attain by the outermost attainment date, if such measures would advance the date of attainment by an estimated one year. At the time of the IDEQ's December 24, 2014 amendment, the State and the EPA had access to monitoring data showing that it would not be possible to advance attainment by one year (December 31, 2014) due to expected 3-year average of 24-hour PM<sub>2.5</sub> concentrations of 40 µg/m<sup>3</sup> at the Franklin monitor, and 45 µg/m<sup>3</sup> at the Logan, Utah monitor, based on preliminary 2012–2014 data. Therefore, we are proposing to approve IDEQ's determination that it was not possible to advance the attainment date by one-year and that they implemented all reasonable available control measures identified.

#### *Precursors Addressed*

As discussed in the “Characterization of the Franklin County Air Shed” section above, secondary formation of ammonium nitrate (NH<sub>4</sub>NO<sub>3</sub>) is the most dominant source of PM<sub>2.5</sub> in the valley (approximately 80% of the PM<sub>2.5</sub>). Due to the unique topography of being surrounded by steep mountain ranges approximately 3,000 to 5,000 feet above the Cache Valley floor, this air shed is particularly susceptible to wintertime inversion events. During these inversion events VOCs and NO<sub>x</sub> emissions (primarily from on-road motor vehicles) are trapped in a shallow layer of air with ammonia emissions (primarily from agricultural operations) to form ammonium nitrate. The 2012 submittal included the Utah State University Special Air Quality Studies which determined that the air shed was ammonia rich by a factor of approximately two. Modeled sensitivity

runs, conducted by UDAQ in cooperation with IDEQ, also showed that significant reductions in the ammonia inventories would have little to no effect on predicted PM<sub>2.5</sub> concentrations.<sup>4</sup> As such, one of the most significant control measures for the area as a whole, was Utah's establishment of an I&M program to reduce NO<sub>x</sub> and VOCs from on-road motor vehicles. As discussed above, IDEQ also assessed the economic feasibility of establishing an I&M program to reduce NO<sub>x</sub> and VOCs, but found that the estimated \$20,000+ per ton reduction of NO<sub>x</sub> renders the cost unreasonable and thus not RACM. IDEQ also considered other potential NO<sub>x</sub> controls such as controls for home heating of natural gas or distillate oil, but determined it was prohibitively expensive given the tiny proportion of the emissions inventory for those sources (see Table 1). The potential for VOC and SO<sub>2</sub> reductions from Franklin County sources was similarly small. While the emissions inventory shows some potential for reducing VOC emission from commercial, consumer, and industrial solvents, IDEQ noted that many of these products are purchased in the more populous retail center in Logan, Utah. Therefore the Utah VOC controls for these products would have an air shed wide impact. Lastly, IDEQ notes that MOVES modeling conducted as part of the 2012 submittal, using a 2008 base year, predicted VOC emissions reductions from on-road mobile sources of 37% by January 1, 2015, due to fleet turnover with cleaner Tier 2 vehicles. IDEQ did assess potential SO<sub>2</sub>, NO<sub>x</sub>, VOC, and NH<sub>3</sub> reductions from Idaho-specific control measures. However, due to the sparse population and generally small emissions inventories, the direct PM<sub>2.5</sub> control measures discussed above (woodstoves and road sanding) were deemed as the only viable and economically feasible measures possible to impose as RACM.

#### *Overall RACM Analysis*

IDEQ's analysis of potential control measures under RACM was informed by the emissions inventory for the area (see pages 23–29 of the 2012 submittal). As discussed above, many of the source categories in the Franklin County portion of the nonattainment area have negligible emissions due to the sparse population and rural nature of the county. IDEQ then analyzed the emissions inventory for SO<sub>2</sub>, NO<sub>x</sub>, VOC,

NH<sub>3</sub>, and direct PM<sub>2.5</sub>, to determine possible control measures (see pages 38–41). Pursuant to that analysis, IDEQ identified and established the mandatory woodstove curtailment program, burn ban, heating device restrictions and the woodstove change-out programs discussed above to satisfy the RACM requirement for the predominant emissions sources in the county, with estimated emission reductions greater than 0.13 tons per episode day. The IDEQ also determined reasonable measures beyond the Tier 2 Federal Motor Vehicle Emission Requirements, the diesel emission reduction program, the commuter bus service, and the Park-n-Ride lots already in place for the area are not available for mobile emissions. The EPA has reviewed the comprehensive emissions inventory information, as summarized in Table 1. Based on the 2012 submittal and 2014 amendment, the EPA proposes to find that IDEQ has satisfied the RACM requirement for the Idaho portion of the area.

#### *H. Contingency Measures*

Contingency measures are additional measures to be implemented in the event that an area fails to attain a standard by its attainment date, or fails to meet Reasonable Further Progress (RFP). See CAA section 172(c)(9); 81 FR 58066. These measures must be fully adopted rules or control measures that take effect with minimal further action by the state or the EPA. Contingency measures should also contain trigger mechanisms and an implementation schedule. In addition, they should be measures not already included in the SIP control strategy, and should provide for emission reductions equivalent to one year of RFP.

The EPA explained that the April 16, 1992 General Preamble provided the following guidance: “States must show that their contingency measures can be implemented without further action on their part and with no additional rulemaking actions such as public hearings or legislative review. In general, EPA will expect all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure.” (57 FR at 13512). The statute requires that contingency measures provide for additional emission reductions that are not relied on for RFP or attainment and that are not included in the demonstration. The purpose of contingency measures is to provide a cushion while the plan is being revised to meet the missed milestone and continue progress towards expeditious attainment. In other words, contingency

<sup>4</sup> See page 17 of Cache Valley Air Quality Studies, included as Appendix A of IDEQ's 2012 SIP submission.

measures are intended to achieve reductions over and beyond those relied on in the attainment and RFP demonstrations.

In its 2012 SIP submittal, the IDEQ relied on two sets of measures as contingency measures: Idaho control measures that had already been adopted and implemented but which were not included or accounted for in UDAQ's attainment demonstration modeling; and the contingency measures included in Utah's 2012 SIP submission. IDEQ asserted that such measures collectively would achieve emission reductions resulting in a 0.2 µg per year reduction, equaling one year's worth of emission reductions necessary to achieve RFP at the time of IDEQ's 2012 submittal. While the IDEQ asserts that the 0.2 µg per year reduction would occur, the reductions are not quantified in the UDAQ modeling. The EPA is therefore proposing to disapprove the IDEQ's contingency measure plan element.<sup>5</sup>

#### I. Reasonable Further Progress (RFP) and Quantitative Milestones

For PM<sub>2.5</sub> nonattainment areas, two statutory provisions apply regarding RFP and quantitative milestones. First, under subpart 1, CAA section 172(c)(2) requires attainment plans to provide for RFP, which is defined in CAA section 171(l) as "such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D of Title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Reasonable further progress is a requirement to assure that states make steady, incremental progress toward attaining air quality standards, rather than deferring implementation of control measures and thereby emission reductions until sometime just before the date by which the standard is to be attained. Second, under subpart 4, CAA section 189(c) requires that attainment plan submissions have "quantitative milestones which are to be achieved every 3 years until the area is redesignated to attainment and which demonstrate reasonable further progress . . . toward attainment by the applicable date."

<sup>5</sup> We also note that the 9th Circuit Court of Appeals recently rejected EPA's interpretation of CAA section 172(c)(9) as allowing for early implementation of contingency measures. *Bahr v. EPA*, No. 12-72327 (Sept. 12, 2016). The Court concluded that contingency measures must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before. *Id.* at 35-36. The IDEQ control measures, which have already been implemented, do not meet the standard for section 172(c)(9) contingency measures set out by the *Bahr* decision.

The IDEQ's 2012 SIP submittal was developed to meet the subpart 1 RFP requirements, and the 2014 amendment was intended to address the D.C. Circuit's determination that the subpart 4 requirements apply to PM<sub>2.5</sub> NAAQS; however, the IDEQ submittals do not include quantitative milestones as required pursuant to section 189(c). Specifically, section 189(c) provides that an attainment plan must have quantitative milestones which are to be achieved every three years until the area is redesignated to attainment, and which demonstrate reasonable further progress toward attainment by the applicable attainment date.<sup>6</sup> While the SIP submittals did identify one measure of RFP (*i.e.* that the area will attain by the attainment date), the SIP submittals do not adequately address the RFP requirement or provide specific quantitative milestone as required pursuant to section 189(c). For this reason, we propose to disapprove the SIP with respect to the RFP and quantitative milestones requirements.

While the specific RFP and quantitative milestones requirements were not satisfied in the SIP submittals, the IDEQ's attainment plan did contain control measures that were implemented after the area was designated nonattainment. For example, the woodstove curtailment and burn ban ordinances were adopted and in place during the summer and fall of 2012. In addition, the woodstove change-out programs conducted in 2006-2007 and 2011-2012, had already commenced and achieved sustained and quantifiable emission reductions of 8.04 tons per year (tpy) PM<sub>2.5</sub>, 0.47 tpy NO<sub>x</sub>, and 18.57 tpy VOC. The IDEQ calculated the emissions reductions associated with the number of woodstoves exchanged in each of those years. In addition, the IDEQ quantified the estimated reduction in PM<sub>2.5</sub> reentrained road dust emissions from the road sanding

<sup>6</sup> The EPA's General Preamble and Addendum provide guidance interpreting the RFP and quantitative milestone requirements of subpart 4 and were available at the time IDEQ submitted the 2014 addendum. See General Preamble, 57 FR 13539; Addendum, 59 FR 42015-17. The EPA's guidance recommendations with respect to section 189(c) include several relevant features: (1) That the control measures comprising the RFP should be implemented and in place to meet the milestone requirement; (2) that it is reasonable for the three year periods for milestones to run from the date that the attainment plan submission is due; and (3) that the precise form quantitative milestones should take is not specified and they may take whatever form would allow progress to be quantified or measured adequately. The guidance contains a partial list of potential approaches, including percent implementation of control strategies, percent compliance with implemented control measures, and adherence to a compliance schedule. See Addendum, 59 FR 42016.

agreements effective July 16, 2012 and October 25, 2012. The control measures in the IDEQ's attainment plan were in place and achieving reductions within three years of submission. The State relied upon these control measures, in addition to the Utah control measures, to provide the bulk of the emissions reductions projected to bring the area into attainment, and those measures were achieving reductions during the three years from the subpart 4 attainment plan submission date. However, the IDEQ's SIP submittal did not specify whether such measures were also included for the purposes of RFP and quantitative milestones. If properly accounted for and specified in the SIP submittal, such reductions might be sufficient to provide the necessary demonstration of RFP for use in a quantitative milestones report.

#### J. Motor Vehicle Emissions Budget

Section 176(c) of the CAA requires Federal actions in nonattainment and maintenance areas to "conform to" the goals of SIPs. This means that such actions will not cause or contribute to violations of a NAAQS, worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, the EPA, the FHWA, and the FTA to demonstrate that their long-range transportation plans and transportation improvement programs (TIPs) conform to applicable SIPs. This demonstration is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (budgets) contained in a SIP.

For budgets to be approvable, they must meet, at a minimum, the EPA's adequacy criteria (40 CFR 93.118(e)(4)). One of the adequacy criteria requires that motor vehicle emissions budgets when considered together with all other emissions sources, are consistent with the applicable requirements for reasonable further progress, attainment or maintenance (40 CFR 93.118(e)(4)(iv)). In this case the applicable requirement is attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS. The Cache Valley NAA failed to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS by



December 31, 2014.<sup>7</sup> Therefore, the submitted motor vehicle emissions budgets do not meet the aforementioned adequacy criterion. We are proposing to disapprove the submitted budgets consistent with our proposed disapproval of the attainment demonstration for the Idaho portion of the area.

### III. Consequences of a Disapproved SIP

This section explains the consequences of a disapproval of a SIP under section 110(k) of the Act. The Act provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if a state fails to submit and the EPA approve a plan revision that corrects the deficiencies identified by the EPA in its disapproval.

#### *The Act's Provisions for Sanctions*

If the EPA finalizes disapproval of a required SIP submission, such as an attainment plan submission, or a portion thereof, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after the EPA disapproves the SIP. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction imposed at 18 months following a disapproval is 2:1 offsets for sources subject to the new source review requirements under section 173 of the Act. If the deficiency remains uncorrected at 24 months after the disapproval a second sanction is imposed consisting of a prohibition on the approval or funding of certain highway projects.<sup>8</sup> The EPA also has authority under section 110(m) to impose sanctions on a broader area, but is not proposing to take such action in today's rulemaking. The imposition of sanctions is avoided or stopped by a final EPA rulemaking action finding that the state corrected the SIP deficiencies resulting in the disapproval.

#### *Federal Implementation Plan Provisions That Apply if a State Fails To Submit an Approvable Plan*

In addition to sanctions, if the EPA finds that a state failed to submit the

required SIP revision or finalizes disapproval of the required SIP revision, or a portion thereof, the EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected within that time period.

#### *Ramifications Regarding Conformity*

One consequence if EPA finalizes disapproval of a control strategy SIP submission is a conformity freeze.<sup>9</sup> If we finalize the disapproval of the attainment demonstration SIP without a protective finding, a conformity freeze will be in place as of the effective date of the disapproval (40 CFR 93.120(a)(2)). The Idaho portion of the Cache Valley NAA is a "donut area" as defined in the transportation conformity rule (40 CFR 93.101).<sup>10</sup> As such, the Idaho portion of the area does not have a metropolitan planning organization (MPO) and there is no long range transportation plan or TIP that would be subject to a freeze. However, the freeze does mean that no new projects in the Idaho portion of the Cache Valley NAA may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved.

### IV. Proposed Action

The EPA is proposing to approve the woodstove curtailment ordinances, burn ban, heating device restrictions and woodstove change-out programs as meeting RACM requirements. However, for the reasons set forth above and because the area failed to attain by the December 31, 2015 attainment date, we are proposing to determine that the IDEQ has not satisfied the attainment demonstration, the contingency measures, the RFP and quantitative milestone, and the motor vehicle emission budget requirements for the Franklin County portion of the Logan UT-ID area. As such, we are proposing to disapprove these elements.

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply on any Indian reservation land in Idaho or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply on any Indian reservation land in Idaho or any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

<sup>7</sup> December 31, 2014 is the attainment date associated with the motor vehicle emission budgets submitted as part of the 2012 submittal. Although IDEQ did submit revised emissions and attainment year inventories as part of the 2014 supplement, IDEQ did not explicitly submit revised budgets for the Subpart 4 attainment date of December 31, 2015).

<sup>8</sup> On April 1, 1996 the US Department of Transportation published a notice in the **Federal Register** describing the criteria to be used to determine which highway projects can be funded or approved during the time that the highway sanction is imposed in an area. (See 61 FR 14363)

<sup>9</sup> Control strategy SIP revisions as defined in the transportation conformity include reasonable further progress plans and attainment demonstrations (40 CFR 93.101).

<sup>10</sup> The Cache Metropolitan Planning Organization is responsible for transportation planning in a portion of Cache County, UT which is part of this nonattainment area.



Dated: October 18, 2016.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2016–26016 Filed 10–26–16; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R06–OAR–2016–0520; FRL–9952–65–Region 6]

### Approval and Promulgation of Implementation Plans; Louisiana; Regional Haze State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Louisiana State Implementation Plan (SIP) submitted by the State of Louisiana through the Louisiana Department of Environmental Quality (LDEQ) on August 11, 2016 that addresses regional haze (RH) for the first planning period. This revision was submitted to address deficiencies identified in a previous action regarding requirements of the Federal Clean Air Act (CAA or Act) and the EPA's rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program"). This action concerns Best Available Retrofit Technology for certain sources.

**DATES:** Written comments must be received on or before November 28, 2016.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0520, at <http://www.regulations.gov> or via email to [huser.jennifer@epa.gov](mailto:huser.jennifer@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include

discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact Jennifer Huser, 214–665–7347, [huser.jennifer@epa.gov](mailto:huser.jennifer@epa.gov). 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>.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

**FOR FURTHER INFORMATION CONTACT:** Jennifer Huser, 214–665–7347, [huser.jennifer@epa.gov](mailto:huser.jennifer@epa.gov). To inspect the hard copy materials, please schedule an appointment with Jennifer Huser or Mr. Bill Deese at 214–665–7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

## I. Background

### A. The Regional Haze Program

In the Clean Air Act (CAA) Amendments of 1977, Congress established a program to protect and improve visibility in the Nation's national parks and wilderness areas. See CAA section 169A. Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169B. The EPA promulgated regional haze regulations in 1999 to implement sections 169A and 169B of the CAA. These regulations require states to develop and implement plans to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas<sup>1</sup> (Class I areas). See 64 FR 35714

<sup>1</sup> Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, the EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate

(July 1, 1999); see also 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).

Regional haze is impairment of visual range or colorization caused by air pollution, principally fine particulate, produced by numerous sources and activities, located across a broad regional area. The sources include but are not limited to, major and minor stationary sources, mobile sources, and area sources including non-anthropogenic sources. These sources and activities may emit fine particles (PM<sub>2.5</sub>) (*e.g.*, sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.*, sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and in some cases, ammonia and volatile organic compounds). Fine particulate can also cause serious health effects and mortality in humans, and contributes to environmental effects such as acid deposition and eutrophication. See 64 FR at 35715. Data from the existing visibility monitoring network, the "Interagency Monitoring of Protected Visual Environments" (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time in most national parks and wilderness areas. The average visual range in many Class I areas in the western United States is 100–150 kilometers, or about one-half to two-thirds the visual range that would exist without manmade air pollution.<sup>2</sup> Visibility impairment also varies day-to-day and by season depending on variations in meteorology and emission rates. The deciview (dv) is the metric by which visibility is measured in the regional haze program. A change of 1 dv is generally considered the change in visual range that the human eye can perceive.

### B. Best Available Retrofit Technology

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources with the potential to emit greater than 250 tons per year (tpy) or more of any visibility impairing pollutant in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the Act requires states to revise their SIPs to contain such measures as may be necessary to make

as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager." 42 U.S.C. 7602(i). When we use the term "Class I area" in this action, we mean a "mandatory Class I Federal area."

<sup>2</sup> 64 FR at 35715.

reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources<sup>3</sup> built between 1962 and 1977 procure, install, and operate the “Best Available Retrofit Technology”, as determined by the state or us in the case of a plan promulgated under section 110(c) of the CAA. Under the Regional Haze rule, states are directed to conduct BART determinations for such “BART-eligible” sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area.

We promulgated regulations addressing Regional Haze in 1999, 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P.<sup>4</sup> These regulations require all states to submit implementation plans that, among other measures, contain either emission limits representing BART for certain sources constructed between 1962 and 1977, or alternative measures that provide for greater reasonable progress than BART. 40 CFR 51.308(e).

### C. EPA's Previous Actions on Louisiana Regional Haze

On June 13, 2008, Louisiana submitted a SIP to address regional haze. EPA acted on that submittal in two separate actions. The first was a limited disapproval (77 FR 33641) because of deficiencies in the state's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia to the EPA of the Clean Air Interstate Rule (CAIR). The second was a partial limited approval/partial disapproval (77 FR 39425) because the SIP revision met some but not all of the applicable requirements of the CAA and EPA's regulations as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308, but as a whole, the SIP revision strengthened the SIP. The deficiencies included inadequate Best Available Retrofit Technology (BART) determinations for four facilities. These four facilities are the only non-electric generating unit (EGU) facilities in Louisiana that were identified as being subject to BART and are referred to as the non-EGU facilities.

On August 11 2016, Louisiana submitted a SIP revision intended to

address the deficiencies related to BART for the four non-EGUs.

## II. The EPA's Evaluation

### A. Introduction to the Four Non-EGU Facilities: Summary

The four non-EGU facilities are: Phillips 66 Company-Alliance Refinery; Mosaic Fertilizer LLC, Uncle Sam Plant; Eco-Services Operations Corp.; and Sid Richardson Carbon Co., Addis Plant. For three facilities (Phillips 66, Eco-Services, and Sid Richardson), LDEQ had submitted a BART analysis under 40 CFR 51.308(e)(1)(ii)(A). For each of these facilities, we determined, in our July 3, 2012 notice, that the BART analysis satisfied part, but not all, of the requirements. We also found that LDEQ had erred in exempting Mosaic from BART by using future controls and visibility impacts rather than assessing controls that were in place at the time of the SIP submittal.

In its August 11, 2016 SIP submittal, LDEQ provided revised BART analyses for the three facilities to address the deficiencies noted in the previous Regional Haze SIP action. LDEQ has also provided a BART analysis for Mosaic. A summary of our proposed findings for these facilities is provided below. For more details, please see our evaluation of the BART determination for each of these four subject-to-BART sources in the TSD.

#### A. Sid Richardson Carbon Co.

The Sid Richardson Carbon Company's Addis Plant is located in West Baton Rouge Parish, Louisiana. For the BART eligible units at the facility, LDEQ submitted in the original Regional Haze SIP a BART engineering analysis; for particulate matter the LDEQ determined that the high efficiency fabric filters already in use at the facility are BART. EPA found that the LDEQ acted within its discretion in making this determination and that the analyses met the BART requirements. However, the EPA found that the BART analysis for NO<sub>x</sub> and SO<sub>2</sub> were deficient. While LDEQ indicated that no controls were technically feasible, EPA found that the record did not provide a sufficient basis for this conclusion. Based on this, the NO<sub>x</sub> and SO<sub>2</sub> BART determination for the Addis Plant was deemed deficient (77 FR 11851).

The original modeling that was performed showed that the facility had an impact that was above the contribution threshold of 0.5 deciview level for determining which sources are subject to BART. The Addis plant model results were 0.756 deciviews.

In response to the EPA action, Sid Richardson revised the BART analysis and updated the modeling. The facility requested permission to perform a new round of modeling using the same emissions parameters that were used in the original model but utilizing the newest EPA approved methods and guidance documents. EPA reviewed and concurred with the methodology and modeling results provided by Sid Richardson. Based on this analysis, LDEQ concluded that the facility is not subject-to-BART because its model visibility impact was less than 0.5 deciviews. We have evaluated LDEQ's submittal and propose to approve the Sid Richardson BART analysis and modeling and the LDEQ's finding that the Addis plant is not subject-to-BART.

#### B. Phillips 66 Company-Alliance Refinery (Formerly ConocoPhillips)

The Phillips 66 Company (Phillips 66) owns and operates the Alliance Refinery near Belle Chasse, Louisiana, which is a subject-to-BART source.<sup>5</sup> On December 5, 2005, Conoco Phillips, the United States of America and the State of Louisiana, entered into a Consent Decree (CD)<sup>6</sup> as part of the National Refinery Initiative for the Belle Chasse (Alliance) Refinery. In our previous action, we found that the BART engineering analysis provided by Phillips 66 utilized emission reductions that are mandated per the CD for the fluidized catalytic cracker (FCCU), the process refinery flares and the crude unit heater. However, the LDEQ did not provide a complete BART evaluation for these units. In the August 11, 2016 SIP revision, LDEQ provided a complete BART determination for these units. Controls and conditions required by the CD include a wet gas scrubber on the FCCU, selective catalytic reduction (SCR) on the FCCU and crude unit heater, flare gas recovery for the process refinery flares, and compliance with the Standards of Performance for Petroleum Refineries as prescribed in 40 CFR part 60, subpart J for the low pressure and high pressure flares, CO boilers, and crude unit heaters. Implementation of these control projects as per the CD emissions reduction requirements have resulted in reducing the overall site visibility impacts. In the previous

<sup>3</sup> The set of “major stationary sources” potentially subject to BART are listed in CAA section 169A(g)(7).

<sup>4</sup> In *American Corn Growers Ass'n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002), the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling vacating and remanding the BART provisions of the regional haze rule. In 2005, we issued BART guidelines to address the court's ruling in that case. See 70 FR 39104 (July 6, 2005).

<sup>5</sup> At the time of Louisiana's initial Regional Haze SIP, the Alliance Refinery was owned and operated by ConocoPhillips. Ownership of the Alliance Refinery transferred to Phillips 66 on April 26, 2012. Pursuant to the Separation and Distribution Agreement between the companies, responsibility for compliance with the environmental permits now resides with Phillips 66 Company.

<sup>6</sup> Civil Action No. H-05-0285. A copy of this CD is available in the docket for this rulemaking.

action, we also found that the LDEQ failed to submit the emissions limits as part of the SIP revision as required. The emissions limits are now included in an Administrative Order on Consent (AOC) No. AE-AOC-14-00211A between LDEQ and Phillips 66 and were provided in the August 11, 2016 SIP revision.

In our initial action on Louisiana Regional Haze, we approved LDEQ's BART determinations for several other subject to BART units at the Alliance Refinery. These units include the cooling water tower, gas-fired heaters, loading docks, and the coke transfer and storage area. See 77 FR at 39432. However, at that time, LDEQ did not submit the BART emissions limits for approval into the SIP. The BART emissions limits for these units are also included in AOC No. AE-AOC-14-00211A.

EPA proposes to find that the current controls installed and operating conditions at these subject to BART units constitute BART. The emissions limits for all of the subject to BART units at the Alliance Refinery are included in the AOC in accordance with 40 CFR 51.308(4)(e). Upon EPA approval of this portion of the Regional Haze SIP submittal, the AOC becomes federally enforceable. We propose to approve the BART analysis and the emission limits for Phillips 66 as meeting the BART requirements.

#### C. Mosaic Fertilizer LLC

Mosaic Fertilizer, LLC, owns and operates the Uncle Sam Plant (Mosaic) in St. James Parish, Louisiana and produces phosphoric acid and sulfuric acid. In our previous action, we partially disapproved Louisiana's Regional Haze SIP for failure to identify Mosaic as subject to BART and failure to submit a BART determination for Mosaic.

In Louisiana's initial Regional Haze SIP submittal, the LDEQ used a contribution threshold of 0.5 dv for determining which sources are subject to BART, and we approved this threshold in our previous action. See, 77 FR at 11849. The Regional Haze Rule states that a BART eligible source can only be exempted from being subject to BART if its visibility impacts at the time the SIP is developed are less than the screening value. See, 70 FR 39118; 77 FR at 11849.

In the original Regional Haze SIP submittal, the LDEQ properly identified Mosaic as a BART eligible source consistent with the BART Guidelines. However, LDEQ's initial SIP submittal inappropriately allowed Mosaic to screen out based on controls that were

not installed at the time of the submittal. LDEQ accepted Mosaic's modeling, which was based on future controls that were to be installed on the A-Train Sulfuric Acid Stack. Based on the modeling results, the LDEQ listed the facility as passing both the screening modeling as well as the refined modeling. As such, LDEQ erroneously determined that the facility was not subject to BART and, therefore, was not required to perform a BART analysis.

In our final action (77 FR at 39429), we determined that the state should have identified the Mosaic facility as being subject to BART and submitted a BART determination for the source. Mosaic entered into a CD with the EPA, LDEQ and other parties on December 23, 2009.<sup>7</sup> The CD required the installation of controls on the Sulfuric Acid Trains A, D, and E, including a scrubber system on the A Train and process improvements on the D Train. These controls resulted in a reduction in SO<sub>2</sub> emissions of over 10,000 tons per year. In its SIP revision, LDEQ provided a complete BART analysis concluding that additional control beyond those required by the consent decree would not be necessary to meet BART. Based on a review of the BART analysis and LDEQ's determination, EPA agrees that Mosaic, with its current controls and operating conditions, has satisfied BART. The emissions limits for Mosaic under current controls and operating conditions are included in AOC No. AE-AOC-14-00274A which was included in the August 11, 2016 SIP revision in accordance with 40 CFR 51.308(4)(e). Upon EPA approval of this portion of the Regional Haze SIP submittal, the AOC becomes federally enforceable. We propose to approve the BART analysis and the emission limits for Mosaic.

#### D. Eco-Services Operations Corp (Formerly Rhodia)

The Eco-Services Operations Corp facility (Eco-Services) is a sulfuric acid plant located in Baton Rouge, Louisiana.<sup>8</sup> The plant produces sulfuric

acid by using two sulfuric acid production trains, Unit 1 and Unit 2, but only Unit 2 is subject to BART.<sup>9</sup> Effective July 23, 2007, the EPA, LDEQ and other parties entered into a CD with Eco-Services due to violations associated with excess emissions of sulfuric acid mist and sulfur dioxide. The CD required a scrubber to be installed on each of the units to control SO<sub>2</sub> emissions.<sup>10</sup>

In the July 23, 2012 action (77 FR at 39426), EPA found that with the selected control strategy, the Eco-Services units met the BART requirements at 40 CFR part 51, Appendix Y.OV.D.1.9.<sup>11</sup> However, EPA found that the LDEQ failed to submit the emissions limits as part of the SIP revision as required. The emissions limits are included in the AOC No. AE-AOC-14-00957 between LDEQ and Eco-Services, which was provided in the August 11, 2016 SIP revision.

In the BART analysis, Eco-Services identified both a short term and long term limit control level for SO<sub>2</sub>. The long term emissions limits for Eco-Services under current controls and operating conditions are included in the AOC in accordance with 40 CFR 51.308(4)(e) and are federally enforceable. The short term limit provided in the BART analysis is 3 lbs/ton, consistent with the limits established in the Consent Decree. The long term limit in the Consent Decree includes an exemption for emissions during startup shutdown and malfunction. However, the short term emissions are limited by the New Source Performance Standard (NSPS) for Sulfuric Acid Plants (40 CFR part 60, subpart H). This short term limit is applicable at all times and is adequate to meet BART during periods of startup and shutdown. EPA concurs with LDEQ's evaluation and findings that the current controls in place, along with the federally enforceable limits established in the AOC and through applicability to

Distribution Agreement between the companies, responsibility for compliance with the environmental permits now resides with Eco-Services.

<sup>9</sup> Under the CAA, BART only applies to a unit that was "in existence on August 7, 1977, but which has not been in operation for more than fifteen years as of such date." 42 U.S.C. 7491(b)(2)(A); CAA 169A(b)(2)(A). Unit 1 was constructed in 1953, which is outside the BART timeframe. However, Unit 2 was constructed in 1968.

<sup>10</sup> Civil Action No. 2:07CV134 WL. A copy of this CD is available in the docket for this rulemaking.

<sup>11</sup> We acknowledge that compliance with the BART Guidelines in 40 CFR part 51, Appendix Y is not mandatory for Eco-Services because Eco-Services is a non-EGU source. However, following these Guidelines is one option for subject-to-BART non-EGUs to ensure BART determinations are adequate.

<sup>7</sup> Civil Action No. 09-6662. A copy of this CD is available in the docket for this rulemaking.

<sup>8</sup> At the time of Louisiana's initial Regional Haze SIP, the facility was owned and operated by Rhodia. Effective October 1, 2013, Rhodia Inc. changed its company name and the name of the facility from Rhodia Inc. to Solvay USA Inc. The LDEQ Office of Environmental Services acknowledged the name change in correspondence, dated November 1, 2013. On December 1, 2014, Solvay USA Inc. transferred ownership and operation of the facility to Eco Services Operations LLC. Pursuant to the agreement between the companies and the Department's approval of the permit transfer, responsibility for compliance with the terms and conditions of Permit No. 0840-00033-V5 now resides with Eco Services Operations LLC. Pursuant to the Separation and

the NSPS standard, constitutes BART. We propose to approve the BART analysis and the emission limits for Eco-Services. Upon approval the limits in the SIP these limits will be federally enforceable.

### III. Proposed Action

We are proposing to approve Louisiana's Regional Haze SIP revision submitted on August 11, 2016. Specifically, we are proposing to find that the following elements have satisfied the federal requirement:

- the State's identification of BART-eligible sources,
- the State's determination that Sid Richardson Addis Plant is not subject to BART,
- the State's BART determinations for Phillips 66, Eco-Services, and Mosaic.

### IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

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

Dated: October 11, 2016.

**Ron Curry,**

*Regional Administrator, Region 6.*

[FR Doc. 2016-25803 Filed 10-26-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR 180

[EPA-HQ-OPP-2016-0083; FRL-9954-27]

### Receipt of a Pesticide Petition Filed for Residues of a Pesticide Chemical in or on a Commodity

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of filing of petition and request for comment.

**SUMMARY:** This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities. **DATES:** Comments must be received on or before November 28, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID)

number EPA-HQ-OPP-2016-0083, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

### FOR FURTHER INFORMATION CONTACT:

Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDFFRNotices@epa.gov](mailto:RDFFRNotices@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this action apply to me?

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

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

##### B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What action is the agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the modification of regulations in 40 CFR part 180 for residues of a pesticide chemical in or on a food commodity. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is

publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

### Amended Tolerance

*PP 5F8430.* EPA–HQ–OPP–2016–0083. Bayer CropScience LP, P.O. Box 12014, 2 T.W. Alexander Drive Research Triangle Park, NC 27709, requests to amend the tolerance in 40 CFR 180.499 for residues of the fungicide, Propamocarb Hydrochloride, in or on potato at from 0.06 parts per million (ppm) to 0.30 ppm. The gas/liquid chromatography and N–FID or MSD is used to measure and evaluate the chemical propamocarb hydrochloride. Contact: RD.

**Authority:** 21 U.S.C. 346a.

Dated: October 18, 2016.

**Michael Goodis,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016–25927 Filed 10–26–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA–HQ–OPP–2016–0594; FRL–9953–98]

### Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of filing of petition and request for comment.

**SUMMARY:** This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities. **DATES:** Comments must be received on or before November 28, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0594, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

### FOR FURTHER INFORMATION CONTACT:

Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: [RD.FRNNotices@epa.gov](mailto:RD.FRNNotices@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this action apply to me?

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

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

##### B. What should I consider as I prepare my comments for EPA?

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

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What action is the agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be

obtained through the petition summary referenced in this unit.

*PP 4F8303.* EPA-HQ-OPP-2016-0594. Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide 2,4-D in or on cotton, gin byproducts at 1.5 parts per million (ppm), and cotton, undelinted seed at 0.8 ppm. The EN-CAS Method No. ENC-2/93 is used to measure and evaluate the chemical 2,4-D. Contact: RD.

**Authority:** 21 U.S.C. 346a.

Dated: October 14, 2016.

**Michael Goodis,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016-25926 Filed 10-26-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

[EPA-HQ-OPPT-2015-0810; FRL-9951-77]

**RIN 2070-AB27**

### Significant New Use Rule on Certain Chemical Substances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for three chemical substances which were the subject of premanufacture notices (PMNs). The applicable review periods for the PMNs submitted for these chemical substances all ended prior to June 22, 2016, the date on which President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amends TSCA). This action would require persons who intend to manufacture (defined by statute to include import) or process any of the chemical substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the intended use within the applicable review period. Manufacture and processing for the significant new use is unable to commence until EPA has conducted a review of the notice, made an appropriate determination on the notice, and take such actions as are required with that determination.

**DATES:** Comments must be received on or before November 28, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2015-0810, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-9232; email address: [moss.kenneth@epa.gov](mailto:moss.kenneth@epa.gov).

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

Manufacturers (including importers) or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification

requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance to a proposed or final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

*B. What should I consider as I prepare my comments for EPA?*

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

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

## II. Background

*A. What action is the agency taking?*

EPA is proposing these SNURs under TSCA section 5(a)(2) for three chemical substances which were the subject of PMNs P-15-276, P-15-378, and P-15-559. These SNURs would require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity. In accordance with the procedures at § 721.160(c)(3)(i), in the **Federal Register** publication of May 16, 2016 (81 FR 30452) (FRL-9944-77) EPA issued direct final SNURs on these chemical substances, which are the subject of PMNs. EPA received notices of intent to submit adverse

comments on these SNURs. Therefore, as required by § 721.160(c)(3)(ii), EPA withdrew the direct final SNURs in the **Federal Register** of July 14, 2016 (81 FR 45416) (FRL-9948-81), and is now issuing this proposed rule on these three chemical substances. The records for the direct final SNURs on these chemical substances were established as docket EPA-HQ-OPPT-2015-0810. Those records include information considered by the Agency in developing the direct final rule. While notices of intent to submit adverse comments were received during the direct final rule phase, no substantive comments were submitted. EPA awaits the adverse comments during the open comment period for this proposed rule. Comments received on the two isocyanate PMN chemicals in today's proposed rule will be addressed in a final rule with isocyanate PMN chemicals that were the subject of previous proposed rules published in the **Federal Register** at 80 FR 845 (January 7, 2015) and 81 FR 21830 (April 13, 2016).

*B. What is the agency's authority for taking this action?*

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA furthermore prohibits such manufacturing or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

*C. Applicability of General Provisions*

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject

to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

## III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

## IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for three chemical substances in 40 CFR part 721, subpart E. In this unit, EPA



provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (assigned for non-confidential chemical identities).
- Public comments and EPA's response to comments on the three direct final SNURs
- Basis for the TSCA non-section 5(e) SNURs (*i.e.*, SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VII. for more information).
- CFR citation assigned in the regulatory text section of this proposed rule.

The regulatory text section of this proposed rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (*i.e.*, limits on manufacture volume) and other uses designated in this proposed rule, may be claimed as CBI.

The three PMN substances included in this rulemaking are not subject to consent orders under TSCA section 5(e). These cases completed Agency review prior to June 22, 2016. Under TSCA, prior to the enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act on June 22, 2016, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a "significant new use." These so-called "non-TSCA section 5(e) SNURs" are consistent with the determination made at the time and are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a "significant new use" in all non-TSCA section 5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), *i.e.*, these significant new use activities, "(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified" for the PMN substance.

*PMN Number P-15-276*

*Chemical name:* Functionalized carbon nanotubes (generic).

*CAS number:* Claimed confidential.

*Basis for action:* The PMN states that the substance will be used as a thin film for electronic device applications. Based on SAR analysis of test data on analogous carbon nanotubes and other respirable poorly soluble particulates, EPA identified potential lung effects and skin penetration and toxicity induction from inhalation and dermal exposure to the PMN substance. Further, EPA predicts toxicity to aquatic organisms via releases of the PMN substance to surface water. Although there is potential for dermal exposure, EPA does not expect significant occupational exposures due to the use of impervious gloves, and because the PMN is used in a liquid and is not spray applied except in a closed system. Further, EPA does not expect environmental releases during the use identified in the PMN submission. Therefore, EPA has not determined that the proposed manufacturing, processing, and or use of the substance may present an unreasonable risk to human health or the environment. EPA has determined, however, that any use of the substance without the use of impervious gloves, where there is potential for dermal exposure; manufacturing the PMN substance for use other than as a thin film for electronic device applications; manufacturing, processing, or using the PMN substance in a form other than a liquid; use of the PMN substance involving an application method that generates a mist, vapor, or aerosol except in a closed system; or any release of the PMN substance into surface waters or disposal other than by landfill or incineration may cause serious health effects or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).

*Recommended testing:* EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); an algal toxicity test (OCSPP Test Guideline 850.4500); a 90-day inhalation toxicity test (OPPTS 870.3465) with additional testing parameters beyond those noted at CFR 870.3465, for using the 90-day subchronic protocol for nanomaterial assessment; a two-year inhalation bioassay (OPPTS Test Guideline 870.4200); and a surface charge by electrophoresis (for example, using ASTM E2865-12 or NCL Method PCC-2—Measuring the Zeta Potential of Nanoparticles) would help characterize

the health and environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.10902.

*PMN Number P-15-378*

*Chemical name:* Diisocyanato hexane, homopolymer, alkanolic acid-polyalkylene glycol ether with substituted alkane (3:1) reaction products-blocked (generic).

*CAS number:* Claimed confidential.

*Basis for action:* The PMN states that the substance will be used as a dual cure/UV cure adhesion/barrier coating for wood substrates. Based on SAR analysis of test data on analogous diisocyanates, EPA identified concerns for respiratory sensitization. Furthermore, the National Institute for Occupational Safety and Health (NIOSH) alert at <http://www.cdc.gov/niosh/docs/2006-149/pdfs/2006-149.pdf> summarizes four case reports: one death and several incidents of asthma or other respiratory disease following exposure to methylenebis(phenyl isocyanate) (MDI) during spray-on truck bed lining operations. For this PMN substance, a significant new use is any use of the substance without a NIOSH-certified particulate respirator with an APF of at least 10 where there is a potential for inhalation exposure, or any use in consumer products. For new isocyanates submitted as PMNs, EPA expects to issue TSCA section 5(e) orders imposing 0.1% limits on total residual isocyanates and greater levels of respiratory protection (at least an APF of 50, or 1000 if used in a process that generates a vapor or particulate), and no consumer use. The Agency would then likely issue a SNUR defining the significant new use as total residual isocyanates exceeding that 0.1% limit and any use in a consumer product. However, as mentioned in Unit VI., below, and in the original May 16, 2016 direct final rule, EPA designated that date as the cutoff date for determining whether the new use is ongoing.

Furthermore, a Notice of Commencement of Manufacture or Import was submitted and the chemical substance is now on the TSCA Inventory and is being used with respiratory protection with an APF of less than 50. For these reasons, EPA is not changing the terms of the original direct final SNUR for this PMN substance. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

*Recommended testing:* EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the



human health effects of the PMN substance.

*CFR citation:* 40 CFR 721.10913.

*PMN Number P-15-559*

*Chemical name:* Modified diphenylmethane diisocyanate prepolymer with polyol (generic).

*CAS number:* Claimed confidential.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance will be as a raw material for flexible foam. Based on SAR analysis of analogous diisocyanates, EPA identified concerns for potential dermal and respiratory sensitization from dermal and inhalation exposures, and for pulmonary toxicity from inhalation exposure, to the PMN substance where the average molecular weight is below 7,500 daltons and any molecular weight species is below 1,000 daltons. For the molecular weight distribution described in the PMN, significant occupational exposures are not expected. Therefore, EPA has not determined that the proposed manufacture of the substance may present an unreasonable risk. EPA has determined, however, that any manufacture of the PMN substance with an average molecular weight below 7,500 daltons, and where any molecular weight species is below 1,000 daltons may cause serious health effects. For new isocyanates submitted as PMNs, EPA expects to issue TSCA section 5(e) orders imposing 0.1% limits on total residual isocyanates and greater levels of respiratory protection (at least an APF of 50, or 1000 if used in a process that generates a vapor or particulate), and no consumer use. The Agency would then likely issue a SNUR defining the significant new use as total residual isocyanates exceeding that 0.1% limit and any use in a consumer product. However, as mentioned in Unit VI., below, and in the original May 16, 2016 direct final rule, EPA designated that date as the cutoff date for determining whether the new use is ongoing.

Furthermore, a Notice of Commencement of Manufacture or Import was submitted and the chemical substance is now on the TSCA Inventory and is being used with respiratory protection with an APF of less than 50. For these reasons, EPA is not changing the terms of the original direct final SNUR for this PMN substance. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

*Recommended testing:* EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the

human health effects of the PMN substance.

*CFR citation:* 40 CFR 721.10920.

## V. Rationale and Objectives of the Proposed Rule

### A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA determined that one or more of the criteria of concern established at § 721.170 were met. For additional discussion on these chemical substances, see Units II. and IV. of this proposed rule.

### B. Objectives

EPA is proposing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this proposed rule:

- EPA would receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- EPA would be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at <https://www.epa.gov/tsca-inventory>.

## VI. Applicability of the Proposed Rule to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first

submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. The identities of the three chemical substances subject to this proposed rule have been claimed as confidential and EPA has received no post-PMN *bona fide* submissions (per §§ 720.25 and 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

Therefore, as mentioned in the original May 16, 2016 direct final rule, EPA designated that date as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that May 16, 2016 date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990 (55 FR 17376) for a more detailed discussion of the cutoff date for ongoing uses.

## VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.*, generating test data) before submission of a SNUN. There is an exception: development of test data is required where the chemical substance subject to the SNUR is also subject to a rule, order or consent agreement under TSCA section 4 (see TSCA section 5(b)(1)).

In the absence of a TSCA section 4 test rule covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Descriptions of tests are provided for

informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to <http://www.epa.gov/ocspp> and select “Test Guidelines for Pesticides and Toxic Substances.”

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs and define the terms of any potentially necessary controls if the submitter provides detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

## VIII. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E-PMN software is available electronically at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/how-submit-e-pmn>.

## IX. Scientific Standards, Evidence, and Available Information

EPA has used scientific information, technical procedures, measures, methods, protocols, methodologies, and models consistent with the risk assessment documents included in the public docket. These information sources supply information relevant to whether a particular use would be a significant new use, based on relevant factors including those listed under TSCA section 5(a)(2).

The clarity and completeness of the data, assumptions, methods, quality

assurance, and analyses employed in EPA's decision are documented, as applicable and to the extent necessary for purposes of this proposed significant new use rule, in Unit II and in the documents noted above. EPA recognizes, based on the available information, that there is variability and uncertainty in whether any particular significant new use would actually present an unreasonable risk. For precisely this reason, it is appropriate to secure a future notice and review process for these uses, at such time as they are known more definitely. The extent to which the various information, procedures, measures, methods, protocols, methodologies or models used in EPA's decision have been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for a significant new use rule.

## X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule, during the development of the direct final rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2015–0810.

## XI. Statutory and Executive Order Reviews

### A. Executive Order 12866

This proposed rule would establish SNURs for three chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “*Regulatory Planning and Review*” (58 FR 51735, October 4, 1993).

### B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this proposed rule have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR

No. 574). This proposed rule would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

### C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
2. The SNUR submitted by any small entity would not cost significantly more than \$8,300.

A copy of that certification is available in the docket for this proposed rule.

This proposed rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit IX. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than \$8,300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

### D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to

believe that any State, local, or Tribal government would be impacted by this proposed rule. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

#### E. Executive Order 13132

This proposed rule would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999).

#### F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

#### G. Executive Order 13045

This proposed rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this proposed rule does not address environmental health or safety risks disproportionately affecting children.

#### H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because this proposed rule is not expected to affect energy supply, distribution, or use and because this proposed rule is not a significant regulatory action under Executive Order 12866.

#### I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this proposed rule would not involve any technical

standards, NTTAA section 12(d) (15 U.S.C. 272 note), would not apply to this proposed rule.

#### J. Executive Order 12898

This proposed rule does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 19, 2016.

**Maria J. Doa,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

#### PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add § 721.10902 to subpart E to read as follows:

##### **§ 721.10902 Functionalized carbon nanotubes (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as functionalized carbon nanotubes (PMN P-15-276) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), and (a)(3). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is manufacture, process, or use of the PMN substance other than in a liquid formulation. A significant new

use is use other than as a thin film for electronic device applications or any use involving an application method that generates a vapor, mist, or aerosol unless such application method occurs in an enclosed process. An enclosed process is defined as an operation that is designed and operated so that there is no release associated with normal or routine production processes into the environment of any substance present in the operation. An operation with inadvertent or emergency pressure relief releases remains an enclosed process so long as measures are taken to prevent worker exposure to and environmental contamination from the releases.

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (e), (i), (j), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 3. Add § 721.10913 to subpart E to read as follows:

##### **§ 721.10913 Diisocyanato hexane, homopolymer, alkanolic acid-polyalkylene glycol ether with substituted alkane (3:1) reaction products-blocked (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as diisocyanato hexane, homopolymer, alkanolic acid-polyalkylene glycol ether with substituted alkane (3:1) reaction products-blocked (PMN P-15-378) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(4), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational

Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125

(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 4. Add § 721.10920 to subpart E to read as follows:

**§ 721.10920 Modified diphenylmethane diisocyanate prepolymer with polyol (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as modified diphenylmethane diisocyanate prepolymer with polyol (PMN P-15-559) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use of the substance is manufacture of the substance where the average molecular weight is below 7,500 daltons, and where any molecular weight species is below 1,000 daltons.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2016-25933 Filed 10-26-16; 8:45 am]

**BILLING CODE 6560-50-P**

# Notices

Federal Register

Vol. 81, No. 208

Thursday, October 27, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### Amendment to the Designation of North Dakota Grain Inspection

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** North Dakota Grain Inspection Service, Inc.'s (North Dakota) geographical territory is amended to include the area previously designated to Columbus Grain Inspection, Inc. (Columbus). North Dakota purchased Columbus effective July 11, 2016, and met the requirements specified in the agency's General Regulations. The designation of North Dakota is from January 1, 2016, to December 31, 2020.

**DATES:** Effective July 11, 2016.

**FOR FURTHER INFORMATION CONTACT:** Sharon Lathrop, 816-891-0415 or [FGIS.QACD@usda.gov](mailto:FGIS.QACD@usda.gov).

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act (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). Under 7 U.S.C. 79(g), designations of official agencies are effective for no longer than five years, unless terminated by the Secretary, and may be renewed according to the criteria and procedures prescribed in 7 U.S.C. 79(f).

#### North Dakota Designation

Pursuant to 7 U.S.C. 79(f)(2), the following geographic area, in the States of Illinois, Indiana, Michigan, Minnesota, North Dakota, and Ohio, is assigned to this official agency.

#### In Illinois

Bounded on the East by the eastern Cumberland County line; the eastern

Jasper County line south to State Route 33; State Route 33 east-southeast to the Indiana-Illinois State line; the Indiana-Illinois State line south to the southern Gallatin County line; Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River; and Bounded on the West by the Mississippi River north to the northern Calhoun County line; Bounded on the North by the northern and eastern Calhoun County lines; the northern and eastern Jersey County lines; the northern Madison County line; the western Montgomery County line north to a point on this line that intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines.

#### In Indiana

Bartholomew, Blackford, Boone, Brown, Carroll (south of State Route 25), Cass, Clinton, Delaware, Fayette, Fulton (bounded on east by eastern Fulton County line south to State Route 19; State Route 19 south to State Route 114; State Route 114 southeast to eastern Fulton County line), Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Jay, Johnson, Madison, Marion, Miami, Monroe, Montgomery, Morgan, Randolph, Richmond, Rush (north of State Route 244), Shelby, Tipton, Union, and Wayne Counties.

#### In Michigan

Bounded on the West by State Route 127 at the Michigan-Ohio State line north to State Route 50; Bounded on the north by State Route 50 at State Route 127 east to the Michigan State line; the Michigan state line south to the Michigan-Ohio State line.

#### In Minnesota

Koochiching, St. Louis, Lake, Cook, Itasca, Norman, Mahnommen, Hubbard, Cass, Clay, Becker, Wadena, Crow Wing, Aitkin, Carlton, Wilkin, and Otter Tail Counties, except those export port locations within the State, which are serviced by GIPSA.

#### In North Dakota

Bounded on the North by the northern Steele County line from State Route 32 east; the northern Steele and Trail County lines east to the North Dakota State line; Bounded on the East by the eastern North Dakota State line; Bounded on the South by the southern North Dakota State line west to State Route 1; and Bounded on the West by State Route 1 north to Interstate 94; Interstate 94 east to the Soo Railroad line; the Soo Railroad line northwest to State Route 1; State Route 1 north to State Route 200; State Route 200 east to State Route 45; State Route 45 north to State Route 32; State Route 32 north.

#### In Ohio

The northern Ohio State line east to the Ohio Pennsylvania State line; Bounded on the East by the Ohio-Pennsylvania State line south to the Ohio River; Bounded on the South by the Ohio River south-southwest to the western Scioto County line; and Bounded on the West by the western Scioto County line north to State Route 73; State Route 73 northwest to U.S. Route 22; U.S. Route 22 west to U.S. Route 68; U.S. Route 68 north to Clark County; the northern Clark County line west to Valley Pike Road; Valley Pike Road north to State Route 560; State Route 560 north to U.S. 36; U.S. 36 west to eastern Miami County Line; eastern Miami County Line to Northern Miami County Line; Northern Miami County Line west to Interstate 75; Interstate 75 north to State Route 47; State Route 47 northeast to U.S. Route 68 (including all of Sidney, Ohio); U.S. Route 68 north to the southern Hancock County line; the southern Hancock County line west to the western Hancock, Wood and Lucas County lines north to the Michigan-Ohio State line; the Michigan-Ohio State line west to State Route 127; plus all of Darke County.

North Dakota's assigned geographic area does not include the export port locations inside North Dakota's area which are serviced by GIPSA. The

following grain elevators are not part of this geographic area assignment and are assigned to: Titus Grain Inspection, Inc.; The Andersons, Delphi, Carroll County; Frick Services, Inc., Leiters Ford, Fulton County; and Cargill, Inc., Linden, Montgomery County, Indiana.

The agency certifies that North Dakota has met all the criteria for designation as delineated in 7 CFR 800.196(f)(2).

**Authority:** 7 U.S.C. 71–87k.

**Susan B. Keith,**

*Acting Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2016–25612 Filed 10–26–16; 8:45 am]

**BILLING CODE 3410-KD-P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### Amendment to the Designation of Mid-Iowa Grain Inspection

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** Mid-Iowa Grain Inspection, Inc.'s (Mid-Iowa) geographical territory is amended to include the area previously designated to John R. McCrea Agency, Inc. (McCrea). Mid-Iowa purchased McCrea effective September 1, 2016, and met the requirements specified in GIPSA's General Regulations. The designation of Mid-Iowa is from July 1, 2016, to June 30, 2020.

**DATES:** *Effective Date:* September 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jorge Vazquez, 816–866–2224 or *FGIS.QACD@usda.gov*.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act (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). Under 7 U.S.C. 79(g), designations of official agencies are effective for no longer than five years, unless terminated by the Secretary, and may be renewed according to the criteria and procedures prescribed in 7 U.S.C. 79(f).

#### Mid-Iowa Designation

Pursuant to 7 U.S.C. 79(f)(2), the following geographic area, in the States of Minnesota, Illinois, and Iowa, is assigned to this official agency.

In Minnesota

Wabasha, Olmstead, Winona, Houston, and Fillmore Counties.

In Illinois

Carroll and Whiteside Counties.

In Iowa

Bounded on the North by the northern Winneshiek and Allamakee County lines; Bounded on the East by the eastern Allamakee County line; the eastern and southern Clayton County lines; the eastern Buchanan County line; the northern Jones and Jackson County lines; the eastern Jackson and Clinton County Lines; southern Clinton County Line; the eastern Cedar County line south to State Route 130; Bounded on the South by State Route 130 west to State Route 38; State Route 38 south to Interstate 80; Interstate 80 west to U.S. Route 63; and Bounded on the West by U.S. Route 63 north to State Route 8; State Route 8 east to State Route 21; State Route 21 north to D38; D38 east to V49; V49 north to Bremer County; the southern Bremer County line; the western Fayette and Winneshiek County lines.

The agency certifies that Mid-Iowa meets the criteria delineated in 7 CFR § 800.196(f)(2).

**Authority:** 7 U.S.C. 71–87k.

**Susan B. Keith,**

*Acting Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2016–25611 Filed 10–26–16; 8:45 am]

**BILLING CODE 3410-KD-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B–70–2016]

#### Foreign-Trade Zone 80—San Antonio, Texas, Application for Subzone, CGT U.S. Limited, New Braunfels, Texas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of San Antonio, grantee of FTZ 80, requesting subzone status for the facility of CGT U.S. Limited located in New Braunfels, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on October 20, 2016.

The proposed subzone (27.78 acres) is located at 2827 FM 1101 in New Braunfels. A notification of proposed production activity has been submitted and will be published separately for public comment.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is December 6, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 21, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: October 21, 2016.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. 2016–26025 Filed 10–26–16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–580–885]

#### Phosphor Copper From the Republic of Korea: Postponement of Final Determination of Sales at Less Than Fair Value

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is postponing the deadline for issuing the final determination in the less-than-fair-value (LTFV) investigation of phosphor copper from the Republic of Korea (Korea) and is extending the provisional measures from a four-month period to a period of not more than six months.

**DATES:** Effective October 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Cindy Robinson at (202) 482–3797, Antidumping and Countervailing Duty Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

On April 5, 2016, the Department of Commerce (the Department) initiated an antidumping duty investigation of imports of phosphor copper from the Republic of Korea (Korea).<sup>1</sup> The period of investigation is January 1, 2015, through December 31, 2015. On October 5, 2016, the Department published its affirmative *Preliminary Determination* in the LTFV investigation of phosphor copper from Korea.<sup>2</sup> On October 12 and October 19, 2016, Bongsan Co., Ltd. (Bongsan), the sole mandatory respondent in this investigation, requested that the Department fully extend the deadline for the final determination and extend the application of the provisional measures from a four-month period to a period of not more than six months.<sup>3</sup>

#### Postponement of Final Determination

Section 735(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2)(ii) provide that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by the exporters or producers who account for a significant proportion of exports of the subject merchandise. Further, 19 CFR 351.210(e)(2) requires that such postponement requests by exporters be accompanied by a request for extension of provisional measures from a four-month period to a period of not more than six months, in accordance with section 733(d) of the Act.

In accordance with section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination was affirmative; (2) the request was made by the exporter/producer who accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the date of the publication of the *Preliminary Determination* and

extending the provisional measures from a four-month period to a period of not more than six months. Accordingly, we will issue our final determination no later than February 27, 2017.<sup>4</sup>

This notice is issued and published pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(g).

Dated: October 24, 2016.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–26027 Filed 10–26–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–827]

#### Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty New Shipper 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 new shipper review of the antidumping duty order on certain cased pencils from the People's Republic of China. This review covers one company, Wah Yuen Stationery Co., Ltd. and its affiliated producer, Shandong Wah Yuen Stationery Co., Ltd. (collectively, Wah Yuen), for the period of review (POR) December 1, 2014, through May 31, 2015. We invited interested parties to comment on the *Preliminary Results*. Based upon our analysis of the comments received, we made changes to the margin calculations for the final results. As a result of these changes, we find that the exporter Wah Yuen made a sale of subject merchandise at below normal value during the POR.

**DATES:** Effective October 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1785.

<sup>4</sup> Postponing the final determination to 135 days after the publication of the *Preliminary Determination* would place the deadline on Sunday, February 26, 2017. The Department's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

## SUPPLEMENTAL INFORMATION:

### Background

The Department published its *Preliminary Results* in this new shipper review on June 10, 2016.<sup>1</sup> Wah Yuen and the Dixon Ticonderoga Company, the petitioner, filed case briefs on August 12, 2016.<sup>2</sup> We received a rebuttal brief from Wah Yuen on August 22, 2016.<sup>3</sup>

### Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). A full description of the scope of the order is contained in the Issues and Decision Memorandum.<sup>4</sup> Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description is dispositive.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Department's Central Records Unit, B8024 of the main Department of Commerce building, as well as available electronically via

<sup>1</sup> See *Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2014–2015*, 81 FR 37573, June 10, 2016.

<sup>2</sup> See letter from Dixon, re: "Certain Cased Pencils from the People's Republic of China, New Shipper Review NSR 12/01/2014–05/31/2015: Case Brief of Dixon Ticonderoga Company," dated August 12, 2016 (Dixon's case brief); see also letter from Wah Yuen, re: "Certain Cased Pencils from the People's Republic of China: Administrative Case Brief of Wah Yuen Stationery Co. Ltd.," dated August 12, 2016 (Wah Yuen's case brief).

<sup>3</sup> See letter from Wah Yuen, re: "Certain Cased Pencils from the People's Republic of China: Administrative Case Rebuttal Brief of Wah Yuen Stationery Co., Ltd.," dated August 22, 2016.

<sup>4</sup> See Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: "Issues and Decision Memorandum for Final Results of Antidumping Duty New Shipper Review: Certain Cased Pencils from the People's Republic of China," dated October 20, 2016 (Issues and Decision Memorandum).

<sup>1</sup> See *Phosphor Copper from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 19552 (April 5, 2016).

<sup>2</sup> See *Phosphor Copper from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances*, 81 FR 71049 (October 14, 2016) (*Preliminary Determination*).

<sup>3</sup> See the letter from Bongsan titled, "Phosphor Copper from the Republic of Korea: Request for Extension of Final Determination Deadline," dated October 12, 2016; see also letter from Bongsan titled, "Phosphor Copper from the Republic of Korea: Amended Request for Extension of Final Determination Deadline," dated October 19, 2016.

Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and it is available to all parties. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://>

[enforcement.trade.gov/frn/index.html](http://enforcement.trade.gov/frn/index.html). The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

#### Changes Since the Preliminary Results

Based on a review of the record and the comments received from interested parties regarding our *Preliminary*

*Results*, and for the reasons explained in the Issues and Decision Memorandum, we revised the margin calculations for Wah Yuen.<sup>5</sup>

#### Final Results of New Shipper Review

The dumping margin for the final results of the new shipper review for the period of review December 1, 2014, through May 31, 2015, is as follows:

Exporter	Producer	Weighted average dumping margin (percent)
Wah Yuen Stationery Co., Ltd .....	Shandong Wah Yuen Stationery Co., Ltd .....	33.86

#### Disclosure

The Department will disclose the analysis performed for these final results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b) of the Department's regulations.

#### Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b), 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 final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this new shipper review.

For Wah Yuen, which has a dumping margin which is not zero or *de minimis* (*i.e.*, less than 0.50 percent), we calculated importer- (or customer-) specific assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* rate is not zero or *de minimis*, the Department will instruct CBP to collect the appropriate antidumping duties at the time of liquidation.<sup>6</sup> Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.<sup>7</sup>

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse,

for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For merchandise produced by Shandong Wah Yuen Stationery Co., Ltd. and exported by Wah Yuen Stationery Co., Ltd., the cash deposit rate will be the rate established in the final results of this review; (2) for subject merchandise exported by Wah Yuen Stationery Co., Ltd. but not produced by Shandong Wah Yuen Stationery Co., Ltd., the cash deposit rate will be that for the PRC-wide entity (*i.e.*, 114.90 percent); and (3) for subject merchandise produced by Shandong Wah Yuen Stationery Co., Ltd. but not exported by Wah Yuen Stationery Co., Ltd., the cash deposit rate will be that applicable to the exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a 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 the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

#### Notification Regarding Administrative Protective Order

This notice serves as a reminder to parties subject to an 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 the terms of an APO is a violation subject to sanction.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214.

Dated: October 20, 2016.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

#### Appendix—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Issues
  - Comment 1: Whether Wah Yuen Is Entitled to a New Shipper Review
  - Comment 2: Whether the Surrogate Value for Brokerage and Handling Was Calculated Correctly
  - Comment 3: Whether Wah Yuen Is Entitled to a By-Product Offset for Slat Scrap
  - Comment 4: Whether the Values for Alkyd Resin and Acrylic Resin Were Calculated Correctly
  - Comment 5: Whether the Packed Weight of One Gross of Pencils Should Be Adjusted by the Weight of the By-Product Scrap
- V. Recommendation

[FR Doc. 2016-26024 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-DS-P**

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

#### Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage

<sup>5</sup> See Issues and Decision Memorandum.

<sup>6</sup> See 19 CFR 351.212(b)(1).

<sup>7</sup> See 19 CFR 351.106(c)(2).



subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1, 2016 through June 30, 2016.

**DATES:** Comments must be submitted within 30 days after publication of this notice.

**ADDRESSES:** See the Submission of Comments section below.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3965.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 18, 2008, section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

The Department submitted its last subsidy report on June 15, 2016. As part of its newest report, the Department intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

**Request for Comments**

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period January 1, 2016 through June 30, 2016. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that three countries, Canada, Chile and France, exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period July

1, 2016 through December 31, 2016, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.<sup>1</sup>

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (at least 3-4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

**Submission of Comments**

Persons wishing to comment should file comments by the date specified above. Comments should only include publicly available information. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments or materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department requests submission of comments filed in electronic Portable Document Format (PDF) submitted on CD-ROM or by email to the email address of the EC Webmaster, below.

The comments received will be made available to the public in PDF on the Enforcement and Compliance Web site at the following address: <http://enforcement.trade.gov/sla2008/sla-index.html>. Any questions concerning file formatting, access on the Internet, or other electronic filing issues should be addressed to Laura Merchant, Enforcement and Compliance Webmaster, at (202) 482-0367, email address: [webmaster\\_support@trade.gov](mailto:webmaster_support@trade.gov).

All comments and submissions in response to this Request for Comment should be received by the Department no later than 5 p.m. Eastern Standard Time on the above-referenced deadline date.

<sup>1</sup> See section 771(5)(B) of the Tariff Act of 1930, as amended.

Dated: October 21, 2016.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2016-26030 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE978**

**New England Fishery Management Council; Public Meeting; Cancellation**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of cancellation of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) has cancelled the public meeting of its Herring Advisory Panel that was scheduled for Tuesday, November 8, 2016, at 10:30 a.m.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The original notice was published in the **Federal Register** on Thursday, October 20, 2016, (81 FR 72571). The meeting will be rescheduled at a later date and announced in the **Federal Register**.

Dated: October 24, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016-25998 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE977**

**New England Fishery Management Council; Public Meeting; Cancellation**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of cancellation of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) has cancelled the public meeting of its Herring Committee that was scheduled

for Wednesday, November 9, 2016, at 9 a.m.

**FOR FURTHER INFORMATION CONTACT:**

Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The original notice was published in the **Federal Register** on Thursday, October 20, 2016, (81 FR 72574). The meeting will be rescheduled at a later date and announced in the **Federal Register**.

Dated: October 24, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016-25997 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XE998**

#### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Monday, November 14, 2016 at 10 a.m.

**ADDRESSES:** The meeting will be held at the Hotel Viking, One Bellevue Avenue, Newport, RI 02840; telephone: (401) 847-3300.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:**

Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:**

#### Agenda

The Monkfish Committee will receive an update on Plan Development Team (PDT) analysis on Days-at-sea (DAS) allocation and trip limits. They will also receive an overview from the Monkfish PDT on draft alternatives and impacts for Framework 10 regarding

specifications for FY 2017-19 and DAS allocation and/or possession limit alternatives. The Committee will select preferred alternatives for Framework. They will discuss other business, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 24, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016-26004 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XF001**

#### North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Groundfish Plan Team will meet in November in Seattle, WA.

**DATES:** The meeting will be held on Monday, November 14, 2016 to Friday, November 18, 2016, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Alaska Fishery Science Center Traynor Room 2076, 7600 Sand Point Way NE., Building 4, Seattle, WA 98115.

*Council address:* North Pacific Fishery Management Council, 605 W.

4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone: (907) 271-2809.

**FOR FURTHER INFORMATION CONTACT:**

Diana Stram or Jim Armstrong, Council staff; telephone: (907) 271-2809.

**SUPPLEMENTARY INFORMATION:**

#### Agenda

*Monday, November 14 to Friday, November 18, 2016*

The Plan Teams will compile and review the annual Groundfish Stock Assessment and Fishery Evaluation (SAFE) reports, (including the Economic Report, the Ecosystems Consideration Chapter, and the stock assessments for BSAI and GOA groundfishes), and recommend final groundfish harvest specifications for 2017/18.

The Agenda is subject to change, and the latest version will be posted at <http://www.npfmc.org/fishery-management-plan-team/goa-bsai-groundfish-plan-team/>.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: October 24, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016-26005 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XE994**

#### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council, NEFMC) will hold a three-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, Wednesday, and Thursday, November 15, 16, and 17, 2016, beginning at 9 a.m. on November 15, 8:30 a.m. on November 16, and 8:30 a.m. on November 17.

**ADDRESSES:** The meeting will be held at the Hotel Viking, 1 Bellevue Avenue, Newport, RI 02840; telephone: (401) 847-3300; online at [www.hotelviking.com](http://www.hotelviking.com).

**Council address:** New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465-0492; [www.nefmc.org](http://www.nefmc.org).

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492, ext. 113.

#### **SUPPLEMENTARY INFORMATION:**

##### **Agenda**

*Tuesday, November 15, 2016*

After introductions and brief announcements, the meeting will begin with reports from the Council Chairman and Executive Director, NMFS's Regional Administrator for the Greater Atlantic Regional Office (GARFO), liaisons from the Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council, representatives from NOAA General Counsel and the Office of Law Enforcement, and staff from the Atlantic States Marine Fisheries Commission and the U.S. Coast Guard. Following these reports, the Council will hear from its Vessel Monitoring System (VMS)/Enforcement Committee, which will: (1) Update the Council on work being done to develop a codend certification program; (2) provide a brief overview of the Anthropocene Institute's mapping project; and (3) provide initial input on measures under consideration in Atlantic Herring Framework Adjustment 5 and Atlantic Herring Amendment 8. Next, the Skate Committee will present a Skate Monitoring Report with an overview on stock status, landings, and revenue for the seven skate species being managed by the Council. Afterward, the Council is expected to approve a scoping document for Amendment 5 to the Northeast Skate Complex Fishery Management Plan (FMP) to consider limited access in the fishery. Next, the Council will receive a presentation from the NMFS Highly Migratory Species (HMS) staff on Draft Amendment 5b to the 2006 Consolidated HMS FMP, which is being developed to end overfishing and rebuild dusky sharks.

After a lunch break, the Council will hear from its Monkfish Committee and take final action on Framework Adjustment 10 to the Monkfish FMP, which will set fishing year 2017-19 specifications and, if needed, additional measures. Next, the Council will receive

a progress report from its Small Mesh Multispecies (Whiting) Committee regarding limited access options being developed for Amendment 22. The Council will close out the day with a Habitat Committee report, which will include an overview of the preliminary impacts analysis for the Council's Omnibus Deep-Sea Coral Amendment. The Council also will discuss Coral Amendment alternatives that overlap with the new Northeast Canyons and Seamounts Marine National Monument and, finally, consider a management action to implement fishing regulations in the monument area. Following adjournment, NMFS will hold a public hearing at 5:30 p.m. in the Council meeting room on Draft Amendment 5b to the 2006 Consolidated HMS FMP.

*Wednesday, November 16, 2016*

The second day of the meeting will begin with a report from the Scientific and Statistical Committee (SSC), which will present Atlantic sea scallop overfishing limit (OFL) and acceptable biological catch (ABC) recommendations for the 2017 scallop fishing year and OFL and ABC defaults for the 2018 fishing year. The SSC also may discuss issues related to improving control rules and ABC recommendations for groundfish and other stocks. The Scallop Committee report will directly follow the SSC. At this point, the Council will take final action on Framework Adjustment 28 to the Atlantic Sea Scallop FMP, which includes: (1) Specifications for fishing year 2017 with default measures for 2018; (2) a measure to restrict the possession of shell stock inshore of the days-at-sea demarcation line north of 42° 20' N; (3) modifications to the process for setting scallop fishery annual catch limits (ACLs); and (4) modifications to the Closed Area I Scallop Access Area boundary to be consistent with potential changes to habitat and groundfish mortality closed areas. More specifically, the 2017 specifications and 2018 default measures include: (a) Setting ABCs, ACLs, days-at-sea, and access-area allocations for both limited access (LA) and limited access general category (LAGC) vessels; (b) determining the hard total allowable catch (TAC) for the Northern Gulf of Maine Management Area; (c) setting the target TAC for the LAGC incidental catch; and (d) specifying set-aside amounts for the scallop observer and research set-aside programs. Next, members of the public will be able to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this

meeting. The Council asks the public to limit remarks to 3-5 minutes.

Following a lunch break, the Council will go into its Groundfish Committee report and take final action on most of the measures in Framework Adjustment 56 to the Northeast Multispecies FMP. These include: (1) 2017 U.S./Canada specifications; (2) a scallop fishery sub-ACL for northern windowpane flounder; (3) potential changes to the scallop fishery accountability measure (AM) triggers for Georges Bank yellowtail flounder; (4) a potential increase to the sub-ACL for Georges Bank haddock for the Atlantic herring midwater trawl fishery; and (5) a timely notification process for announcing recreational measures. The Council is expected to take final action on 2017-19 witch flounder specifications—the last component of Framework 56—at its January meeting. In another groundfish-related item for this November meeting, the Council also will review a draft scoping notice for a Groundfish Monitoring Program Amendment. Closing out the day, the Council will receive a NMFS briefing on revisions to National Standard Guidelines 1, 3, and 7 to the Magnuson-Stevens Fishery Conservation and Management Act.

*Thursday, November 17, 2016*

The third day of the meeting will begin with a discussion of 2017 Council priorities, followed by a final vote on the resulting list. Next, the Council will receive a NMFS briefing on the agency's comprehensive review of observer safety issues. Then, the Council will take up the Atlantic Herring Committee report. The Council may take final action on Framework Adjustment 5 to the Atlantic Herring FMP, which includes alternatives to modify Georges Bank haddock bycatch AMs in the Atlantic herring midwater trawl fishery. The Council also will approve the agenda for a second Management Strategy Evaluation (MSE) workshop, which will be held Dec. 7-8 as part of the MSE process under Amendment 8 to develop ABC control rule alternatives for the Atlantic herring fishery. Furthermore, the Council will receive an update on the development of Amendment 8 measures to address herring localized depletion.

Following a lunch break, the Council will resume the Atlantic Herring Committee discussion if needed and then conclude the meeting with "other business."

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council

action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 24, 2016.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016-25999 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[0648-XE982]

### Endangered and Threatened Species; Take of Anadromous Fish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Applications for five scientific research permit renewals and one permit modification.

**SUMMARY:** Notice is hereby given that NMFS has received six scientific research permit application requests relating to Pacific salmon and steelhead. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: [https://apps.nmfs.noaa.gov/preview/preview\\_open\\_for\\_comment.cfm](https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm).

**DATES:** Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on November 28, 2016.

**ADDRESSES:** Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274. Comments may also be sent via fax to 503-230-5441 or by email to [nmfs.nwr.apps@noaa.gov](mailto:nmfs.nwr.apps@noaa.gov) (include the permit number in the subject line of the fax or email).

**FOR FURTHER INFORMATION CONTACT:** Rob Clapp, Portland, OR (ph: 503-231-2314), Fax: 503-230-5441, email: [Robert.Clapp@noaa.gov](mailto:Robert.Clapp@noaa.gov). Permit application instructions are available from the address above, or online at <https://apps.nmfs.noaa.gov>.

### SUPPLEMENTARY INFORMATION:

#### Species Covered in This Notice

The following listed species are covered in this notice:

*Chinook salmon (Oncorhynchus tshawytscha)*: Endangered upper Columbia River (UCR); threatened Snake River (SR) spring/summer (spr/sum); threatened SR fall.

*Steelhead (O. mykiss)*: Threatened UCR; threatened SR; threatened middle Columbia River (MCR).

*Sockeye salmon (O. nerka)*: Endangered SR.

#### Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222-226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

#### Applications Received

Permit 1339-4R

The Nez Perce Tribe (NPT) under the authorization of the Columbia River Intertribal Fish Commission (CRITFC) is seeking to renew for five years its permit to annually take adult and juvenile SR spr/sum Chinook salmon and SR steelhead while conducting research in a number of the tributaries to the Imnaha River (Cow, Lightning, Horse, Big Sheep, Camp, Little Sheep, Freezeout, Grouse, Crazyman, Mahogany, and Gumboot Creeks), the Grande Ronde River (Joseph Creek, Wenaha and Minam rivers), the Clearwater River (South Fork Clearwater River and Lolo Creek), and the Snake River (Lower Granite Dam adult trap). The Imnaha and Grande Ronde Rivers

are in northeastern Oregon, the Clearwater is in Idaho, and the work in the Snake River would take place in Washington. The permit would be a renewal of work the NPT has been conducting for well over a decade in the Northwest.

The purpose of the research is to acquire information on the status (escapement abundance, genetic structure, life history traits) of juvenile and adult steelhead in the Imnaha, Grande Ronde, and Clearwater River basins. The research would benefit the listed species by providing information on current status that fishery managers can use to determine if recovery actions are helping increase wild Snake River salmonid populations. Baseline information on steelhead populations in the Imnaha, Grande Ronde, and Clearwater River basins would also be used to help guide future management actions. Adult and juvenile salmon and steelhead would be observed, harassed, handled, and marked. The researchers would use temporary/portable picket and resistance board weirs and rotary screw traps to capture the fish and would then sample them for biological information (fin tissue and scale samples). They may also mark some of the fish with opercule punches, fin clips, dyes, and PIT, floy, and/or Tyvek disk tags. Adult steelhead carcasses would also be collected and sampled. The researchers do not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

1341-5R

The Shoshone-Bannock Tribes (Tribes) are seeking to renew for five years their permit to take SR sockeye salmon and SR spr/sum Chinook salmon while conducting research designed to estimate their overwinter survival and downstream migration survival and timing. The researchers would also conduct limnological studies on the lakes and monitor sockeye rearing. This research—which has been conducted every year since 1996—would continue to provide information on the relative success of the Pettit and Alturas Lakes (Idaho) sockeye salmon reintroduction programs and thereby benefit the listed fish by improving those programs. Juvenile SR sockeye salmon, spr/sum Chinook salmon, and steelhead would be collected at Pettit and Alturas Lakes, ID, using rotary screw traps and weirs. The fish would be sampled for biological information and released or tagged with passive integrated transponders and released. In addition, to determine trap efficiencies, a portion of the tagged juvenile SR

sockeye salmon would be released upstream of the traps, captured at the traps a second time, and re-released. The Tribes do not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

1465—4R

The Idaho Department of Environmental Quality (IDEQ) is seeking to renew for five years their permit to annually take juvenile threatened SR steelhead, threatened SR fall Chinook salmon, threatened SR spring Chinook salmon, and endangered SR sockeye salmon during the course of two research projects designed to ascertain the condition of many Idaho streams. The purposes of the research are to (a) determine whether aquatic life is being properly supported in Idaho's rivers, streams, and lakes, and (b) assess the overall condition of Idaho's surface waters. The fish would benefit from the research because the data it produces would be used to inform decisions about how and where to protect and improve water quality in the state. The researchers would use backpack- and boat electrofishing equipment to capture the fish. They would then be weighed and measured (some may be anesthetized to limit stress) and released. The IDEQ does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 16521—2R

The WDFW is seeking to renew for five years their permit to annually capture, handle, and release juvenile UCR steelhead and Chinook salmon in the Hanford reach of the Columbia River and near the Tri-Cities, Washington. The purpose of the research is to gather data on fall Chinook abundance, length frequency distribution, and losses in the area. The information collected from these surveys has been used and continues to be used to evaluate protections for juvenile fall Chinook under the Hanford Reach Fall Chinook Protection Program Agreement and gauge the efficacy of the Coded Wire Tagging Program for marking of wild up-river bright fall Chinook in the Hanford Reach. These surveys can provide biologists and managers with definitive data on the presence or impacts on both non-listed and ESA Listed Chinook and steelhead residing in near shore habitats in this area of the Columbia River. These data, in turn, would be used to help guide management actions for the benefit of the listed species in the future. The

researchers would use beach seines and backpack electrofishing equipment to capture the fish. The captured fish would be anesthetized, measured, allowed to recover, and released back to the river. The researchers do not expect to kill any listed fish, but a small number may die as an unintended result of the research activities.

Permit 16446—2R

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) are seeking to renew for five years their permit to take MCR steelhead during the course of research designed to monitor listed fish population status in the Walla Walla River watershed, Washington. The data gathered (on fish abundance, trends, genetics, diversity, productivity, and population structure) would be used to inform management decisions regarding land use activities and recovery planning in the Walla Walla sub-basin. The researchers would use rotary screw traps and backpack electrofishing units to capture the fish. At the screw traps, the fish would then be identified, measured, weighed, tissue sampled, and implanted with PIT-Tags (if they do not already have tags). Fish captured via electrofishing would be handled, measured, allowed to recover, and released in a safe area. Some adult carcasses would also be sampled. The researchers do not expect to kill any of the fish being captured, but a small number may die as an unintended result of the research activities.

Permit 18696—2M

The Idaho Power company is seeking to modify their five-year permit to annually capture juvenile white sturgeon in Lower Granite Reservoir. The researchers would use small-mesh gill nets and d-ring nets to capture the fish. The gill net fishing would take place at times (October and November) and in areas (the bottom of the reservoir) that have purposefully been chosen to have the least possible impact on listed fish. When the nets are pulled to the surface, listed species would immediately be released (including by cutting the net, if necessary) and allowed to return to the reservoir. The d-ring fishing would take place in June and July, but the same restrictions (immediately releasing listed fish, etc.) would still apply. The research targets a species that is not listed, but the research should benefit listed salmonids by generating information about the habitat conditions in Lower Granite Reservoir and by helping managers develop conservation plans for the species that inhabit it. The researchers are not proposing to kill any of the fish

they capture, but a small number of individuals may be killed as an inadvertent result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: October 21, 2016.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2016-25922 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XE939**

#### Endangered and Threatened Species; Recovery Plans

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of Availability; request for comments.

**SUMMARY:** We, NMFS, announce that the *Proposed Endangered Species Act (ESA) Recovery Plan for Snake River Spring/Summer Chinook Salmon and Snake River Steelhead* (Proposed Plan) is available for public review and comment. The Proposed Plan addresses the Snake River Spring/Summer Chinook Salmon (*Onchorhynchus tshawytscha*) evolutionarily significant unit (ESU), which is listed as threatened under the ESA, and the Snake River Steelhead (*Onchorhynchus mykiss*) distinct population segment (DPS), which is listed as threatened under the ESA. The geographic area covered by the Proposed Plan is the lower mainstem Snake River and its tributaries, as well as the mainstem Columbia River below its confluence with the Snake River. As required under the ESA, the Proposed Plan contains objective, measurable delisting criteria, site-specific management actions necessary to achieve the Proposed Plan's goals, and estimates of the time and cost required to implement recovery actions. We are soliciting review and

comment from the public and all interested parties on the Proposed Plan.

**DATES:** We will consider and address, as appropriate, all substantive comments received during the comment period. Comments on the Proposed Plan must be received no later than 5 p.m. Pacific daylight time on December 27, 2016.

**ADDRESSES:** Please send written comments and materials to Rosemary Furfey, National Marine Fisheries Service, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

Comments may also be submitted by email to: [nmfs\\_snakeriver\\_ssch\\_st\\_plan.wcr@noaa.gov](mailto:nmfs_snakeriver_ssch_st_plan.wcr@noaa.gov).

Please include "Comments on Proposed Snake River Spring/Summer Chinook Salmon and Snake River Steelhead Recovery Plan" in the subject line of the email. Comments may be submitted via facsimile (fax) to (503) 230-5441. Electronic copies of the Proposed Plan are available on the NMFS Web site at: [http://www.westcoast.fisheries.noaa.gov/protected\\_species/salmon\\_steelhead/recovery\\_planning\\_and\\_implementation/snake\\_river/snake\\_river\\_sp-su\\_chinook\\_steelhead.html](http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/snake_river/snake_river_sp-su_chinook_steelhead.html). Persons wishing to obtain an electronic copy on CD ROM of the Proposed Plan may do so by calling Bonnie Hossack at (503) 736-4741, or by emailing a request to [bonnie.hossack@noaa.gov](mailto:bonnie.hossack@noaa.gov) with the subject line "CD ROM Request for Snake River Spring/Summer Chinook Salmon and Snake River Steelhead Recovery Plan."

**FOR FURTHER INFORMATION CONTACT:** Rosemary Furfey, NMFS Snake River Spring/Summer Chinook Salmon and Steelhead Recovery Coordinator, at (503) 231-2149, or mail to: [Rosemary.Furfey@noaa.gov](mailto:Rosemary.Furfey@noaa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

We are responsible for developing and implementing recovery plans for Pacific salmon and steelhead listed under the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*). Recovery means that the listed species and their ecosystems are sufficiently restored, and their future secured, to the point that the protections of the ESA are no longer necessary. Section 4(f)(1) of the ESA requires that recovery plans include, to the maximum extent practicable: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA

requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

We believe it is essential to have local support of recovery plans by those whose activities directly affect the listed species and whose continued commitment and leadership will be needed to implement the necessary recovery actions. We, therefore, support and participate in collaborative efforts to develop recovery plans that involve state, tribal, and federal entities, local communities, and other stakeholders. For this Proposed Plan for threatened Snake River Spring/Summer Chinook Salmon and Snake River Steelhead, we worked collaboratively with state, tribal, and Federal partners to produce a recovery plan that satisfies the ESA requirements. We have determined that this *Proposed ESA Recovery Plan for Snake River Spring/Summer Chinook Salmon and Snake River Steelhead* meets the statutory requirements for a recovery plan and are proposing to adopt it as the ESA recovery plan for these threatened species. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided prior to final approval of a recovery plan. This notice solicits comments on this Proposed Plan.

##### **Development of the Proposed Plan**

For the purpose of recovery planning for the ESA-listed species of Pacific salmon and steelhead in Idaho, Oregon, and Washington, NMFS designated five geographically based "recovery domains." The Snake River Spring/Summer Chinook Salmon ESU and Snake River Steelhead DPS spawning and rearing range is in the Snake River recovery domain of the Interior Columbia area. For each domain, NMFS appointed a team of scientists, nominated for their geographic and species expertise, to provide a solid scientific foundation for recovery plans. The technical recovery team responsible for Snake River Spring/Summer Chinook Salmon and Snake River Steelhead, the Interior Columbia Technical Recovery Team, included biologists from NMFS, other Federal agencies, states, tribes, and academic institutions.

A primary task for the Interior Columbia Technical Recovery Team was to recommend criteria for determining when each component population within an ESU or DPS should be considered viable (*i.e.*, when they have a low risk of extinction over a 100-year period) and when ESUs or DPSs have a risk of extinction consistent with no longer needing the protections of the

ESA. All technical recovery teams used the same biological principles for developing their recommendations. These principles are described in the NOAA technical memorandum *Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units* (McElhany *et al.*, 2000). Viable salmonid populations (VSP) are defined in terms of four parameters: abundance; productivity or growth rate; spatial structure; and diversity.

We also collaborated with state, tribal, and Federal biologists and resource managers to provide technical information used to write the Proposed Plan which is built upon locally-led recovery efforts. In addition, NMFS established a multi-state (Idaho, Oregon, and Washington), tribal, and Federal partners' regional forum called the Snake River Coordination Group that addresses the four ESA-listed Snake River salmon and steelhead species. They met twice a year to be briefed and provide technical and policy information to NMFS. We presented regular updates on the status of this Proposed Plan to the Snake River Coordination Group and posted draft chapters on NMFS' West Coast Region Snake River recovery planning Web page. We also made full drafts of the Proposed Plan available for review to the state, tribal, and Federal entities with whom we collaborated to develop the plan.

For the purpose of recovery planning in the Snake River recovery domain, NMFS divided the domain into three different "management units" based on jurisdictional boundaries, as well as areas where local planning efforts were underway. The three Snake River domain management units include: the Northeast Oregon unit; Southeast Washington unit; and the Idaho unit. A recovery plan addressing tributary conditions for both species was developed for each management unit. All three management unit plans were developed in coordination with respective Federal, state, and local agencies, tribes, and others. This Proposed Plan synthesizes relevant information from the three management unit plans at the species level and includes them as appendices: Appendix A is the *Northeast Oregon Management Unit Plan*; Appendix B is the *Southeast Washington Management Unit Plan*; and Appendix C is the *Idaho Management Unit Plan*.

In addition to the Proposed Plan, we developed and incorporated the *Module for the Ocean Environment* (Fresh *et al.* 2014) as Appendix D to address Snake River Spring/Summer Chinook Salmon and Snake River Steelhead recovery

needs in the Columbia River estuary, plume, and Pacific Ocean. To address recovery needs related to the Lower Columbia River mainstem and estuary, we incorporated the *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (NMFS 2011a) as Appendix E. To address recovery needs for fishery harvest management in the mainstem Snake and Columbia Rivers, Columbia River estuary, and ocean, we developed and incorporated the *SNAKE RIVER HARVEST MODULE* (NMFS 2014a) as Appendix F. To address recovery needs related to the Columbia River Hydropower System, we developed and incorporated the *Supplemental Recovery Plan Module for Snake River Salmon and Steelhead Mainstem Columbia River Hydropower Projects* (NMFS 2014b) as Appendix G of this Proposed Plan.

The Proposed Plan, including the three management unit plans and four modules, is now available for public review and comment.

#### Contents of Proposed Plan

The Proposed Plan contains biological background and contextual information that includes descriptions of the ESU and DPS, the planning area, and the context of the plan's development. It presents relevant information on ESU and DPS structure, guidelines for assessing salmonid population and ESU and DPS status, and a brief summary of Interior Columbia Technical Recovery Team products on population structure and species status. It also presents NMFS' proposed biological viability criteria and threats criteria for delisting each species.

The Proposed Plan also describes specific information on the following: Current status of Snake River Spring/Summer Chinook Salmon and Snake River Steelhead (Chapter 4); limiting factors and threats throughout the life cycle that have contributed to each species' decline (Chapter 5); recovery strategies and actions addressing these limiting factors and threats (Chapter 6); and a proposed research, monitoring, and evaluation program for adaptive management (Chapter 7). For recovery actions, the Proposed Plan incorporates the site-specific actions in each management unit plan, together with the associated location, life stage affected and potential implementing entity. The Proposed Plan also summarizes time and costs (Chapter 8) required to implement recovery actions. In some cases, costs of implementing actions could not be determined at this time and NMFS is interested in additional information regarding scale, scope, and costs of these actions. We are

also particularly interested in comments on establishing appropriate forums (Chapter 9) to coordinate implementation of the Proposed Plan. We are also interested in information to address critical uncertainties identified in the Proposed Plan, particularly regarding causes of mortality of juvenile fish as they move from natal tributaries into the Salmon and Snake Rivers during migration to the Pacific Ocean.

#### How NMFS and Others Expect To Use the Plan

With approval of the final recovery plan, we will commit to implement the actions in the plan for which we have responsibility, authority, and funding; encourage other Federal and state agencies and tribal governments to implement recovery actions for which they have responsibility, authority, and funding; and work cooperatively with the public and local stakeholders on implementation of other actions. We expect the recovery plan to guide us and other Federal agencies in evaluating Federal actions under ESA section 7, as well as in implementing other provisions of the ESA and other statutes. For example, the plan will provide greater biological context for evaluating the effects that a proposed action may have on a species by providing delisting criteria, information on priority areas for addressing specific limiting factors, and information on how the ESU and DPS can tolerate varying levels of risk.

When we are considering a species for delisting, the agency will examine whether the section 4(a)(1) listing factors have been addressed. To assist in this examination, we will use the delisting criteria described in section 3.4 of the Proposed Plan, which include both biological criteria and criteria addressing each of the ESA section 4(a)(1) listing factors, as well as any other relevant data and policy considerations.

We will also work with the proposed implementation structure, as described in chapter 9 of the Proposed Plan, to coordinate among existing forums, develop implementation priorities, and address science and adaptive management issues.

#### Conclusion

Section 4(f)(1)(B) of the ESA requires that recovery plans incorporate, to the maximum extent practicable, (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals;

and (3) estimates of the time required and costs to implement recovery actions. We conclude that the Proposed Plan meets the requirements of ESA section 4(f) and are proposing to adopt it as the *ESA Recovery Plan for Snake River Spring/Summer Chinook Salmon and Snake River Steelhead*.

#### Public Comments Solicited

We are soliciting written comments on the Proposed Plan. All substantive comments received by the date specified above will be considered and incorporated, as appropriate, prior to our decision whether to approve the plan. While we invite comments on all aspects of the Proposed Plan, we are particularly interested in comments on addressing critical uncertainties in our knowledge about the early juvenile life stage survival from natal tributaries downstream into the Salmon and Snake Rivers, comments on the cost of recovery actions for which we have not yet determined implementation costs, and comments on establishing an appropriate implementation forums for the plan. We will issue a news release announcing the adoption and availability of the final plan. We will post on the NMFS West Coast Region Web site ([www.wcr.noaa.gov](http://www.wcr.noaa.gov)) a summary of, and responses to, the comments received, along with electronic copies of the final plan and its appendices.

#### Literature Cited

- Fresh, K. et al., 2014. Module for the Ocean Environment. NMFS Northwest Fisheries Science Center, Seattle, WA. [http://www.westcoast.fisheries.noaa.gov/publications/recovery\\_planning/salmon\\_steelhead/domains/interior\\_columbia/snake/ocean\\_module.pdf](http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/interior_columbia/snake/ocean_module.pdf).
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**Authority:** 16 U.S.C. 1531 *et seq.*

**Dated:** October 21, 2016.

**Angela Somma,**

*Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2016-25973 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### Multistakeholder Process To Promote Collaboration on Vulnerability Research Disclosure

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) will convene a meeting of a multistakeholder process concerning the collaboration between security researchers and software and system developers and owners to address security vulnerability disclosure on November 7, 2016.

**DATES:** The meeting will be held on November 7, 2016, from 12:00 p.m. to 4:00 p.m., Eastern Time. See **SUPPLEMENTARY INFORMATION** for details.

**ADDRESSES:** The meeting will be held at the American Institute of Architects, 1735 New York Ave. NW., Washington, DC 20006.

#### FOR FURTHER INFORMATION CONTACT:

Allan Friedman, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; telephone: (202) 482-4281; email: [afriedman@ntia.doc.gov](mailto:afriedman@ntia.doc.gov). Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482-7002; email: [press@ntia.doc.gov](mailto:press@ntia.doc.gov).

#### SUPPLEMENTARY INFORMATION:

**Background:** On March 19, 2015, the National Telecommunications and Information Administration, working with the Department of Commerce's Internet Policy Task Force (IPTF), issued a Request for Comment to "identify substantive cybersecurity

issues that affect the digital ecosystem and digital economic growth where broad consensus, coordinated action, and the development of best practices could substantially improve security for organizations and consumers."<sup>1</sup> This Request built on earlier work from the Department, including the 2011 Green Paper *Cybersecurity, Innovation, and the Internet Economy*,<sup>2</sup> as well as comments the Department had received on related issues.<sup>3</sup> On July 9, 2015, after reviewing the comments, NTIA announced that the first issue to be addressed would be "collaboration on vulnerability research disclosure,"<sup>4</sup> and subsequently announced that the first meeting of a multistakeholder process on this topic would be held on September 29, 2015, and subsequent meetings were convened on December 2, 2015, and April 8, 2016.<sup>5</sup>

**Matters To Be Considered:** The November 7, 2016 meeting is a continuation of a series of NTIA-convened multistakeholder discussions concerning collaboration on vulnerability disclosure. Stakeholders will engage in an open, transparent, consensus-driven process to develop voluntary principles guiding the collaboration between vendors and researchers about vulnerability information. Stakeholders will review the work of the ongoing working groups, and identify strategies for maximizing the impact of stakeholder outputs. More information about stakeholders' work is available at: <http://www.ntia.doc.gov/other-publication/2015/multistakeholder-process-cybersecurity-vulnerabilities>.

**Time and Date:** NTIA will convene a meeting of the multistakeholder process to promote collaboration on

vulnerability research disclosure on November 7, 2016, from 12:00 p.m. to 4:00 p.m., Eastern Time. The meeting date and time are subject to change. Please refer to NTIA's Web site, <http://www.ntia.doc.gov/other-publication/2015/multistakeholder-process-cybersecurity-vulnerabilities>, for the most current information.

**Place:** The meeting will be held at the American Institute of Architects, 1735 New York Ave. NW., Washington, DC 20006. The location of the meeting is subject to change. Please refer to NTIA's Web site, <http://www.ntia.doc.gov/other-publication/2015/multistakeholder-process-cybersecurity-vulnerabilities>, for the most current information.

**Other Information:** The meeting is open to the public and the press. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Allan Friedman at (202) 482-4281 or [afriedman@ntia.doc.gov](mailto:afriedman@ntia.doc.gov) at least seven (7) business days prior to the meeting. The meeting will also be webcast. Requests for real-time captioning of the webcast or other auxiliary aids should be directed to Allan Friedman at (202) 482-4281 or [afriedman@ntia.doc.gov](mailto:afriedman@ntia.doc.gov) at least seven (7) business days prior to the meeting. There will be an opportunity for stakeholders viewing the webcast to participate remotely in the meeting through a moderated conference bridge, including polling functionality. Access details for the meeting are subject to change. Please refer to NTIA's Web site, <http://www.ntia.doc.gov/other-publication/2015/multistakeholder-process-cybersecurity-vulnerabilities>, for the most current information.

**Dated:** October 21, 2016.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 2016-25944 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-60-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Submission for OMB Review; Comment Request; Post Allowance and Refiling

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

<sup>1</sup> U.S. Department of Commerce, Internet Policy Task Force, Request for Public Comment, Stakeholder Engagement on Cybersecurity in the Digital Ecosystem, 80 FR 14360, Docket No. 150312253-5253-01 (Mar. 19, 2015), available at: [http://www.ntia.doc.gov/files/ntia/publications/cybersecurity\\_rfc\\_03192015.pdf](http://www.ntia.doc.gov/files/ntia/publications/cybersecurity_rfc_03192015.pdf).

<sup>2</sup> U.S. Department of Commerce, Internet Policy Task Force, *Cybersecurity, Innovation, and the Internet Economy* (June 2011) (Green Paper), available at: [http://www.nist.gov/itl/upload/Cybersecurity\\_Green-Paper\\_FinalVersion.pdf](http://www.nist.gov/itl/upload/Cybersecurity_Green-Paper_FinalVersion.pdf).

<sup>3</sup> See Comments Received in Response to Federal Register Notice Developing a Framework for Improving Critical Infrastructure Cybersecurity, Docket No. 140721609-4609-01, available at: [http://csrc.nist.gov/cyberframework/rfi\\_comments\\_10\\_2014.html](http://csrc.nist.gov/cyberframework/rfi_comments_10_2014.html).

<sup>4</sup> NTIA, *Enhancing the Digital Economy Through Collaboration on Vulnerability Research Disclosure* (July 9, 2015), available at: <http://www.ntia.doc.gov/blog/2015/enhancing-digital-economy-through-collaboration-vulnerability-research-disclosure>.

<sup>5</sup> NTIA, *Cybersecurity Vulnerabilities*, <http://www.ntia.doc.gov/other-publication/2015/multistakeholder-process-cybersecurity-vulnerabilities>.



*Agency:* United States Patent and Trademark Office, Commerce.

*Title:* Post Allowance and Refiling.

*OMB Control Number:* 0651-0033.

*Form Number(s):* PTO/SB/44/50/51/51S/52/53/56/141, PTO/AIA/05/06/07, and PTOL-85B.

*Type of Request:* Regular.

*Number of Respondents:* 379,600 response.

*Estimated Average Hours per Response:* The USPTO estimates that it will take the public from 12 minutes (0.20 hours) to 5 hours to gather the necessary information, prepare the appropriate form or document, and submit the information to the USPTO.

*Burden Hours:* 207,065 burden hours.

*Cost Burden:* \$35,734,150.00.

*Needs and Uses:* This collection of information encompasses the action an applicant must take to submit an issue fee payment to the USPTO. The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. When an application for a patent is allowed by the USPTO, the USPTO issues a notice of allowance and the applicant must pay the specified issue fee (including the publication fee, if applicable) within three months to avoid abandonment of the application. If the appropriate fees are paid within the proper time period, the USPTO can then issue the patent. If the fees are not paid within the designated time period, the application is abandoned. The rules outlining the procedures for payment of the issue fee and issuance of a patent are found at 37 CFR 1.18 and 1.311-1.317.

This collection of information also encompasses several actions that may be taken after issuance of a patent. A certificate of correction may be requested to correct an error or errors in the patent. If the USPTO determines that the request should be approved, the USPTO will issue a certificate of correction. For an original patent that is believed to be wholly or partly inoperative or invalid, the assignee(s) or inventor(s) may apply for reissue of the patent, which entails several formal requirements, including provision of an oath or declaration specifically identifying at least one error being relied upon as the basis for reissue and stating the reason for the belief that the original patent is wholly or partially inoperative or invalid. The rules outlining these procedures are found at 37 CFR 1.171-1.178 and 1.322-1.325.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Kimberly Keravuori, email: [Kimberly\\_R\\_Keravuori@omb.eop.gov](mailto:Kimberly_R_Keravuori@omb.eop.gov).

Once submitted, the request will be publicly available in electronic format through [www.reginfo.gov](http://www.reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

- *Email:* [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). Include "0651-0073 copy request" in the subject line of the message.
- *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed information collection should be sent on or before November 28, 2016 to Kimberly Keravuori, OMB Desk Officer, via email to [Kimberly\\_R\\_Keravuori@omb.eop.gov](mailto:Kimberly_R_Keravuori@omb.eop.gov), or by fax to 202-395-5167, marked to the attention of Kimberly Keravuori.

Dated: October 20, 2016.

**Marcie Lovett,**

*Records Management Division Director, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2016-25950 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Submission for OMB Review; Comment Request; Patent Law Treaty

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office, Commerce.

*Title:* Patent Law Treaty.

*OMB Control Number:* 0651-0073.

*Form Number(s):* No form numbers.

*Type of Request:* Regular.

*Number of Respondents:* 500.

*Estimated Average Hours per Response:* The USPTO estimates that it will take approximately 1 hour (60 minutes) to complete the information in this collection, including the time it takes for reading the instructions for the forms, gathering the necessary information, completing the forms, and submitting them to the USPTO.

*Burden Hours:* 500 burden hours.

*Cost Burden:* \$748,064.50.

*Needs and Uses:* The Patent Law Treaties Implementation Act of 2012 (PLTIA) amends the patent laws to implement the provisions of the Patent Law Treaty (PLT) in title II. The PLT harmonizes and streamlines formal procedures pertaining to the filing and processing of patent applications.

As covered in the final rule titled, "Changes to Implement the Patent Law Treaty" (RIN 0651-AC85), the USPTO adopted the rules of practice for consistency with the PLT and title II of the PLTIA. The information in this collection relates to the petitions for restoration that may be filed in accordance with the revised rules.

The information in this collection can be submitted electronically through EFS-Web, the USPTO's Web-based electronic filing system, as well as on paper. The USPTO is therefore accounting for both electronic and paper submissions in this collection.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Kimberly Keravuori, email: [Kimberly\\_R\\_Keravuori@omb.eop.gov](mailto:Kimberly_R_Keravuori@omb.eop.gov).

Once submitted, the request will be publicly available in electronic format through [www.reginfo.gov](http://www.reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

- *Email:* [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). Include "0651-0073 copy request" in the subject line of the message.
- *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed information collection should be sent on or before November 28, 2016 to Kimberly Keravuori, OMB Desk Officer, via email to [Kimberly\\_R\\_Keravuori@omb.eop.gov](mailto:Kimberly_R_Keravuori@omb.eop.gov), or by fax to 202-395-5167, marked to the attention of Kimberly Keravuori.

Dated: October 20, 2016.

**Marcie Lovett,**

*Records Management Division Director, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2016-25949 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-16-P**

**DEPARTMENT OF COMMERCE****Patent and Trademark Office****Submission for OMB Review;  
Comment Request; Patent Term  
Extension**

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office, Commerce.

*Title:* Patent Term Extension.

*OMB Control Number:* 0651-0020.

*Form Number(s):* N/A.

*Type of Request:* Renewal.

*Number of Respondents:* 1,340.

*Average Hours per Response:* 1 hour to 25 hours, depending upon the instrument used.

*Burden Hours:* 6,187 hours.

*Cost Burden:* \$351,505.08.

*Needs and Uses:* The patent term restoration portion of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417), which is codified at 35 U.S.C. 156, permits the United States Patent and Trademark Office (USPTO) to extend the term of protection under a patent to compensate for delay during regulatory review and approval by the Food and Drug Administration (FDA) or Department of Agriculture. Only patents for drug products, medical devices, food additives, or color additives are potentially eligible for extension. The maximum length that a patent may be extended under 35 U.S.C. 156 is five years. The USPTO administers 35 U.S.C. 156 through 37 CFR 1.710-1.791. Separate from the extension provisions of 35 U.S.C. 156, the USPTO may in some cases extend the term of an original patent due to certain delays in the prosecution of the patent application, including delays caused by interference proceedings, secrecy orders, or appellate review by the Patent Trial and Appeal Board or a Federal court in which the patent is issued pursuant to a decision reversing an adverse determination of patentability. The patent term provisions of 35 U.S.C. 154(b), as amended by Title IV, Subtitle D of the Intellectual Property and Communications Omnibus Reform Act of 1999, require the USPTO to notify the applicant of the patent term adjustment in the notice of allowance and give the applicant an opportunity to request reconsideration of the USPTO's patent term adjustment determination. The USPTO administers 35 U.S.C. 154 through 37 CFR 1.701-1.705.

The public uses this information collection to file requests related to patent term extensions and reconsideration or reinstatement of patent term adjustments. The information in this collection is used by the USPTO to consider whether an applicant is eligible for a patent term extension or reconsideration of a patent term adjustment and, if so, to determine the length of the patent term extension or adjustment.

*Affected Public:* Businesses or other for-profits; not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Kimberly R.

Keravuori, email: [Kimberly\\_R\\_Keravuori@omb.eop.gov](mailto:Kimberly_R_Keravuori@omb.eop.gov).

Once submitted, the request will be publicly available in electronic format through [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

- *Email:* [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). Include "0651-0020 copy request" in the subject line of the message.
- *Mail:* Marcie Lovett, Records Management Division Director, OCIO, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed information collection should be sent on or before November 28, 2016 to Kimberly R. Keravuori, OMB Desk Officer, via email to [Kimberly\\_R\\_Keravuori@omb.eop.gov](mailto:Kimberly_R_Keravuori@omb.eop.gov), or by fax to 202-395-5167, marked to the attention of Kimberly R. Keravuori.

Dated: October 20, 2016.

**Marcie Lovett,**

*Records Management Division Director,  
OCIO, United States Patent and Trademark Office.*

[FR Doc. 2016-25951 Filed 10-26-16; 8:45 am]

**BILLING CODE 3510-16-P**

**DEPARTMENT OF COMMERCE****Patent and Trademark Office**

**[Docket No.: PTO-P-2016-0039]**

**Standard ST.26—Request for  
Comments on the Recommended  
Standard for the Presentation of  
Nucleotide and Amino Acid Sequence  
Listings Using XML (eXtensible  
Markup Language)**

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Request for comments.

**SUMMARY:** Patent applications that contain disclosures of nucleotide and/or amino acid sequences must contain sequence information in a separate part of the disclosure in a specified manner. The United States Patent and Trademark Office (Office) is seeking additional comments to obtain views of the public on the continuing international effort to revise the World Intellectual Property Organization (WIPO) standard for the presentation of nucleotide and/or amino acid sequences and the consequent changes to the United States rules of practice. The revised standard will be known as WIPO Standard ST.26. An interim version of WIPO Standard ST.26 was adopted in March 2016 by the Committee on WIPO Standards (CWS), but has not been implemented pending further consideration by the CWS. Since the adoption of the interim version, efforts have been undertaken to finalize WIPO Standard ST.26 and to improve its effectiveness once implemented. One aspect of that continuing effort is a proposed guidance document annex, which will include a variety of sequence disclosure examples, to ensure understanding and uniform application of standard requirements. Comments may be offered on any aspect of this effort, and in particular, (a) the comprehensiveness and clarity of WIPO Standard ST.26 and the proposed guidance document annex, and (b) the proposed authoring/validation tool for creation of a sequence listing in XML.

**DATES:** Written comments must be received on or before December 27, 2016 to ensure consideration. No public hearing will be held.

**ADDRESSES:** Comments concerning this notice should be sent by electronic mail message over the Internet addressed to [seq\\_listing\\_xml@uspto.gov](mailto:seq_listing_xml@uspto.gov). Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Susan C. Wolski, Office of International Patent Legal Administration, Office of the Deputy Commissioner for International Patent Cooperation. Although comments may be submitted by mail, the Office prefers to receive comments via the Internet.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Internet (<http://www.uspto.gov>). Because comments will be made available for public inspection, information that the submitter does not

desire to make public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:**

Susan C. Wolski, Office of International Patent Legal Administration, Office of the Deputy Commissioner for International Patent Cooperation, by telephone at (571) 272-3304, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Susan C. Wolski.

**SUPPLEMENTARY INFORMATION:**

**1. Background Information**

Patent applicants are currently required to submit biological sequence data in a standardized electronic format in accordance with WIPO Standard ST.25, both within the framework of the Patent Cooperation Treaty (PCT) (Annex C of the Administrative Instructions) and under most national and regional provisions. The Rules of Patent Practice in the United States (37 CFR 1.821–1.825) were amended to implement WIPO Standard ST.25 in July of 1998. See *Requirements for Patent Applications Containing Nucleotide Sequences and/or Amino Acid Disclosures*, 63 FR 29620 (June 1, 1998), 1121 *Off. Gaz. Pat. Office* 82 (June 23, 1998).

WIPO Standard ST.25, which became effective in 1998 and has not been revised since that time, requires a flat file structure of numeric identifiers using a limited set of character codes. In October 2010, the CWS established a Task Force, designating the European Patent Organization as the lead, to draft a revised standard (WIPO Standard ST.26) for the filing of nucleotide and/or amino acid sequence listings in XML format. The Office issued a first request for comments on WIPO Standard ST.26 as drafted by the Task Force (see *Request for Comments on the Recommendation for the Disclosure of Sequence Listings Using XML (Proposed ST.26)*, 77 FR 28541 (May 15, 2012), 1379 *Off. Gaz. Pat. Office* 106 (June 12, 2012)), following which the draft was revised in response to comments received. In March 2016, the reconvened fourth session of the CWS adopted an interim version of WIPO Standard ST.26, which had been initially considered at the fourth session of the CWS in May 2014. The interim version of WIPO Standard ST.26 contains an editorial note requesting that implementation be postponed until the recommendation for the transition from WIPO Standard ST.25 to WIPO Standard ST.26 is agreed on by the CWS

at its next session to be held in 2017. Meanwhile, WIPO Standard ST.25 should continue to be used. The adopted interim version of WIPO Standard ST.26 is composed of six documents, namely, the main body of the standard, a first annex setting forth the controlled vocabulary for use with the sequence part of the standard, a second annex setting forth the Document Type Definition (DTD) for the standard, a third annex containing a sequence listing specimen, a fourth annex setting forth the character subset from the Unicode Basic Latin Code Table, and a fifth annex setting forth additional data exchange requirements for patent offices, and can be found here: <http://www.wipo.int/export/sites/www/standards/en/pdf/03-26-01.pdf>. Since the adoption of the interim version, the main body, the controlled vocabulary, and the DTD have been further revised and updated. In addition, a sixth annex has been proposed; it would contain a guidance document that aims to ensure that all applicants and Intellectual Property Offices (IPOs) understand and agree on the requirements for inclusion and representation of sequence disclosures. In all, seven rounds of discussion have been completed since March 2011, and currently, the eighth round of discussion of the documents is ongoing.

**2. Request for Comments**

The Office, leading the negotiations for the United States, is seeking public comment on WIPO Standard ST.26, as revised subsequent to the adoption of the interim version. To that end, the current revisions of the main body of the standard and its five annexes, as well as the newly proposed sixth annex, are available via the Office's Web site at <http://www.uspto.gov/patent/laws-and-regulations/comments-public/2016-comments-standard-st26-presentation-nucleotide-and>.

Written comments may be offered on any aspect of WIPO Standard ST.26, its annexes, or the proposed authoring/validation tool. Comments are specifically requested on the following issues:

*(a) WIPO Standard ST.26 Main Body*

Since the first request for comments, the main body of WIPO Standard ST.26 has been revised, *inter alia*, to define a “nucleotide” to include nucleotide analogues and to provide further guidance on representation of nucleotide analogue sequences and variant sequences that have been disclosed as a single sequence with enumerated alternative variant residues at one or more positions.

The Office invites comments on whether the main body of WIPO Standard ST.26 is sufficiently comprehensive and clear, and in particular welcomes suggestions to add details or clarify the language as appropriate.

*(b) Guidance Document*

One goal of the development of a WIPO Standard for sequence listings is to allow patent applicants to draw up a single sequence listing in a patent application that would be acceptable for the purposes of both international and national or regional prosecution worldwide. Any new standard should represent the maximum requirements for any sequence listing submission. The purpose of the guidance document is to ensure that all applicants and IPOs understand and agree on the requirements for inclusion and representation of sequence disclosures, such that this purpose is realized.

The guidance document is composed of an introduction, examples, and a sequence listing in XML demonstrating representation of the exemplified sequences. The introduction defines terminology used in the document and discusses the questions raised for each example, namely, whether inclusion is required for a particular disclosed sequence, if inclusion of the sequence is permitted when it is not required, and the appropriate means of representation of sequences included in a sequence listing. Examples were chosen to illustrate various paragraphs of the main body and include 22 involving nucleotide sequences and 19 involving amino acid sequences. It is envisioned that the guidance document would be updated as necessary to include further examples to keep pace with technological advances.

The Office invites comments on whether the guidance document is sufficiently comprehensive and clear, and in particular welcomes suggestions to add details or further examples as appropriate.

*(c) Authoring and Validation Tool*

Availability of an authoring tool in advance of the WIPO Standard ST.26 effective date is key to a successful transition from WIPO Standard ST.25. As envisioned, the authoring tool should be capable of intake of a sequence listing in WIPO Standard ST.25 format, and with additional input from applicant, create a sequence listing in WIPO Standard ST.26 format. Unfortunately, direct conversion from one standard to the other is not possible, due to numerous differences between the two standards, including *inter alia*,

the types of required sequences, representation and annotation of the sequences, and sequence data structure.

The authoring tool should also prompt entry of all required data, prevent entry of sequences having fewer than ten specifically defined nucleotides or fewer than four specifically defined amino acids, inform as to the possibility of optional annotations, and allow use of only acceptable values or formats where applicable, thereby enhancing submission quality. A sequence listing in WIPO Standard ST.26 XML format is not as easily human-readable as its ST.25 counterpart; therefore, the tool should also provide a means for easily viewing both the in-progress and completed sequence listing.

Because the authoring tool is expected to prompt entry of all required data and to allow use of only acceptable values or formats where applicable, a certain level of validation occurs as data is entered. The tool is further expected to include a separate validation function for use by both applicants and IPOs.

WIPO Standard ST.25 provides for a single numeric identifier <223> per sequence to contain “free text” to describe sequence characteristics using non-language neutral vocabulary. Such “free text” is required to be repeated in the main part of the application description in the language thereof in a specific recommended section entitled “Sequence Listing Free Text.” Such repetition ensures that any “free text” will be translated together with the application description, precluding the need for separate translation of the sequence listing itself. In contrast, WIPO Standard ST.26 allows use of “free text” as the value for multiple different annotation qualifiers per sequence, and due to the absence of procedural requirements, repetition in the application is not required, although such a requirement under the PCT and by various IPOs is possible. In WIPO Standard ST.26, “free text” is limited to a few short terms indispensable for understanding a characteristic of a sequence, is preferably in the English language, and as part of the sequence data part of the sequence listing, must not exceed 1000 characters composed of printable characters from the Unicode Basic Latin code table. It is expected that most inventors providing sequence information are capable of providing “free text” in the English language.

The Office invites comments on any aspect of the authoring tool, and in particular welcomes feedback on whether it is deemed necessary for the authoring tool to include a mechanism for automatic identification and

extraction of any “free text” from sequence annotations to facilitate inclusion in the application description.

Dated: October 21, 2016.

**Michelle K. Lee,**

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

[FR Doc. 2016–25968 Filed 10–26–16; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0116]

### Agency Information Collection Activities; Comment Request; Student Assistance General Provisions—Satisfactory Academic Progress Policy

**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 a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before December 27, 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–0116. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of

information. This helps the Department assess the impact of its information collection requirements and minimize the public’s reporting burden. It also helps the public understand the Department’s information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Student Assistance General Provisions—Satisfactory Academic Progress Policy.

*OMB Control Number:* 1845–0108.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments; Individuals or Households; Private Sector.

*Total Estimated Number of Annual Responses:* 33,543,341.

*Total Estimated Number of Annual Burden Hours:* 1,470,256.

**Abstract:** The Department of Education (the Department) is making this request is for an extension of the current approval of the policies and procedures for determining satisfactory academic progress (SAP) as required in Section 484 of the Higher Education Act of 1965, as amended (HEA). These regulations identify the policies and procedures to ensure that students are making satisfactory academic progress in their program at a pace and a level to receive or continue to receive Title IV, HEA program funds. If there is lapse in progress, the policy must identify how the student will be notified and what steps are available to a student not making satisfactory academic progress toward the completion of their program, and under what conditions a student who is not making satisfactory academic progress may continue to receive Title IV, HEA program funds.

Dated: October 24, 2016.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016-25954 Filed 10-26-16; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2016-ICCD-0117]

### Agency Information Collection Activities; Comment Request; Credit Enhancement for Charter School Facilities Program Performance Report

**AGENCY:** Office of Innovation and Improvement (OII), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before December 27, 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-0117. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E-347, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Clifton Jones, 202-205-2204.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize

the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Credit Enhancement for Charter School Facilities Program Performance Report.

*OMB Control Number:* 1855-0010.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 34.

*Total Estimated Number of Annual Burden Hours:* 850.

*Abstract:* The Credit Enhancement for Charter School Facilities Program and its virtually identical antecedent program, the Charter Schools Facilities Financing Demonstration Program, are authorized as part of the reauthorization of the Elementary and Secondary Education Act to have a statutory mandate for an annual report (respectively, Section 5227 and Section 10227). This reporting is a requirement in order to obtain or retain benefits according to section 5527 part b of the Elementary and Secondary Education Act of 1965. ED will use the information through this report to monitor and evaluate competitive grants. These grants are made to private, non-profits; governmental entities; and consortia of these organizations. These organizations will use the funds to leverage private capital to help charter schools construct, acquire, and renovate school facilities.

Dated: October 24, 2016.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016-25957 Filed 10-26-16; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### President's Board of Advisors on Historically Black Colleges and Universities

**AGENCY:** Office of the Undersecretary, U.S. Department of Education.

**ACTION:** Announcement of an open meeting.

**SUMMARY:** This notice sets forth the agenda for the October 26, 2016 meeting of the President's Board of Advisors on Historically Black Colleges and Universities (Board) and provides information regarding an opportunity to attend. Notice of the meeting is required by the Federal Advisory Committee Act (FACA) and is intended to notify the public of its opportunity to attend. This notice is being published less than 15 calendar days prior to the meeting to address scheduling conflicts by having the meeting coincide with the National HBCU Week Conference and thereby ensure a quorum for the final meeting of the Board during this Administration.

**DATES:** The Board meeting will be held on October 26, 2016, from 9 a.m. to 2 p.m. E.D.T. at the Renaissance Capital View, 2800 South Potomac Avenue, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Sedika Franklin, Associate Director, U.S. Department of Education, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW., Washington, DC 20204; telephone: (202) 453-5634 or (202) 453-5630, fax: (202) 453-5632, or email: [sedika.franklin@ed.gov](mailto:sedika.franklin@ed.gov).

#### SUPPLEMENTARY INFORMATION:

*Board's Statutory Authority and Function:* The Board is established by Executive Order 13532 (February 26, 2010) and is continued by Executive Order 13708 (September 30, 2015). The Board is governed by the provisions of the FACA, which sets forth standards for the formation and use of advisory committees. The purpose of the Board is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President and the Secretary in the following areas: (i) Improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to

remain fiscally secure institutions that can assist the nation in reaching its goal of having the highest proportion of college graduates by 2020; (iv) elevating the public awareness of HBCUs; and (v) encouraging public-private investments in HBCUs.

**Meeting Agenda:** Members of the public who wish to listen to the meeting via telephone may dial (877) 988-7340, participant code, 2881382.

The meeting agenda will include (i) a review of the Board's activities prior to October 26 2016; (ii) the introduction and swearing-in of five new members of the Board; (iii) Chairman William R. Harvey will present a report on HBCU issues and concerns; (iv) Deputy Under Secretary of the U.S. Department of Education and Acting Executive Director/Designated Federal Official, Kim Hunter Reed, will provide an update on current priorities of the White House Initiative on HBCUs, including planning strategies and initiatives; (v) Kim Hunter Reed will also provide an update on education policies relevant to HBCUs; (vi) Chairman Harvey will open the floor for subcommittee reports. The public comment period will begin immediately following the conclusion of the subcommittee reports.

**Submission of request to make a public comment:** There are two methods the public may use to provide an oral comment pertaining to the work of the Board at the October 26, 2016 meeting.

**Method One:** Submit a request by email to [whirsvps@ed.gov](mailto:whirsvps@ed.gov). Please do not send materials directly to Board members. Requests for oral comment must be received by close of business October 22, 2016. Include in the subject line of the email request "Oral Comment Request: (organization name)." The email must include the name(s), title, organization/affiliation, mailing address, email address, telephone number, of the person(s) requesting to speak, and a brief summary (not to exceed one page) of the principal points to be made during the oral comment. All individuals submitting an advance request in accordance with this method will be afforded an opportunity to speak for three minutes.

**Method Two:** Register at the meeting location on October 26, 2016. The requestor must provide his or her name, title, organization/affiliation, mailing address, email address, and telephone number. Individuals will be selected on a first-come, first-served basis. If selected, each commenter will have an opportunity to speak for three minutes.

All comments made will become part of the official record of the Board. Similarly, written materials distributed

during oral comment will become part of the official record of the meeting.

**Submission of written public comments:** The Board invites written comments, which will be read during the public comment period. Written comments must be received by close of business October 22, 2016 and must be sent via email to [whirsvps@ed.gov](mailto:whirsvps@ed.gov). Please include in the subject line of the email "Written Comments: Public Comment." The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number, of the person(s) making the comment. Written comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to the email message or is provided in the body of the email message. Please do not send material directly to the Board members.

**Access to Records of the Meeting:** The Department will post the official report of the meeting on the Board Web site 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 400 Maryland Avenue SW., Washington, DC, by emailing [oswhi-hbcu@ed.gov](mailto:oswhi-hbcu@ed.gov) or by calling (202) 453-5634 to schedule an appointment.

**Reasonable Accommodations:** The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least one week before the meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

**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](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to

documents published by the Department.

**Authority:** Presidential Executive Order 13532, continued by Executive Order 13708.

**Ted Mitchell,**

*Under Secretary.*

[FR Doc. 2016-25828 Filed 10-24-16; 4:20 pm]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Office of Nuclear Energy; Request for Information on Approaches Involving Private Initiatives for Consolidated Interim Storage Facilities

**AGENCY:** Spent Fuel and Waste Disposition, Office of Nuclear Energy, Department of Energy.

**ACTION:** Notice of availability and request for information.

**SUMMARY:** The U.S. Department of Energy (DOE), Office of Nuclear Energy, released on its Web site a Request for Information (RFI) on Private Initiatives (PIs) for Consolidated Interim Storage Facilities. The purpose of the RFI is to gather input on the role of PIs for private consolidated interim storage facilities (ISF) services as part of an integrated waste management system.

**DATES:** Written comments and information are requested on or before January 27, 2017.

**ADDRESSES:** Interested parties are to submit requested information by any of the following methods:

**Email:** Responses may be provided by email to [PrivateISF@hq.doe.gov](mailto:PrivateISF@hq.doe.gov).

**Mail:** Responses may be provided by mail to the following address: U.S. Department of Energy, Office of Nuclear Energy, Response to RFI on Private Initiatives to Develop Consolidated SNF Storage Facilities, 1000 Independence Ave. SW., Washington, DC 20585.

**Fax:** Responses may be faxed to 202-586-0544. Please include "Response to RFI on Private Initiatives to Develop Consolidated SNF Storage Facilities" on the fax cover page.

**Online:** Responses will be accepted online at [www.regulations.gov](http://www.regulations.gov).

**Instructions:** All submissions received are to include "Response to RFI on Private Initiatives to Develop Consolidated SNF Storage Facilities" in the subject of the message. The complete RFI, including the additional instructions, can be found at [www.energy.gov/ne/downloads/Private-ISF](http://www.energy.gov/ne/downloads/Private-ISF).

**FOR FURTHER INFORMATION CONTACT:** Requests for further information should be sent to Mr. Andrew Griffith via [PrivateISF@hq.doe.gov](mailto:PrivateISF@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

Since the Administration's Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste was issued, PIs for interim storage facilities that could provide DOE or utilities with consolidated SNF interim storage services are in various stages of development. PIs, although not envisioned in the Administration's Strategy, represent a potentially promising alternative to federal facilities for consolidated interim storage. The RFI seeks input on key questions related to the role PFIs could play in an integrated waste management system. The RFI is available on the DOE-NE Web site at: [www.energy.gov/ne/downloads/Private-ISF](http://www.energy.gov/ne/downloads/Private-ISF).

The DOE Office of Nuclear Energy invites all interested parties to submit in writing by January 27, 2017, comments and information on matters addressed in the notice.

**Submitting Comments**

**Instructions:** Submit comments via any of the mechanisms set forth in the **ADDRESSES** section.

DOE intends to make the responses submitted to this RFI publicly available in their entirety. Therefore, DOE recommends that respondents do not include any business sensitive, proprietary, or otherwise privileged information (Confidential Business Data or CBI), or any personally identifiable information (PII) such as personal email or phone numbers, in their submission. Responses to this RFI will be automatically posted and made publicly available; DOE will not review submissions for any CBI or PII so it is the respondents' responsibility to ensure no such information is submitted.

If a respondent would like to respond with information that contains potential CBI or PII, they may do so by submitting responses to [privateISF\\_Sensitive@hq.doe.gov](mailto:privateISF_Sensitive@hq.doe.gov). Responses are subject to disclosure statutes such as the Freedom of Information Act. As such, the respondent should clearly identify any CBI or PII and indicate the rationale why such information should not be released. For further details on DOE's treatment of potential CBI that is subject to a FOIA request, see 10 CFR 1004.11 and 5 U.S.C. 552(b)(4).

Issued in Washington, DC, on October 24, 2016.

**Andrew Griffith,**

*Deputy Assistant Secretary for Spent Nuclear Fuel and Waste Disposition, Office of Nuclear Energy, Department of Energy.*

[FR Doc. 2016-26018 Filed 10-26-16; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC16-184-000.

*Applicants:* WGP Acquisition, LLC, Lea Power Partners, LLC, Waterside Power, LLC, Badger Creek Limited, Chalk Cliff Limited, Double C Generation Limited Partnership, High Sierra Limited, Kern Front Limited, McKittrick Limited, Bear Mountain Limited, Live Oak Limited.

*Description:* Second Supplement to September 19, 2016 Joint Section 203 Application for WPG Acquisition, LLC, et al.

*Filed Date:* 10/17/16.

*Accession Number:* 20161017-5067.

*Comments Due:* 5 p.m. ET 10/27/16.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG17-15-000.

*Applicants:* Bluestem Wind Energy, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Bluestem Wind Energy, LLC.

*Filed Date:* 10/21/16.

*Accession Number:* 20161021-5125.

*Comments Due:* 5 p.m. ET 11/14/16.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-2302-006.

*Applicants:* Public Service Company of New Mexico.

*Description:* Second Supplement to December 29, 2015 Public Service Company of New Mexico submits Triennial Market Power Update.

*Filed Date:* 10/21/16.

*Accession Number:* 20161021-5036.

*Comments Due:* 5 p.m. ET 11/14/16.

*Docket Numbers:* ER10-2437-009.

*Applicants:* Arizona Public Service Company.

*Description:* Notice of Non-Material Change in Status of Arizona Public Service Company.

*Filed Date:* 10/20/16.

*Accession Number:* 20161020-5167.

*Comments Due:* 5 p.m. ET 11/10/16.

*Docket Numbers:* ER16-2522-001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Tariff Amendment: 3243 City of Piggott, AR NITSA NOA Deferral of Action in ER16-2522 to be effective 12/31/9998.

*Filed Date:* 10/20/16.

*Accession Number:* 20161020-5165.

*Comments Due:* 5 p.m. ET 11/10/16.

*Docket Numbers:* ER16-2523-001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Tariff Amendment: 3244 Malden—Board of Public Works NITSA NOA Deferral of Action in ER16-2523 to be effective 12/31/9998.

*Filed Date:* 10/20/16.

*Accession Number:* 20161020-5164.

*Comments Due:* 5 p.m. ET 11/10/16.

*Docket Numbers:* ER17-150-000.

*Applicants:* San Diego Gas & Electric Company.

*Description:* § 205(d) Rate Filing: SDGE CSolar LGIA to be effective 10/22/2011.

*Filed Date:* 10/20/16.

*Accession Number:* 20161020-5162.

*Comments Due:* 5 p.m. ET 11/10/16.

*Docket Numbers:* ER17-151-000.

*Applicants:* San Diego Gas & Electric Company.

*Description:* § 205(d) Rate Filing: SDGE Resubmittal of Standard LGIA to be effective 6/28/2010.

*Filed Date:* 10/20/16.

*Accession Number:* 20161020-5163.

*Comments Due:* 5 p.m. ET 11/10/16.

*Docket Numbers:* ER17-152-000.

*Applicants:* Northern States Power Company, a Minnesota corporation.

*Description:* Notice of Cancellation of Interconnection and Interchange Agreement No. 485 of Northern States Power Company, a Minnesota corporation.

*Filed Date:* 10/20/16.

*Accession Number:* 20161020-5168.

*Comments Due:* 5 p.m. ET 11/10/16.

*Docket Numbers:* ER17-153-000.

*Applicants:* Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company, LLC.

*Description:* § 205(d) Rate Filing: 2016-10-20\_SA 2964 METC-City of Marshall Interconnection Facilities Agreement to be effective 10/24/2016.

*Filed Date:* 10/21/16.

*Accession Number:* 20161021-5034.

*Comments Due:* 5 p.m. ET 11/14/16.

*Docket Numbers:* ER17-154-000.

*Applicants:* Northern Indiana Public Service Company.



*Description:* § 205(d) Rate Filing: Contribution in Aid of Construction Agreement to be effective 1/2/2017.

*Filed Date:* 10/21/16.

*Accession Number:* 20161021-5067.

*Comments Due:* 5 p.m. ET 11/14/16.

*Docket Numbers:* ER17-155-000.

*Applicants:* GearyEnergy, LLC.

*Description:* § 205(d) Rate Filing: Geary Energy Succession Filing to be effective 10/15/2016.

*Filed Date:* 10/21/16.

*Accession Number:* 20161021-5136.

*Comments Due:* 5 p.m. ET 11/14/16.

*Docket Numbers:* ER17-156-000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2016-10-21\_Queue Reform Attachment X Filing to be effective 1/4/2017.

*Filed Date:* 10/21/16.

*Accession Number:* 20161021-5139.

*Comments Due:* 5 p.m. ET 11/14/16.

*Docket Numbers:* ER17-157-000.

*Applicants:* Moapa Southern Paiute Solar, LLC.

*Description:* Baseline eTariff Filing: Application for Initial Market-Based Rate Tariff and Granting Certain Waivers to be effective 10/22/2016.

*Filed Date:* 10/21/16.

*Accession Number:* 20161021-5146.

*Comments Due:* 5 p.m. ET 11/14/16.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES17-5-000.

*Applicants:* AEP West Virginia Transmission Company, Inc.

*Description:* Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP West Virginia Transmission Company, Inc.

*Filed Date:* 10/21/16.

*Accession Number:* 20161021-5132.

*Comments Due:* 5 p.m. ET 11/14/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For

other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: October 21, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-25985 Filed 10-26-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. DI16-3-000]

#### Leonard Matteson; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI16-3-000.

c. *Date Filed:* September 19, 2016.

d. *Applicant:* Mr. Leonard Matteson.

e. *Name of Project:* Matteson Hydroelectric Project.

f. *Location:* The proposed Matteson Hydroelectric Project would be located on the Missouri River, near the town of Cascade, in Cascade County, Montana.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b) (2012).

h. *Applicant Contact:* Mr. Leonard Matteson, 57 Tower Rock Road, Cascade, MT 59421, telephone: (406) 468-0087.

i. *FERC Contact:* Any questions on this notice should be addressed to Jennifer Polardino, (202) 502-6437, or email: [Jennifer.Polarino@ferc.gov](mailto:Jennifer.Polarino@ferc.gov).

j. *Deadline for filing comments, protests, and motions to intervene is:* 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number DI16-3-000.

k. *Description of Project:* The proposed Matteson Hydroelectric Project would consist of: (1) A 42-inch water wheel located on a boat dock and placed into the Missouri River; (2) a generating unit linked to the water wheel; (3) a transmission line which directly connects to the Northwest Energy utility; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* This filing may be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above and in the Commission's Public Reference Room located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*o. Filing and Service of Responsive Documents:* All filings must bear in all capital letters the title "COMMENTS", "PROTESTS", and "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion To Intervene must also be served upon each representative of the Applicant specified in the particular application.

*p. Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 21, 2016.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2016-25967 Filed 10-26-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* RP17-38-000.  
*Applicants:* Algonquin Gas Transmission, LLC.  
*Description:* § 4(d) Rate Filing: Negotiated Rates—Keyspan Release to ConEd 792126 to be effective 11/1/2016.

*Filed Date:* 10/19/16.  
*Accession Number:* 20161019-5029.  
*Comments Due:* 5 p.m. ET 10/31/16.  
*Docket Numbers:* RP17-39-000.  
*Applicants:* Southern Natural Gas Company, L.L.C.  
*Description:* § 4(d) Rate Filing: 2016 Expansion Negotiated Rate Filing to be effective 12/1/2016.

*Filed Date:* 10/19/16.  
*Accession Number:* 20161019-5041.  
*Comments Due:* 5 p.m. ET 10/31/16.  
*Docket Numbers:* RP17-40-000.  
*Applicants:* Algonquin Gas Transmission, LLC.  
*Description:* § 4(d) Rate Filing: Negotiated Rates—KeySpan Release to

Emera contract 792149 to be effective 11/1/2016.

*Filed Date:* 10/19/16.

*Accession Number:* 20161019-5047.

*Comments Due:* 5 p.m. ET 10/31/16.

*Docket Numbers:* RP17-41-000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* § 4(d) Rate Filing: Peoples Gas Light & Coke Negotiated Rate to be effective 11/1/2016.

*Filed Date:* 10/20/16.

*Accession Number:* 20161020-5000.

*Comments Due:* 5 p.m. ET 11/1/16.

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.

#### Filings in Existing Proceedings

*Docket Numbers:* RP15-301-002.

*Applicants:* Equitrans, L.P.

*Description:* Compliance filing IBS First Year of Service—Compliance Filing.

*Filed Date:* 10/20/16.

*Accession Number:* 20161020-5036.

*Comments Due:* 5 p.m. ET 11/1/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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 20, 2016.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2016-25986 Filed 10-26-16; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9954-54-OA]

### Request for Nominations of Experts To Augment the Science Advisory Board Chemical Assessment Advisory Committee for the Review of EPA Draft Toxicological Reviews for *tert*-Butyl Alcohol (*tert*-butanol) and Ethyl Tertiary Butyl Ether (ETBE)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office requests public nominations of scientific experts to augment the SAB Chemical Assessment Advisory Committee (CAAC) for the peer review of two EPA Draft Toxicological Review: (1) The Toxicological Review of *tert*-Butyl Alcohol (*tert*-butanol) and (2) Toxicological Review for Ethyl Tertiary Butyl Ether (ETBE) in Support of Summary Information on the Integrated Risk Information System (IRIS).

**DATES:** Nominations should be submitted by November 17, 2016 per the instructions below.

**FOR FURTHER INFORMATION:** Any member of the public wishing further information regarding this Notice and Request for Nominations may contact the Designated Federal Officer for the review, as identified below. Nominators unable to submit nominations electronically as described below may contact the Designated Federal Officer for assistance. General information concerning the EPA SAB can be found at the EPA SAB Web site at <http://www.epa.gov/sab>.

#### SUPPLEMENTARY INFORMATION:

*Background:* The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB Chemical Assessment Advisory Committee (CAAC) is a subcommittee of the SAB that provides advice through the chartered SAB regarding assessments of environmental chemicals available on EPA's Integrated Risk Information System (IRIS). The SAB and the CAAC, augmented with additional experts, will comply with the

provisions of FACA and all appropriate SAB Staff Office procedural policies.

The National Center for Environmental Assessment (NCEA) in the EPA's Office of Research and Development (ORD) develops toxicological reviews/assessments for various chemicals for inclusion in the IRIS database. NCEA is developing a draft Toxicological Review of *tert*-Butyl Alcohol (*tert*-butanol) and Toxicological Review of Ethyl Tertiary Butyl Ether (ETBE) and has asked the SAB to conduct the peer review of these draft documents. Because *tert*-butanol is a metabolite of ETBE, the peer reviews will be conducted together. The SAB Staff Office is seeking experts to augment the SAB CAAC for the review of *tert*-butanol and ETBE.

These two draft EPA documents represent new IRIS assessments of *tert*-butanol and ETBE. Experimental animal data and other relevant data from studies of the noncancer and cancer effects of *tert*-butanol and ETBE are evaluated in these assessments. These assessments include an oral reference dose (RfD) and inhalation reference concentration (RfC) for noncancer effects as well as a cancer assessment. The cancer assessments characterize *tert*-butanol and ETBE as having suggestive evidence of carcinogenic potential to humans and include oral cancer slope factors for both compounds and an inhalation unit risk for ETBE.

**Technical Contact for EPA's draft assessments:** For information concerning the EPA draft assessments, please contact Gina Perovich, National Center for Environmental Assessment, Office of Research and Development, U.S. EPA, 1200 Pennsylvania Avenue NW., Mail Code 8601P, Washington, DC 20460, phone (703) 347-8656 or via email at [perovich.gina@epa.gov](mailto:perovich.gina@epa.gov).

**Request for Nominations:** The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists with demonstrated expertise and research on *tert*-butanol and ETBE to augment the CAAC for the peer review of the *tert*-butanol and ETBE toxicological reviews. The SAB Staff Office seeks experts in one or more of the following areas, with a particular focus on *tert*-butanol and ETBE: Toxicology, rat nephrotoxicity, liver toxicity, reproductive toxicity, cancer biology, physiologically-based pharmacokinetic (PBPK) modeling, toxicokinetics, and dose-response modeling of animal data. Questions regarding this review should be directed to Dr. Shaunta Hill, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564-3343, or via email at [hill.shaunta@epa.gov](mailto:hill.shaunta@epa.gov).

**Process and Deadline for Submitting Nominations:** Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on the augmented CAAC review panel identified in this notice. Nominations should be submitted in electronic format (preferred over hard copy) using the online nomination form under the "Nomination of Experts" category at the bottom of the SAB home page at <http://www.epa.gov/sab>. To receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume or curriculum vitae; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Hill as noted above. Nominations should be submitted in time to arrive no later than November 17, 2016. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates for the CAAC *tert*-butanol and ETBE Review Panel on the SAB Web site at <http://www.epa.gov/sab> (see links under "Public Input on Membership" at the bottom of the SAB home page). Public comments on the List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to

adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the panel as a whole, diversity of expertise and scientific points of view.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees" (EPA Form 3110-48). This confidential form allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded from the following URL address <http://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument>.

The approved policy under which the EPA SAB Office selects members for subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA-SAB-EC-02-010), which is posted on the SAB Web site at [http://yosemite.epa.gov/sab/sabproduct.nsf/WebFiles/OverviewPanelForm/\\$File/ec02010.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/WebFiles/OverviewPanelForm/$File/ec02010.pdf).

Dated: October 18, 2016.

**Khanna Johnston,**

*Acting Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2016-25930 Filed 10-26-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2016-0082; FRL-9952-62]

### Certain New Chemicals; Receipt and Status Information for June 2016

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA) to publish in the **Federal Register** a notice of receipt of a Premanufacture notice (PMN); an application for a test marketing exemption (TME), both pending and/or expired; and a periodic status report on any new chemicals under EPA review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document covers the period from June 22, 2016 to June 30, 2016.

**DATES:** Comments identified by the specific case number provided in this document, must be received on or before November 28, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2016-0025, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: Jim Rahai, IMD 7407M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: [rahai.jim@epa.gov](mailto:rahai.jim@epa.gov).

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422

South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the actions addressed in this document.

##### B. What should I consider as I prepare my comments for EPA?

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

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

#### II. What action is the agency taking?

This document provides receipt and status reports, which cover the period from June 22, 2016 to June 30, 2016, and consists of the PMNs and TMEs both pending and/or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

President Obama signed new TSCA legislation on June 22, 2016. TSCA subsection 5(a) notices, which were submitted prior to signature of the law, but were still within the review period on June 22 (*i.e.*, typically the 90-day review period), will have determinations made in accordance with the new law. EPA views all section 5(a) notices that were within the notice period, as of June 22, 2016, as having been refiled on that date, thereby restarting the 90-day review clock on June 22, 2016. This follows from the

manner in which the TSCA legislation defines the “applicable review period,” a statutory phrase that did not exist before the amendments to TSCA. New TSCA section 5(i)(3) states that the applicable review period “means the period starting on the date the Administrator receives a notice under subsection (a)(1).” EPA interprets this cross-reference as a reference to TSCA subsection (a)(1), *as amended*. Thus, in the case of a notice submitted prior to the date of enactment, the earliest possible date on which that notice could be viewed as submitted “under subsection (a)(1),” is June 22, 2016, the first date on which that subsection was in legal effect.

#### III. What is the agency’s authority for taking this action?

Under TSCA, 15 U.S.C. 2601 *et seq.*, EPA classifies a chemical substance as either an “existing” chemical or a “new” chemical. Any chemical substance that is not on EPA’s TSCA Inventory is classified as a “new chemical,” while those that are on the TSCA Inventory are classified as an “existing chemical.” For more information about the TSCA Inventory go to: <http://www.epa.gov/opptintr/newchemicals/pubs/inventory.htm>.

Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a notice before initiating the activity. TSCA furthermore prohibits such manufacturing or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for “test marketing” purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <http://www.epa.gov/oppt/newchemicals>.

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic reports on the status of new chemicals under review and the receipt of NOCs to manufacture those chemicals.

**IV. Receipt and Status Reports**

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that the information in the table is generic information because the

specific information provided by the submitter was claimed as CBI.

For the 349 PMNs received by EPA during this period, the table provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to

the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer/importer; the potential uses identified by the manufacturer/importer in the PMN; and the chemical identity.

**TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016**

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-09-0378 ....	6/22/2016	9/19/2016	CBI .....	(G) Solvent .....	(G) Hydrofluorocarbon.
P-09-0629 ....	6/22/2016	9/19/2016	Santolubes, LLC .....	(S) This substance will be a raw material for a flame retardant product used in the plastics.	(S) Bis(para-phenoxyphenyl)ether.
P-10-0017 ....	6/22/2016	9/19/2016	CBC (America) Corporation.	(G) Sealant application .....	(S) Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 2-(chloromethyl)oxirane, hydrogenated.
P-10-0494 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate chemical product .....	(G) Polyphenol ether.
P-10-0542 ....	6/22/2016	9/19/2016	CBI .....	(G) Used as an ingredient in manufacture of a polymer binder meant to adhere glass fibers together.	(G) Amide, polyprotic acid.
P-11-0148 ....	6/22/2016	9/19/2016	Ineos Oligomers .....	(G) Industrial applications .....	(S) Hydrocarbons, c4, 1,3-butadiene-free, polymd., triisobutylene fraction, hydrogenated.
P-11-0593 ....	6/22/2016	9/19/2016	CBI .....	(G) Component of polyurethane foam .....	(G) Formaldehyde reaction products with alkylphenol and diethanolamine, alkoxy alkylated.
P-11-0647 ....	6/22/2016	9/19/2016	CBI .....	(G) Water and oil repellent .....	(G) Perfluoroalkylethyl methacrylate copolymer.
P-12-0085 ....	6/22/2016	9/19/2016	CBI .....	(G) Finishing agent for textile .....	(G) Substituted-dioxaphosphorinane, 2-([1,1'-biphenyl]-2-yloxy)-5,5-dialkyl-, 2-oxide.
P-12-0089 ....	6/22/2016	9/19/2016	BrueggeMann Chemical U.S., Inc.	(G) Zinc is a natural essential element, which is needed for the optimal growth and development of all living organisms including man all living organisms have homeostasis mechanisms that actively regulate zinc uptake and absorption excretion from the body due to this regulations zinc and zinc compounds do not bioaccumulate or biomagnify most common technical function of substance (what it does) food/feedstuff additives process regulators other than polymerisation or vulcanisation processes lubricants and lubricant additives laboratory chemicals ph-regulating agents fertilizers.	(S) Carbonic acid, zinc salt, basic.
P-12-0277 ....	6/22/2016	9/19/2016	CBI .....	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P-12-0278 ....	6/22/2016	9/19/2016	CBI .....	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P-12-0279 ....	6/22/2016	9/19/2016	CBI .....	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P-12-0280 ....	6/22/2016	9/19/2016	CBI .....	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P-12-0281 ....	6/22/2016	9/19/2016	CBI .....	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P-12-0282 ....	6/22/2016	9/19/2016	CBI .....	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P-12-0283 ....	6/22/2016	9/19/2016	CBI .....	(G) Platicizer and lubricant with flame retardant properties.	(G) Chloro alkanes.
P-12-0284 ....	6/22/2016	9/19/2016	CBI .....	(G) Metal working fluid additive .....	(G) Chloro alkanes.
P-12-0291 ....	6/22/2016	9/19/2016	CBI .....	(G) Additive, open, non-dispersive use .....	(G) Fluoroalkyl modified polydimethylsiloxane.
P-12-0399 ....	6/22/2016	9/19/2016	CBI .....	(G) Paper treatment .....	(G) Perfluoroalkylethyl methacrylate copolymer, sodium salt.
P-12-0433 ....	6/22/2016	9/19/2016	Ineos Chlor Americas	(G) Additive .....	(S) Alkanes, c18-20, chloro.
P-12-0453 ....	6/22/2016	9/19/2016	Ineos Chlor Americas	(G) Additive .....	(S) Alkanes, c14-17, chloro.
P-12-0505 ....	6/22/2016	9/19/2016	Ineos Chlor Americas	(G) Additive .....	(S) Alkanes, c22-30, chloro.
P-13-0021 ....	6/22/2016	9/19/2016	CBI .....	(S) Surface protection agent for use in building materials.	(G) Perfluoroacrylate polymer.
P-13-0022 ....	6/22/2016	9/19/2016	CBI .....	(S) Surface protection agent for use in building materials.	(G) Perfluoroacrylate polymer.
P-13-0287 ....	6/22/2016	9/19/2016	CBI .....	(G) Curing agent; starting material for curing agent.	(G) Cyanoethylated diamine.
P-13-0307 ....	6/22/2016	9/19/2016	CBI .....	(G) Component of manufactured consumer article—contained use.	(G) Substituted carbocycle, n-[[[4-[(4-substituted carbocyclic)amino]sulf onyl]carbocyclic]amino]carbonyl]-4-methyl-
P-13-0323 ....	6/22/2016	9/19/2016	CBI .....	(G) Additive for foam applications .....	(G) Phosphonic acid, [1]([5,5-dialkyl-2-substituted-substituted heteromonocycle]-1-alkyl]-, dialkyl ester.

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-13-0377 ....	6/22/2016	9/19/2016	CBI .....	(G) Water and oil repellent .....	(G) Perfluoroalkylethyl methacrylate copolymer.
P-13-0382 ....	6/22/2016	9/19/2016	CBI .....	(G) Plastics .....	(G) Castor oil, reaction products with an alcohol amine.
P-13-0520 ....	6/22/2016	9/19/2016	Alberdingk Boley Inc ..	(S) Coatings for wood metal and plastic .....	(G) Aromatic dicarboxylic acid, polymer with cycloalkanemethanol, alkanediamine, alkanedioic acid, hydroxy-2-(hydroxyalkyl)-2-alkylcarboxylic acid, methylenebis[isocyanatocycloalkane] and (methylethylidene)bis(phenyleneoxy)] bis[alkan ol], compd. with dialkylamino ethanol.
P-13-0521 ....	6/22/2016	9/19/2016	Alberdingk Boley, Inc	(S) Coatings for wood metal and plastic .....	(G) Aromatic dicarboxylic acid, polymer with alkanediamine, alkane dioic acid, alkanediol, hydroxy-2-(hydroxymethyl)-2-alkyl carboxylic acid, methylenebis [isocyanatocycloalkane] and [(alkylethylidene) bis(phenyleneoxy)]bis [alkanol], compd. with dialkylethanamine.
P-13-0720 ....	6/22/2016	9/19/2016	Nano-C, Inc .....	(S) Additive for fibers in fabrics; (S) Additive for fibers in structural and electrical applications; (S) Additive for transparency and conductivity in electronic devices; (S) Additive in lubricants and grease to improve wear resistance; (S) Additive to improve the strength and durability of materials and batteries; (S) Catalyst support for use in fuel cells; (S) Coating additive to improve corrosion resistance of metals; (S) Use as a nonporous network in gas diffusion layers; (S) Use as a semi-conductor, conductive, or resistive element in electronic circuitry and devices; (S) Use as an electromechanical switch in electronic circuitry and devices; (S) Use in film laminates to improve structural, electrical, or electrochemical properties of composite; (S) Use in separation of chemicals; (S) Use with materials to improve mechanical properties or electrical conductivities.	(G) Single-walled carbon nanotubes.
P-13-0883 ....	6/22/2016	9/19/2016	CBI .....	(G) Corrosion inhibitor for down-hole well treatment and pipelines used in the oil and gas industry.	(G) Fatty acids, tall oil, reaction products with polyamine, 2-mercaptoacetate.
P-14-0053 ....	6/22/2016	9/19/2016	Takasago .....	(S) Fragrance in deodorants and cosmetics; (S) Fragrance in fine fragrance; (S) Fragrance in household products such as laundry; detergents and air fresheners; (S) Fragrance in shampoos and body washes.	(S) 2-pentanone, 3-methyl-5-(2,2,3-trimethylcyclopentyl)-
P-14-0055 ....	6/22/2016	9/19/2016	Takasago .....	(S) Fragrance in deodorants and cosmetics; (S) Fragrance in fine fragrance; (S) Fragrance in household products such as laundry detergents and air; Fresheners; (S) Fragrance in shampoos, body wash.	(S) Cyclohexanecarboxylic acid, 2,2,6-trimethyl-2-propen-1-yl ester.
P-14-0073 ....	6/22/2016	9/19/2016	CBI .....	(G) Manufacturing intermediate .....	(G) Fluorinated alcohol.
P-14-0093 ....	6/22/2016	9/19/2016	CBI .....	(G) Resin for coatings .....	(G) Phenol, bis alkylalylidene-, polymer with haloalkyl heteromonocycle, alkylhexanoate, reaction products with substituted amines.
P-14-0094 ....	6/22/2016	9/19/2016	CBI .....	(G) Crosslinking agent .....	(G) Substituted polyalkylene polycarbomonocyclic ester, 2-alkoxyethanol- and dialkylene glycol alkyl ether-blocked.
P-14-0246 ....	6/22/2016	9/19/2016	Shell Chemical, LP .....	(S) Cleaning adn inks; (S) Electronics; (S) Other solvents; (S) Paint and coating.	(S) 2-propanol, 1-ethoxy-, 2-acetate.
P-14-0266 ....	6/22/2016	9/19/2016	CBI .....	(G) Functions as an oil-soluble corrosion inhibitor for use in oil and gas wells and pipelines.	(G) Tall oil fatty acid diethylenetriamine compds. with substituted polyethylene glycol ether.
P-14-0314 ....	6/22/2016	9/19/2016	CBI .....	(G) Industrial flame retardant .....	(G) Poly aliphatic phosphate.
P-14-0321 ....	6/22/2016	9/19/2016	CBI .....	(G) Site-limited isolated and recycled intermediate.	(G) Hydrochlorofluoroprop ene.
P-14-0323 ....	6/22/2016	9/19/2016	CBI .....	(G) Site-limited, isolated and recycled intermediate.	(G) Hydrochlorofluoroprop ene.
P-14-0472 ....	6/22/2016	9/19/2016	CBI .....	(G) Site Controlled Intermediate .....	(G) Polyphosphoric acids, 2-[alkyl-1-oxo-2-propen-1-yl]oxy]ethyl esters, compds. with n-(aminoiminomethyl)ure a.
P-14-0481 ....	6/22/2016	9/19/2016	CBI .....	(G) Base material in industrial rubber synthesis; (G) Base material in industrial rubber synthesis.	((G) Alkene, hexasubstituted, telomer with disubstituted alkene and polysubstituted alkane.
P-14-0482 ....	6/22/2016	9/19/2016	CBI .....	(G) Industrial chemical .....	(G) Organic salt.
P-14-0485 ....	6/22/2016	9/19/2016	CBI .....	(G) Fuel cell component .....	(G) Rare earth oxide.

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-14-0496 ....	6/22/2016	9/19/2016	CBI .....	(G) Paper additive .....	(G) Polyphosphoric acids, 2-[(alkyl-1-oxo-2-propen-1-yl)oxy]ethyl esters, compds. with n-(aminoiminomethyl)urea, polymers with butyl acrylate, n-(hydroxymethyl)-2-propenamide and styrene.
P-14-0574 ....	6/22/2016	9/19/2016	CBI .....	(G) Open non-dispersive use; dispersive use	(G) Fatty acid esters with polyol.
P-14-0627 ....	6/22/2016	9/19/2016	CBI .....	(S) Solvent in a variety of applications; laboratory chemical/solvent; cleaning agent.	(G) Cyclic amide.
P-14-0630 ....	6/22/2016	9/19/2016	CBI .....	(S) Pigment for liquid coatings solvent based system; (S) Pigment for polymer materials; (S) Pigment for powder coatings.	(S) Bismuth bromide iodide oxide.
P-14-0636 ....	6/22/2016	9/19/2016	CBI .....	(S) Functional resin coating/protective coating; functional resin insulating glass sealant; functional resin aerospace sealant.	(G) Chloroalkane, polymer with chloroalkoxyalkane and sodium sulfide (na2sx).
P-14-0637 ....	6/22/2016	9/19/2016	CBI .....	(G) Textile treatment .....	(G) Perfluoroalkylethyl methacrylate copolymer.
P-14-0642 ....	6/22/2016	9/19/2016	CBI .....	(S) Low foam surfactant for the autodishwasher market; low foam surfactant for the household cleaning market.	(S) Oxirane, 2-ethyl-, polymer with oxirane, mono-c12-16-alkyl ethers.
P-14-0683 ....	6/22/2016	9/19/2016	Qualice, LLC .....	(S) Extreme pressure additive in lubricants; (S) Flame retardant in rubber products.	(S) Tetradecane, chloro derivatives.
P-14-0684 ....	6/22/2016	9/19/2016	Qualice, LLC .....	(S) Extreme pressure additive in lubricants; (S) Flame retardant in rubber products.	(S) Alkanes, c14-16, chloro.
P-14-0758 ....	6/22/2016	9/19/2016	CBI .....	(G) Urethane foam .....	(G) Polyamine-based polyol.
P-14-0829 ....	6/22/2016	9/19/2016	CBI .....	(S) Surfactant for use in paints, coatings, inks, waxes, detergents, polishes, adhesives, and lubricants.	(G) Perfluoropolyethylene glycol polymer.
P-14-0865 ....	6/22/2016	9/19/2016	CBI .....	(G) Isolated intermediate .....	(G) Aromatic amide oxime.
P-15-0029 ....	6/22/2016	9/19/2016	Maroon, Inc .....	(S) Antioxidant for plastics .....	(S) 2,4,8,10-tetraoxa-3,9-diphosphaspiro[5.5]undecane,3,9-bis[2-(1-methyl-1-phenylethyl)-4-(1,1,3,3-tetramethylbutyl)phenoxy]-
P-15-0106 ....	6/22/2016	9/19/2016	CBI .....	(G) Mining and fuel additive .....	(G) Alkene reaction and distillation by-products and residues.
P-15-0114 ....	6/22/2016	9/19/2016	CBI .....	(S) Dielectric medium; heat transfer .....	(S) 2-butanone, 1,1,1,3,4,4,4-heptafluoro-3-(trifluoromethyl)-
P-15-0123 ....	6/22/2016	9/19/2016	CBI .....	(S) Fragrance ingredient for use in fragrances for soaps, detergents, cleaners and other household products.	(G) Alkyl substituted 5-benzofuranol.
P-15-0310 ....	6/22/2016	9/19/2016	Sasol Chemicals (USA), LLC.	(S) Lubricant in special chain oils for conveyor belts.	(S) 1,2,4-benzenetricarboxylic acid, mixed decyl and octyl triesters.
P-15-0320 ....	6/22/2016	9/19/2016	CBI .....	(S) Dielectric medium .....	(S) Propanenitrile, 2,3,3,3-tetrafluoro-2-(trifluoromethyl)-
P-15-0353 ....	6/22/2016	9/19/2016	CBI .....	(G) Lubricant additive .....	(G) Chlorinated complex ester.
P-15-0357 ....	6/22/2016	9/19/2016	CBI .....	(G) Raw material for thermal paper manufacture.	(G) Benzenesulfonamide, phenyl substituted carbonyl.
P-15-0372 ....	6/22/2016	9/19/2016	CBI .....	(G) Surfactant .....	(G) 1,3-propanediamine, n1-alkyl-, carboxymethyl derivs
P-15-0377 ....	6/22/2016	9/19/2016	PCCR USA, Inc .....	(S) Plasticizer in automotive parts; (S) Plasticizer in pvc cables.	(S) 1,2,4-benzenetricarboxylic acid, 1,2,4-trionyl ester.
P-15-0386 ....	6/22/2016	9/19/2016	CBI .....	(G) Ingredient for consumer products, dispersive use.	(S) 2-cyclohexen-1-ol, 2-methyl-5-(1-methylethenyl)-, 1-acetate, (1r,5r)-
P-15-0387 ....	6/22/2016	9/19/2016	CBI .....	(G) Industrial coating polymer .....	(G) Modified fluoroalkyl acrylate copolymer.
P-15-0392 ....	6/22/2016	9/19/2016	Polynt S.P.A .....	(S) Plasticizer for pvc powders for car interiors manufacturing; plasticizer for pvc compounds for cables.	(S) 1,2,4-benzenetricarboxylic acid, mixed decyl and octyl triesters.
P-15-0419 ....	6/22/2016	9/19/2016	CBI .....	(G) Flame retardant material .....	((G) 2,2-bis[3',5'-dihalo-4'-haloalkoxy carbomonocycle] propane.
P-15-0433 ....	6/22/2016	9/19/2016	CBI .....	(G) Lubricant additive .....	(G) Chlorinated complex ester.
P-15-0436 ....	6/22/2016	9/19/2016	CBI .....	(G) Stain block, surfactant, and antiblock agent.	(G) Anionic aqueous fluorochemical dispersion.
P-15-0442 ....	6/22/2016	9/19/2016	CBI .....	(G) Catalyst .....	(G) Rare earth doped zirconium oxide.
P-15-0443 ....	6/22/2016	9/19/2016	CBI .....	(G) Catalyst .....	(G) Rare earth doped zirconium oxide.
P-15-0444 ....	6/22/2016	9/19/2016	CBI .....	(G) Catalyst .....	(G) Rare earth doped zirconium oxide.
P-15-0445 ....	6/22/2016	9/19/2016	CBI .....	(G) Catalyst .....	(G) Rare earth doped zirconium oxide.
P-15-0446 ....	6/22/2016	9/19/2016	CBI .....	(G) Catalyst .....	(G) Rare earth doped zirconium oxide.
P-15-0447 ....	6/22/2016	9/19/2016	CBI .....	(G) Catalyst .....	(G) Rare earth doped zirconium oxide.
P-15-0450 ....	6/22/2016	9/19/2016	CBI .....	(G) Mixed metal oxide for batteries .....	(G) Lithium mixed metal oxide.
P-15-0469 ....	6/22/2016	9/19/2016	CBI .....	(G) Surfactant .....	(G) Glycerides, c8-18 and c18 unsaturated, from fermentation.
P-15-0474 ....	6/22/2016	9/19/2016	xF Technologies .....	(S) Organic solvent; (S) Plasticizer .....	(S) 2-furancarboxylic acid, 5-methyl-, ethyl ester.
P-15-0475 ....	6/22/2016	9/19/2016	xF Technologies .....	(S) Organic solvent; (S) Plasticizer .....	(S) 2-furancarboxylic acid, 5-methyl-, methyl ester.
P-15-0476 ....	6/22/2016	9/19/2016	xF Technologies .....	(S) Organic solvent; (S) Plasticizer .....	(S) 2-furancarboxylic acid, 5-methyl-, 1-methylethyl ester.
P-15-0477 ....	6/22/2016	9/19/2016	xF Technologies .....	(S) Organic solvent; (S) Plasticizer .....	(S) 2-furancarboxylic acid, 5-methyl-, tetradecyl ester.
P-15-0478 ....	6/22/2016	9/19/2016	xF Technologies .....	(S) Organic solvent; (S) Plasticizer .....	(S) 2-furancarboxylic acid, 5-methyl-, 2,2'-[ethanediy]bis(oxy-2,1-ethanediyl) ester.



TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-15-0479 ....	6/22/2016	9/19/2016	xF Technologies .....	(S) Organic solvent; (S) Plasticizer .....	(S) 2-furancarboxylic acid, 5-methyl-, 2,2'-[oxybis(methyl-2,1-ethanediyl)] ester.
P-15-0481 ....	6/22/2016	9/19/2016	CBI .....	(S) Curing agent for epoxy coating systems ..	(G) Benzaldehyde, reaction products with polyalkylenepolyamine s, hydrogenated, reaction products with alkyl ketone.
P-15-0487 ....	6/22/2016	9/19/2016	Daewoo International USA Corp.	(S) Additive for fibers in structural and electrical applications; additive for fibers in fabrics and textiles; (S) Additive for heat transfer and thermal emissions in electronic devices and materials; use as a semi-conductor, conductive, or resistive element in electronic circuitry and devices; (S) Additive for weight reduction in materials; (S) Use as a catalyst support in chemical manufacturing; Coating additive to improve corrosion resistance or conductive properties; (S) Use as a filter additive to remove nanoscale materials; use as a semi-conducting compounding additive for high-voltage cable; use as an additive for super-hydrophobicity; (S) Use as a heat-generating element in heating devices and materials; (S) Use as an additive for electrostatic discharge (esd) in electronic devices, electronics, and materials; (S) Use as an additive for electromagnetic interface (emi) shielding in electronic devices; additive for electrodes in electronic materials and electronic devices; (S) Use as an additive to improve conductivity in electronic circuitry energy storage systems, and devices; use as an electron emitter for lighting and x-ray sources. (S) Use with materials to improve mechanical properties or electrical conductivities.	(G) Multi-walled carbon nanotubes.
P-15-0488 ....	6/22/2016	9/19/2016	Daewoo International USA Corp.	(S) Additive for fibers in structural and electrical applications; additive for fibers in fabrics and textiles; (S) Additive for heat transfer and thermal emissions in electronic devices and materials; use as a semi-conductor, conductive, or resistive element in electronic circuitry and devices; (S) Additive for weight reduction in materials; (S) Use as a catalyst support in chemical manufacturing; coating additive to improve corrosion resistance or conductive properties; (S) Use as a filter additive to remove nanoscale materials; use as a semi-conducting compounding additive for high-voltage cable; use as an additive for super-hydrophobicity; (S) Use as a heat-generating element in heating devices and materials; (S) Use as an additive for electrostatic discharge (esd) in electronic devices, electronics, and materials; (S) Use as an additive for electromagnetic interface (emi) shielding in electronic devices; additive for electrodes in electronic materials and electronic devices; (S) Use as an additive to improve conductivity in electronic circuitry, energy storage systems, and devices; use as an electron emitter for lighting and x-ray sources. (S) Use with materials to improve mechanical properties or electrical conductivities.	(G) Multi-walled carbon nanotubes.

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-15-0489 ....	6/22/2016	9/19/2016	Daewoo International USA Corp.	(S) Additive for fibers in structural and electrical applications; additive for fibers in fabrics and textiles; (S) Additive for heat transfer and thermal emissions in electronic devices and materials; use as a semi-conductor, conductive, or resistive element in electronic circuitry and devices; (S) Additive for weight reduction in materials; (S) Use as a catalyst support in chemical manufacturing; coating additive to improve corrosion resistance or conductive properties; (S) Use as a filter additive to remove nanoscale materials; use as a semi-conducting compounding additive for high-voltage cable; use as an additive for superhydrophobicity; (S) Use as a heat-generating element in heating devices and materials; (S) Use as an additive for electrostatic discharge (esd) in electronic devices, electronics, and materials. (S) Use as an additive for electromagnetic interface (emi) shielding in electronic devices; additive for electrodes in electronic materials and electronic devices; (S) Use as an additive to improve conductivity in electronic circuitry energy storage systems, and devices; use as an electron emitter for lighting and x-ray sources. (S) Use with materials to improve mechanical properties or electrical conductivities.	(G) Multi-walled carbon nanotubes.
P-15-0490 ....	6/22/2016	9/19/2016	Daewoo International USA Corp.	(S) Additive for fibers in structural and electrical applications; additive for fibers in fabrics and textiles; (S) Additive for heat transfer and thermal emissions in electronic devices and materials; use as a semi-conductor, conductive, or resistive element in electronic circuitry and devices; (S) Additive for weight reduction in materials; (S) Use as a catalyst support in chemical manufacturing; coating additive to improve corrosion resistance or conductive properties; (S) Use as a filter additive to remove nanoscale materials; use as a semi-conducting compounding additive for high-voltage cable; use as an additive for superhydrophobicity; (S) Use as a heat-generating element in heating devices and materials. (S) Use as an additive for electrostatic discharge (esd) in electronic devices, electronics, and materials; (S) Use as an additive for electromagnetic interface (emi) shielding in electronic devices; additive for electrodes in electronic materials and electronic devices; (S) Use as an additive to improve conductivity in electronic circuitry, energy storage systems, and devices; use as an electron emitter for lighting and x-ray sources; (S) Use with materials to improve mechanical properties or electrical conductivities.	(G) Multi-walled carbon nanotubes.

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-15-0491 ....	6/22/2016	9/19/2016	Daewoo International USA Corp.	(S) Additive for fibers in structural and electrical applications; additive for fibers in fabrics and textiles; (S) Additive for heat transfer and thermal emissions in electronic devices and materials; use as a semi-conductor, conductive, or resistive element in electronic circuitry and devices; (S) Additive for weight reduction in materials; (S) Use as a catalyst support in chemical manufacturing; coating additive to improve corrosion resistance or conductive properties; (S) Use as a filter additive to remove nanoscale materials; use as a semi-conducting compounding additive for high-voltage cable; use as an additive for super-hydrophobicity; (S) Use as a heat-generating element in heating devices and materials; (S) Use as an additive for electrostatic discharge (esd) in electronic devices, electronics, and materials; (S) Use as an additive for electromagnetic interface (emi) shielding in electronic devices; additive for electrodes in electronic materials and electronic devices; (S) Use as an additive to improve conductivity in electronic circuitry, energy storage systems, and devices; use as an electron emitter for lighting and x-ray sources. (S) Use with materials to improve mechanical properties or electrical conductivities.	(G) Multi-walled carbon nanotubes.
P-15-0506 ....	6/22/2016	9/19/2016	CBI .....	(G) Component in cleaning formulation .....	(G) Alkyl phosphate ammonium salt.
P-15-0525 ....	6/22/2016	9/19/2016	CBI .....	(G) Catalyst .....	(G) Rare earth doped zirconium oxide.
P-15-0526 ....	6/22/2016	9/19/2016	CBI .....	(G) Catalyst .....	(G) Rare earth doped zirconium oxide.
P-15-0527 ....	6/22/2016	9/19/2016	CBI .....	(G) Catalyst .....	(G) Rare earth doped zirconium oxide.
P-15-0528 ....	6/22/2016	9/19/2016	CBI .....	(G) Catalyst .....	(G) Rare earth doped zirconium oxide.
P-15-0540 ....	6/22/2016	9/19/2016	CBI .....	(S) Chemical intermediate in the production of poly[oxy(methyl-1,2-ethanediyl)],a-sulfow-hydroxy-c10-16-alkyl ethers cas # 1497417-15-8, and/or sodium salt of same.	(S) Alcohols, c10-16, propoxylated.
P-15-0562 ....	6/22/2016	9/19/2016	CBI .....	(S) Pigment for automotive coatings to be used in automotive oem and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P-15-0580 ....	6/22/2016	9/19/2016	CBI .....	(G) Coating .....	(G) Cycloaliphatic epoxy.
P-15-0584 ....	6/22/2016	9/19/2016	The Lewis Chemical Company.	(S) Foaming agent in industrial or hard surface cleaners.	(S) Amides, coco, n,n-bis(2-hydroxypropyl).
P-15-0597 ....	6/22/2016	9/19/2016	CBI .....	(S) Dispersing agent for use in paints, pigments, and coatings..	(G) Polyethylene glycol alkyl ether, sodium salt.
P-15-0632 ....	6/22/2016	9/19/2016	CBI .....	(S) Salt for polymer .....	(G) Mixed amine salt.
P-15-0633 ....	6/22/2016	9/19/2016	Firmenich, Inc .....	(G) As part of a fragrance formula (dispersive use).	(S) 1(2h)-naphthalenone,4-ethyloctahydro-8-methyl.
P-15-0653 ....	6/22/2016	9/19/2016	CBI .....	(G) Coating .....	(G) Cycloaliphatic epoxide.
P-15-0697 ....	6/22/2016	9/19/2016	CBI .....	(S) Boron-free, ferrous corrosion inhibitor for water-based metalworking fluids.	(G) Alkyl alkylenetriamine compd. with alkanol ethoxylate phosphate.
P-15-0705 ....	6/22/2016	9/19/2016	CBI .....	(S) Alkylarylamine used as an additive and octane booster in aviation fuels.	(G) Alkylarylamine.
P-15-0706 ....	6/22/2016	9/19/2016	CBI .....	(G) Ingredient for multipurpose exterior coatings.	(G) Mixture of aliphatic n-alkyl ureas containing substituted cyclohexyl and terminal alkoxysilane groups.
P-15-0707 ....	6/22/2016	9/19/2016	CBI .....	(G) Ingredient for multipurpose exterior coatings.	(G) Mixture of aliphatic n-alkyl ureas containing substituted cyclohexyl and terminal alkoxysilane groups.
P-15-0719 ....	6/22/2016	9/19/2016	CBI .....	(G) Flame retardant synergist .....	(S) Poly (1,4-diisopropyl benzene).
P-15-0720 ....	6/22/2016	9/19/2016	CBI .....	(S) Polyurethane prepolymer .....	(G) Aliphatic polyester polyol.
P-15-0721 ....	6/22/2016	9/19/2016	CBI .....	(S) Polyurethane prepolymer .....	(G) Aliphatic polyester polyol.
P-15-0722 ....	6/22/2016	9/19/2016	CBI .....	(S) Polyurethane prepolymer .....	(G) Aliphatic polyester polyol.
P-15-0723 ....	6/22/2016	9/19/2016	CBI .....	(S) Polyurethane prepolymer .....	(G) Aliphatic polyester polyol.
P-15-0724 ....	6/22/2016	9/19/2016	CBI .....	(S) Polyurethane prepolymer .....	(G) Aliphatic polyester polyol.
P-15-0725 ....	6/22/2016	9/19/2016	CBI .....	(S) Polyurethane prepolymer .....	(G) Aliphatic polyester polyol.
P-15-0726 ....	6/22/2016	9/19/2016	CBI .....	(S) Co-polymer for use in adhesives and sealant formulations.	(G) Triethoxysilylalkoxy polyalkylene glycol.
P-15-0734 ....	6/22/2016	9/19/2016	CBI .....	(S) Wastewater heavy metals removal .....	(G) Polymeric sulfide.
P-16-0017 ....	6/22/2016	9/19/2016	Alcoa, Inc .....	(S) Blast suppressor for nitrogen based fertilizers.	(G) Mixed metals layered double hydroxide.
P-16-0043 ....	6/22/2016	9/19/2016	Akzo Nobel Surface Chemistry, LLC.	(S) Polymeric corrosion inhibitor downhole oilfield.	(S) Amines, tallow alkyl, ethoxylated, polymers with adipic acid.
P-16-0054 ....	6/22/2016	9/19/2016	Blaser Swisslube, Inc	(S) Metal working fluid component .....	(S) Phosphoric acid, mixed 2-hexyldodecyl and 2-octyldodecyl and 2-octyldodecyl mono- and diesters.
P-16-0086 ....	6/22/2016	9/19/2016	CBI .....	(G) Coating component .....	(G) Mixed metal oxide-halide complex.

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-16-0092 ....	6/22/2016	9/19/2016	CBI .....	(G) Industrial coatings, open non-dispersive use.	(G) Polymeric polyamine.
P-16-0093 ....	6/22/2016	9/19/2016	CBI .....	(G) Ingredient for consumer products, dispersive use.	(S) 2-cyclohexen-1-one, 2-methyl-5-propyl-
P-16-0099 ....	6/22/2016	9/19/2016	CBI .....	(G) Aqueous coating .....	(G) Polyethylene glycol polymer with aliphatic polycarbodiimide, bis(alkoxysilylpropyl) amine blocked.
P-16-0119 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate .....	(G) Chlorofluorocarbon.
P-16-0120 ....	6/22/2016	9/19/2016	The Shepherd Color Co.	(G) Pigment for anti-corrosive paints .....	(S) Aluminum vanadium zinc hydroxide oxide.
P-16-0122 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate .....	(G) Chlorofluorocarbon.
P-16-0125 ....	6/22/2016	9/19/2016	CBI .....	(G) Resin for coatings .....	(G) Alkoxy alkyl substituted alkanolic acid, ion(1-), salts with substituted carbomonocycle substituted heteromonocyclic polymer ester with substituted carbomonocycle alkyl ester-alkyl substituted alkanol reaction products.
P-16-0127 ....	6/22/2016	9/19/2016	CBI .....	(S) Flotation of silica from iron ore and selected non-ferrous minerals.	(G) Dialkyl ether ammonium salts.
P-16-0143 ....	6/22/2016	9/19/2016	CBI .....	(G) Chemical intermediate .....	(G) Haloalkylfurancarboxaldehyde.
P-16-0150 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate .....	(G) Chlorofluorocarbon.
P-16-0151 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate .....	(G) Perfluoropolyether halide.
P-16-0152 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate .....	(G) Perfluoropolyether aryl.
P-16-0153 ....	6/22/2016	9/19/2016	CBI .....	(G) Lubricant additive .....	(G) Substituted aryl-perfluoropolyether.
P-16-0154 ....	6/22/2016	9/19/2016	CBI .....	(G) Lubricant additive .....	(G) Sulfonated perfluoropolyether aromatic transition metal salt.
P-16-0155 ....	6/22/2016	9/19/2016	CBI .....	(G) Lubricant additive .....	(G) Sulfonated perfluoropolyether aryl alkali metal salt.
P-16-0157 ....	6/22/2016	9/19/2016	CBI .....	(G) Fabric Treatment .....	(G) Fluorinated polyurethane.
P-16-0164 ....	6/22/2016	9/19/2016	CBI .....	(G) Processing aid .....	(G) Thiocarbamic acid derivative.
P-16-0165 ....	6/22/2016	9/19/2016	Dura Chemicals, Inc ...	(S) Ferrous propionate is a component in a metal organic product that will be used in paint and ink driers, UPR promoters, lube/grease additives, fuel additives, polymerization catalysts, specialty petrochemical catalysts, etc., the amount of the ferrous propionate will be well under 1% in any final product; (S) iron,2-ethylhexanoate propionate complexes is a component in a metal organic product that will be used in paint and ink driers, UPR promoters, lube/grease additives, fuel additives, polymerization catalysts, specialty Petrochemical catalysts, etc., the amount of the Iron, 2-ethylhexanoate propionate complexes will be well under 1% in any final product.	(S) Iron, 2-ethylhexanoate propionate complexes.
P-16-0167 ....	6/22/2016	9/19/2016	CBI .....	(S) Light stabilizer for plastic articles .....	(G) Hindered amine alkyl ester compounds.
P-16-0180 ....	6/22/2016	9/19/2016	CBI .....	(S) Component of industrial and maintenance coatings.	(G) Isocyanic acid, polymethylenepolyphenylene ester, polymer with a-hydroxy-hydroxypoly[oxy(methyl-1,2-ethanediyl)] and alkylene oxide polymer, alkylamine initiated.
P-16-0186 ....	6/22/2016	9/19/2016	CBI .....	(G) Surfactant .....	(G) Sodium branched chain alkyl hydroxyl and branched chain alkenyl sulfonates.
P-16-0192 ....	6/22/2016	9/19/2016	Evonik Corporation .....	(S) Reinforcing filler; coupling agent for production of tire/rubber goods.	(G) Silanized amorphous silica.
P-16-0194 ....	6/22/2016	9/19/2016	CBI .....	(G) Process aid .....	(G) Silane-treated aluminosilicate.
P-16-0195 ....	6/22/2016	9/19/2016	CBI .....	(G) Process aid .....	(G) Silane-treated aluminosilicate.
P-16-0196 ....	6/22/2016	9/19/2016	CBI .....	(G) Process aid .....	(G) Silane-treated aluminosilicate.
P-16-0197 ....	6/22/2016	9/19/2016	CBI .....	(G) Process aid .....	(G) Silane-treated aluminosilicate.
P-16-0198 ....	6/22/2016	9/19/2016	CBI .....	(G) Process aid .....	(G) Silane-treated aluminosilicate.
P-16-0199 ....	6/22/2016	9/19/2016	CBI .....	(G) Process aid .....	(G) Silane-treated aluminosilicate.
P-16-0205 ....	6/22/2016	9/19/2016	CBI .....	(G) Lubricant Oil; (S) General Industrial Oil; (S) Hydraulic oil.	(G) Amide.
P-16-0206 ....	6/22/2016	9/19/2016	CBI .....	(G) Pigment wetting and dispersing additive	(G) Formaldehyde ketone condensate polymer.
P-16-0207 ....	6/22/2016	9/19/2016	CBI .....	(G) Additive for electrolyte solution .....	(G) Spiro tetrafluoroborate.
P-16-0217 ....	6/22/2016	9/19/2016	CBI .....	(G) Processing aid for ground mineral slurries (open, non dispersive use).	(G) Alkenoic acid, polymer with sodium phosphinate (1:1), mixed salt.
P-16-0218 ....	6/22/2016	9/19/2016	Gaco Western .....	(G) Architectural Coating; (G) Spray Foam Insulation; (G) Reactant: Architectural Coating; (G) Reactant: Spray Foam Insulation.	(G) Acetoacetylated glycerin.
P-16-0221 ....	6/22/2016	9/19/2016	CBI .....	(S) Coating agent .....	(G) Fluorinated organopolysilazane.

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-16-0225 ....	6/22/2016	9/19/2016	International Flavors & Fragrances Inc.	(S) The notified substance will be used as a fragrance ingredient, being blended (mixed) with other fragrance ingredients to make fragrance oils that will be sold to industrial and commercial customers for their incorporation into soaps, detergents, cleaners, air fresheners, candles and other similar industrial, household and consumer products.	(S) Isomer mixture of cyclohexanol, 4-ethylidene-2-propoxy-(cas 1631145-48-6) (35-45%) and cyclohexanol, 5-ethylidene-2-propoxy (cas 1631145-49-7) (45-55%).
P-16-0246 ....	6/22/2016	9/19/2016	CBI .....	(G) Chemical intermediate .....	(S) 2-pyridinecarboxylic acid, 6-(4-chloro-2-fluoro-3-methoxyphenyl)-4,5-difluoro-, phenylmethyl ester.
P-16-0253 ....	6/22/2016	9/19/2016	CBI .....	(G) Fatty acid based glyceride blend .....	(G) Partial esters of fatty acids with glycerol.
P-16-0255 ....	6/22/2016	9/19/2016	CBI .....	(S) Blocked catalyst for paint and coatings ....	(S) 1-butanaminium, n,n,n-tributyl-, ethyl carbonate (1:1).
P-16-0256 ....	6/22/2016	9/19/2016	CBI .....	(S) Blocked catalyst for paint and coatings ....	(S) 1-butanaminium, n,n,n-tributyl-, ethyl carbonate (1:1).
P-16-0257 ....	6/22/2016	9/19/2016	CBI .....	(S) Blocked catalyst for paint and coatings ....	(S) 1-butanaminium, n,n,n-tributyl-, methyl carbonate (1:1).
P-16-0258 ....	6/22/2016	9/19/2016	CBI .....	(S) Blocked catalyst for paint and coatings ....	(S) 1-butanaminium, n,n,n-tributyl-, ethyl carbonate (1:1).
P-16-0259 ....	6/22/2016	9/19/2016	CBI .....	(S) Blocked catalyst for paint and coatings ....	(S) 1-butanaminium, n,n,n-tributyl-, ethyl carbonate (1:1).
P-16-0261 ....	6/22/2016	9/19/2016	CBI .....	(S) Intermediate .....	(S) Propanoic acid, 3-(dimethylamino)-2-methyl-, methyl ester.
P-16-0271 ....	6/22/2016	9/19/2016	Oxea Corporation .....	(S) Flexible PVC plasticizer for wire insulation	(S) 1,2,4-benzenetricarboxylic acid, 1,2,4-trinonyl ester.
P-16-0273 ....	6/22/2016	9/19/2016	CBI .....	(G) Ingredient in metal working fluid .....	(G) Alkyl heteromonocycle, polymer with heteromonocycle, carboxyalkyl alkyl ether.
P-16-0274 ....	6/22/2016	9/19/2016	CBI .....	(G) Ingredient in metal working fluids .....	(G) Alkyl heteromonocycle, polymer with heteromonocycle, carboxyalkyl alkyl ether.
P-16-0275 ....	6/22/2016	9/19/2016	CBI .....	(G) Surfactant .....	(G) Rhamnolipid salt.
P-16-0276 ....	6/22/2016	9/19/2016	CBI .....	(G) Surfactant .....	(G) Rhamnolipid salt.
P-16-0280 ....	6/22/2016	9/19/2016	CBI .....	(G) Co-initiator .....	(G) Polyether polyol with aromatic dialkylamine.
P-16-0281 ....	6/22/2016	9/19/2016	CBI .....	(G) Reactive polyol .....	(G) Fatty alcohols—dimers, trimmers, polymers.
P-16-0282 ....	6/22/2016	9/19/2016	CBI .....	(S) Paint dryer .....	(G) Manganese complexes.
P-16-0283 ....	6/22/2016	9/19/2016	Allnex USA, Inc .....	(S) Resin for automotive coatings .....	(G) Alkanedioic acid, polymer with substituted carbomonocycle, substituted alkane, substituted alkanedioic acid and substituted alkyldiamine, compd. with substituted alkanol.
P-16-0284 ....	6/22/2016	9/19/2016	Deepak Nitrite Corporation, Inc.	(S) Optical Brightener for Textiles, Paper and Paperboard.	(G) Anilino substituted bis-triazinyl derivative of 4,4'-diaminostilbene-2,2'-disulfonic acid.
P-16-0285 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate .....	(G) Ester amine.
P-16-0286 ....	6/22/2016	9/19/2016	CBI .....	(G) Wellbore additive .....	(G) Quaternary ammonium salts.
P-16-0287 ....	6/22/2016	9/19/2016	CBI .....	(G) Hardener for epoxy coating .....	(G) Alkanedioic acid, 2-substituted-methyl ester, reaction products with aromatic diamine-[alkanediylbis(oxyethylene)]bis[oxirane] polymer.
P-16-0289 ....	6/22/2016	9/19/2016	CBI .....	(G) Extrusion compounding resin molding resin.	(G) Semi-aromatic polyamide.
P-16-0290 ....	6/22/2016	9/19/2016	CBI .....	(G) Fuel additive .....	(G) Copolymer of maleic acid and olefin.
P-16-0291 ....	6/22/2016	9/19/2016	CBI .....	(G) Curing Agent .....	(G) 1,3-cyclohexanedimethanamine adduct.
P-16-0292 ....	6/22/2016	9/19/2016	CBI .....	(S) Intermediate for use in the manufacture of polymers.	(G) Depolymerized waste plastics.
P-16-0293 ....	6/22/2016	9/19/2016	Charkit Chemical Corp	(S) Compounding of fragrance for industrial cleaners/janitorial compounds, detergents, etc.	(S) Octanoic acid, phenylmethyl ester.
P-16-0299 ....	6/22/2016	9/19/2016	CBI .....	(S) Reactive (meth)acrylate oligomer for ultra violet cured 3D printed parts.	(G) Polyurethane, methacrylate-blocked.
P-16-0300 ....	6/22/2016	9/19/2016	H.B. Fuller Company ..	(G) Industrial adhesive .....	(G) Oxirane, 2-methyl-, polymer with 1,3-xylylene diisocyanate and oxirane, 3-(trimethoxysilyl)propyl isocyanate.
P-16-0301 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate .....	(G) Propyl silsesquioxanes, hydrogen-terminated.
P-16-0302 ....	6/22/2016	9/19/2016	CBI .....	(G) Plastic additive .....	(G) Organic modified propyl silsesquioxane.
P-16-0303 ....	6/22/2016	9/19/2016	CBI .....	(G) Use for the production of acrylic resin for waterborne exterior coatings composition.	(G) Alkyl methacrylate polymer with styrene, amino acrylate and acrylic acid, ammonium salt.
P-16-0304 ....	6/22/2016	9/19/2016	CBI .....	(G) Industrial Adhesive .....	(G) Polyurea grease.
P-16-0305 ....	6/22/2016	9/19/2016	CBI .....	(G) Industrial Adhesive .....	(G) Polyurea grease.
P-16-0306 ....	6/22/2016	9/19/2016	CBI .....	(G) Photoinitiator .....	(G) Polyether polyol polymer with aromatic ester.
P-16-0307 ....	6/22/2016	9/19/2016	CBI .....	(G) Open, non dispersive use .....	(G) Heteropolycycliccarboxylic acid, 1,3-dihydro-disubstituted-, polymer with 1,1'-methylenebis[4-isocyanatobenzene], reaction products with silica.

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-16-0308 ....	6/22/2016	9/19/2016	Itaconix Corp .....	(G) Reactive monomer .....	(S) Butanedioic acid, 2-methylene-, 1,4-bis (2-methylpropyl) ester.
P-16-0309 ....	6/22/2016	9/19/2016	CBI .....	(G) PMN substances are intended for use as rheological or thixotropic agents used in the production of solvent based industrial coatings, high solid aromatic paints, adhesives, sealants, and other types of paints and topcoats.	(G) Bisamide mixture.
P-16-0310 ....	6/22/2016	9/19/2016	CBI .....	(G) PMN substances are intended for use as rheological or thixotropic agents used in the production of solvent based industrial coatings, high solid aromatic paints, adhesives, sealants, and other types of paints and topcoats.	(G) Bisamide mixture.
P-16-0311 ....	6/22/2016	9/19/2016	CBI .....	(S) Coatings for wood, metal and plastic .....	(G) Aromatic dicarboxylic acid, polymer with cycloalkanemethanol, alkanediamine, alkanedioic acid, hydroxy-2-(hydroxyalkyl)-2-alkylcarboxylic acid, methylenebis[isocyanat oycloalkane] and [(methylethylidene)bis(phenyleneoxy)]bis [alka nol].
P-16-0312 ....	6/22/2016	9/19/2016	CBI .....	(S) Coatings for wood, metal and plastic .....	(G) Aromatic dicarboxylic acid, polymer with cycloalkanemethanol, alkanediamine, alkanedioic acid, hydroxy-2-(hydroxyalkyl)-2-alkylcarboxylic acid, methylenebis[isocyanat oycloalkane] and [(methylethylidene)bis(phenyleneoxy)] bis[alka nol].
P-16-0313 ....	6/22/2016	9/19/2016	Honeyol, Inc .....	(S) Use in production of resins (raw material used in the production of resins).	(S) Tar acids (shale oil), c6?9 fraction, alkylphenols, low-boiling.
P-16-0314 ....	6/22/2016	9/19/2016	Firmenich, Inc .....	(G) As part of a fragrance formula .....	(S) Ethanone, 1-(5-propyl-1,3-benzodioxol-2-yl)-.
P-16-0315 ....	6/22/2016	9/19/2016	CBI .....	(S) Industrial rubber formulation .....	(G) Alkyldiene, polymer, terminated alkoxysilylalkylcarbamate.
P-16-0316 ....	6/22/2016	9/19/2016	CBI .....	(G) Drilling chemical .....	(G) Aliphatic polyester.
P-16-0317 ....	6/22/2016	9/19/2016	CBI .....	(G) Drilling chemical .....	(G) Aliphatic polyester.
P-16-0318 ....	6/22/2016	9/19/2016	CBI .....	(G) Additive for Pulp and Paper Processing; (G) Additive for car wash applications; (G) Additive for metal working fluids; (G) Additive for textile applications; (G) Processing aide in oil field applications.	(G) Ammonium sulfate, fatty acid esters.
P-16-0319 ....	6/22/2016	9/19/2016	CBI .....	(G) Additive for pulp and paper processing; (G) Additive for car wash applications; (G) Additive for metal working fluids; (G) Additive for textile applications; (G) Processing aide in oil field applications.	(G) Ammonium sulfate, fatty acid esters.
P-16-0320 ....	6/22/2016	9/19/2016	CBI .....	(G) Additive for pulp and paper processing; (G) Additive for car wash applications; (G) Additive for metal working fluids; (G) Additive for textile applications; (G) Processing aide in oil field applications.	(G) Ammonium sulfate, fatty acid esters.
P-16-0321 ....	6/22/2016	9/19/2016	CBI .....	(G) Additive for Pulp and Paper Processing; (G) Additive for car wash applications; (G) Additive for metal working fluids; (G) Additive for textile applications; (G) Processing aide in oil field applications.	(G) Ammonium sulfate, fatty acid esters.
P-16-0322 ....	6/22/2016	9/19/2016	CBI .....	(G) Pulp Bleaching Catalyst; (G) Textile Bleaching Catalyst.	(G) Manganese cyclic (tri)amine chloride complex.
P-16-0323 ....	6/22/2016	9/19/2016	Allnex USA, Inc .....	(G) Coating resin .....	(G) Formaldehyde, reaction products with substituted carbomonocycle-substituted heteromonocycle-alkylene glycol bis [[[substituted(oxoneoalky)oxy]alkyl]amino]alkyl] ether polymer and alkyl substituted alkanediamine, acetate (salts).
P-16-0324 ....	6/22/2016	9/19/2016	CBI .....	(G) Adhesive for open non-descriptive use ....	(G) Uv-curable urethane acrylate.
P-16-0325 ....	6/22/2016	9/19/2016	CBI .....	(G) Oil & gas extraction .....	(G) Polymer of substituted acrylic acid and bromohexane.
P-16-0326 ....	6/22/2016	9/19/2016	Firmenich, Inc .....	(G) As part of a fragrance formula .....	(S) Propanoic acid, 2,2-dimethyl-, 1-methyl-2-(1-methylethoxy)-2-oxoethyl ester.
P-16-0327 ....	6/22/2016	9/19/2016	CBI .....	(G) additive in rubber tires .....	(G) Alkenoic acid, polymer with alkylalkenoate, sodium salt.
P-16-0328 ....	6/22/2016	9/19/2016	CBI .....	(G) Adhesive component; (G) Intermediate ...	(G) Terephthalic acid, polymer with alkanepolycarboxylic acids, alkanepolyols, isophthalic acid, polyetherpolyol, 1,1-methylenebis[isocyanatobenzene], phthalic anhydride and a substituted alkanepolyol.

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-16-0329 ....	6/22/2016	9/19/2016	CBI .....	(G) Adhesive component .....	(G) Polymer of alkanepolycarboxylic acids, alkanepolyols, isophthalic acid, polyetherpolyols, 1,1'-methylenebis[isocyanatobenzene], terephthalic acid, phthalic anhydride and a substituted alkanepolyol.
P-16-0330 ....	6/22/2016	9/19/2016	H.B. Fuller Company ..	(G) Industrial Adhesive .....	(G) Hydroxy functional triglyceride polymer with glycerol mono-ester and 1,1'-methylenebis[isocyanatobenzene].
P-16-0331 ....	6/22/2016	9/19/2016	H.B. Fuller Company ..	(G) Industrial Adhesive .....	(G) Hydroxy functional triglyceride polymer with glycerol mono-ester and 1,1'-methylenebis[4-isocyanatobenzene].
P-16-0332 ....	6/22/2016	9/19/2016	CBI .....	(G) Component of coating .....	(G) Carbomonocycle phosphate metal salt.
P-16-0333 ....	6/22/2016	9/19/2016	Charkit Chemical Corp	(S) Compounding of fragrance for industrial cleaners/janitorial compounds, detergents, etc.	(S) 2-hexyldecanal.
P-16-0333 ....	6/22/2016	9/19/2016	Charkit Chemical Corp	(S) Compounding of fragrance for industrial cleaners/janitorial compounds, detergents, etc.	(S) 8-pentadecanone.
P-16-0333 ....	6/22/2016	9/19/2016	Charkit Chemical Corp	(S) Compounding of fragrance for industrial cleaners/janitorial compounds, detergents, etc.	(S) Methylpentadecanone (unspecified).
P-16-0334 ....	6/22/2016	9/19/2016	Lamberti USA Inc .....	(G) Additive for Industrial Purposes .....	(G) Polymeric amide.
P-16-0335 ....	6/22/2016	9/19/2016	Lamberti USA, Inc .....	(G) Additive for Industrial Purposes .....	(G) Polymeric amide.
P-16-0336 ....	6/22/2016	9/19/2016	CBI .....	(G) Fuel additive—destructive use .....	(G) Polyolefin ester.
P-16-0337 ....	6/22/2016	9/19/2016	CBI .....	(S) Monomer .....	(G) Aliphatic acrylate.
P-16-0338 ....	6/22/2016	9/19/2016	CBI .....	(G) Dyestuff .....	(G) Substituted xanthene derivative.
P-16-0339 ....	6/22/2016	9/19/2016	CBI .....	(G) Dyestuff .....	(G) Azo derivatives.
P-16-0340 ....	6/22/2016	9/19/2016	Solazyme, Inc .....	(G) Feedstock for oleochemical industry; (G) Renewable oil source for fuels.	(G) Glycerides, c8-18 and c18 unsaturated, from fermentation.
P-16-0341 ....	6/22/2016	9/19/2016	Perstorp Polyols .....	(G) Elastomer; (S) Industrial coatings; (S) Adhesive components.	(S) 2-oxepanone, homopolymer, ester with 1,6-hexanediol.
P-16-0342 ....	6/22/2016	9/19/2016	CBI .....	(S) Modified acrylic polymer used as a dispersant for deflocculation of pigments in industrial paints and coatings.	(G) Modified acrylic polymer.
P-16-0343 ....	6/22/2016	9/19/2016	CBI .....	(S) Modified urethane polymer used as a dispersant for deflocculation of pigments in industrial paints and coatings.	(G) Modified urethane polymer.
P-16-0344 ....	6/22/2016	9/19/2016	CBI .....	(S) Modified acrylic polymer used as a dispersant for deflocculation of pigments in industrial paints and coatings.	(G) Modified urethane polymer.
P-16-0345 ....	6/22/2016	9/19/2016	CBI .....	(G) Processing aid .....	(G) Acrylamide, polymer with methacrylic acid derivatives.
P-16-0346 ....	6/22/2016	9/19/2016	H.B. Fuller Company ..	(G) Industrial Adhesive .....	(G) Alkylamine with isocyanate.
P-16-0347 ....	6/22/2016	9/19/2016	H.B. Fuller Company ..	(G) Industrial Adhesive .....	(G) Alkylamine with isocyanate.
P-16-0348 ....	6/22/2016	9/19/2016	CBI .....	(G) Industrial lubricant .....	(G) Polypentaerythritol, mixed esters with linear and branched monoacids.
P-16-0349 ....	6/22/2016	9/19/2016	CBI .....	(G) Fuel additive .....	(G) Quaternary ammonium salt of polyisobutene succinic acid.
P-16-0350 ....	6/22/2016	9/19/2016	CBI .....	(G) Polymer reactant .....	(G) Polyalkyl aryl ester of methacrylic acid.
P-16-0351 ....	6/22/2016	9/19/2016	Solazyme, Inc .....	(G) Feedstock for oleochemical industry; (G) Renewable oil source for fuels.	(G) Glycerides, c14-18 and c16-c18 unsaturated, from fermentation.
P-16-0352 ....	6/22/2016	9/19/2016	CBI .....	(G) Industrial catalyst .....	(G) Reaction product of hydroxybenzaldehyde and fatty alkyl amine ether.
P-16-0353 ....	6/22/2016	9/19/2016	Gantrade Corp .....	(S) Chain extender and curative for use in polymer manufacturing.	(S) Benzenamine, 4-[(4-amino-3-chlorophenyl)methyl]-2-ethyl-
P-16-0354 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate .....	(G) Esteramine.
P-16-0355 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate .....	(G) Esteramine.
P-16-0356 ....	6/22/2016	9/19/2016	CBI .....	(G) Wellbore additive .....	(G) Quaternary ammonium salts.
P-16-0357 ....	6/22/2016	9/19/2016	CBI .....	(G) Wellbore additive .....	(G) Quaternary ammonium salts.
P-16-0358 ....	6/22/2016	9/19/2016	CBI .....	(S) Intermediate for further polymer reaction	(G) Alkyl phenol.
P-16-0359 ....	6/22/2016	9/19/2016	Dic International (USA), LLC.	(G) Pigment additives for industrial coatings	(G) Carbopolycycle-bis(diazonium), dihalo-, chloride (1:2), reaction products with metal hydroxide, 4-[(dioxoalkyl)amino]substituted benzene, 2-[(dioxoalkyl)amino]substituted benzene, 5-[(dioxoalkyl)amino]-2-hydroxy-substituted benzene and oxo-n-phenylalkanamide.
P-16-0360 ....	6/22/2016	9/19/2016	Oleon Americas, Inc ...	(G) Fuel additive .....	(S) Poly (oxy-1,2-ethanediyl), alpha-(1-oxodocosyl)-omega-[(1-oxodocosyl)oxy]-
P-16-0361 ....	6/22/2016	9/19/2016	American Process Inc	(G) Binders .....	(S) Pulp, cellulose, reaction products with lignin [nanocrystals].
P-16-0362 ....	6/22/2016	9/19/2016	American Process Inc	(G) Binders; (G) Plastic reinforcement; (G) Viscosifying agent.	(S) Pulp, cellulose, reaction products with lignin [nanofibrils].
P-16-0363 ....	6/22/2016	9/19/2016	CBI .....	(G) Open, non-dispersive .....	(G) Blocked polyester polyurethane, neutralized.
P-16-0364 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate used completely on site .....	(G) Nitrile-butadiene-acrylate terpolymers.



TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-16-0365 ....	6/22/2016	9/19/2016	Allnex USA, Inc .....	(S) UV Curable coating resin .....	(G) Alkyl carbonate, polymer with, substituted alkanes and substituted heteromonocycle, substituted alkyl acrylate-blocked.
P-16-0366 ....	6/22/2016	9/19/2016	CBI .....	(G) Open, non-dispersive .....	(G) Blocked polyisocyanate.
P-16-0367 ....	6/22/2016	9/19/2016	Allnex USA, Inc .....	(S) UV curable coating resin .....	(G) Substituted heteromonocycle, polymer with substituted alkane and ethoxylated alkane, substituted heteromonocycle substituted alkyl ester-blocked.
P-16-0368 ....	6/22/2016	9/19/2016	CBI .....	(S) Adhesive Coating for Carpet Backing .....	(G) Aromatic dicarboxylic acid, polymer with adipic acid and alkanediol.
P-16-0369 ....	6/22/2016	9/19/2016	Allnex USA, Inc .....	(S) Ultra violet curable coating resin .....	(G) Substituted heteromonocycle, telomer with substituted carbomonocycles, substituted alkyl ester.
P-16-0370 ....	6/22/2016	9/19/2016	CBI .....	(G) Crosslinker for adhesives and coatings ...	(G) Polysiloxane with functional groups.
P-16-0371 ....	6/22/2016	9/19/2016	CBI .....	(G) Wetting and dispersing additive .....	(G) Polyester polymer phosphate ester alkyl alkyl.
P-16-0372 ....	6/22/2016	9/19/2016	CBI .....	(G) Wetting and dispersing additive .....	(G) Polyester phosphate alkyl alkyl esters.
P-16-0373 ....	6/22/2016	9/19/2016	CBI .....	(S) UV absorber for plastic articles .....	(G) Tris(alkyloxyphenyl)tri azine compounds.
P-16-0374 ....	6/22/2016	9/19/2016	CBI .....	(G) Oil additive .....	(G) Metal branched alkyl substituted carbomonocycle complexes with substituted alkyl carbomonocycle.
P-16-0375 ....	6/22/2016	9/19/2016	CBI .....	(G) Binder for seal application .....	(G) Alkyl methacrylates, polymer with olefines.
P-16-0376 ....	6/22/2016	9/19/2016	CBI .....	(G) Photolithography .....	(G) Hydroxystyrene resin.
P-16-0377 ....	6/22/2016	9/19/2016	CBI .....	(G) Film component .....	(G) Polyester polyol.
P-16-0378 ....	6/22/2016	9/19/2016	CBI .....	(G) Film component .....	(G) Polyester polyol.
P-16-0379 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate for polymer synthesis .....	(G) Vinyl functional polymethylalkylpolymer.
P-16-0380 ....	6/22/2016	9/19/2016	CBI .....	(G) Component of electrocoat resin .....	(G) Formic acid, compds. with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products acetates (salts).
P-16-0381 ....	6/22/2016	9/19/2016	CBI .....	(G) Component of electrocoat resin .....	(G) Propanoic acid, 2-hydroxy-, compds. With hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products formates (salts).
P-16-0382 ....	6/22/2016	9/19/2016	CBI .....	(G) Component of electrocoat resin .....	(G) Formic acid, compds. with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products sulfamates(salts).
P-16-0383 ....	6/22/2016	9/19/2016	CBI .....	(S) Anti-crater additive for automotive electrocoat resin.	(G) Formic acid, compds. with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products acetates (salts).
P-16-0384 ....	6/22/2016	9/19/2016	CBI .....	(G) Component of electrocoat resin .....	(G) Propanoic acid, 2-hydroxy-, compds. With hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products formates (salts).
P-16-0385 ....	6/22/2016	9/19/2016	CBI .....	(G) Component of electrocoat resin .....	(G) Formic acid, compds. with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products sulfamates(salts).

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-16-0386 ....	6/22/2016	9/19/2016	CBI .....	(S) Additive for motor oil formulations and gear oil lubricants. The compound serves two primary functions. It acts as a seal swell additive. The elastomers used in the seals of the motor/gear box will absorb a small amount of the chemical compound and swell. This prevents seals from leaking and gives them a longer service life. The chemical also serves as a boundary lubricant. The two ester groups make this compound polar. The polarity causes the compound to be attracted to metal surfaces and adhere. This creates a boundary layer between the metal surface and the bulk primary lubricant used in the motor/gear oil formulation.	(S) Hexanedioic acid, 1,6-bis(3,5,5-trimethylhexyl) ester.
P-16-0387 ....	6/22/2016	9/19/2016	CBI .....	(G) Additives for polymers .....	(G) Aliphatic polycarboxylic acid, polymer with alicyclic polyhydric alcohol and polyoxyalkylene.
P-16-0388 ....	6/22/2016	9/19/2016	CBI .....	(G) Hardener for epoxy coating .....	(G) Aliphatic polyamines, polymers with bisphenol A and epichlorohydrin.
P-16-0389 ....	6/22/2016	9/19/2016	CBI .....	(G) Oil & gas extraction .....	(G) Polymer of substituted acrylic acid, mercaptoethanol and bromohexane.
P-16-0390 ....	6/22/2016	9/19/2016	CBI .....	(S) Coating resin used in anti-fogging clear coat applied to automotive parts.	(G) Alkyl alkenoic acid alkyl ester polymer with alkyl alkenoate, dialkyl alkenamide, hydroxy-modified alkenoic acid derivative, and sulfonic-modified alkenoic acid derivative.
P-16-0391 ....	6/22/2016	9/19/2016	CBI .....	(G) Stabilizer .....	(G) Polyester polyol polymer with aliphatic isocyanate and phenol derivatives.
P-16-0392 ....	6/22/2016	9/19/2016	CBI .....	(G) Wax .....	(G) Modified vegetable oil.
P-16-0393 ....	6/22/2016	9/19/2016	CBI .....	(S) Plasticizer for use with polymers .....	(G) Di-substituted benzenedicarboxylic acid ester.
P-16-0394 ....	6/22/2016	9/19/2016	CBI .....	(G) Adhesive .....	(G) Benzenedicarboxylic acid, polymer with decanedioic acid and dodecanedioic acid, ethanediol, hexanedioic acid, hexanediol, alpha-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], isobenzofurandione, 1,1'-methylenebis[4-isocyanatobenzene], phenol and trimethylbicyclo hept-2-ene.
P-16-0395 ....	6/22/2016	9/19/2016	CBI .....	(S) Polymeric intermediate for the production of acrylic polymers for industrial coatings.	(G) Methacrylic acid, polymer with alkyl methacrylates and substituted acrylamide, ammonium salt.
P-16-0396 ....	6/22/2016	9/19/2016	CBI .....	(G) Specialty chemical for processing additive.	(G) Alkylammonium hydroxide.
P-16-0398 ....	6/22/2016	9/19/2016	CBI .....	(G) Corrosion Inhibitor .....	(G) Di-ammonium di-carboxylate.
P-16-0399 ....	6/22/2016	9/19/2016	TryEco LLC .....	(S) Agricultural soil amendment for filed crops, seed coating and turf.	(S) Starch, polymer with 2-propenoic acid, potassium salt, oxidized.
P-16-0400 ....	6/22/2016	9/19/2016	Shell Chemical, LP .....	(S) Agrochemical; (S) Chemical Intermediate; (S) Metalworking Fluid Use; (S) Use in cleaning Fluids; (S) Use in Cured Coatings.	(S) Alkanes, C11-16-branched and linear.
P-16-0401 ....	6/22/2016	9/19/2016	CBI .....	(G) Adhesive .....	(G) Propenoic acid alkyl ester, polymer with alkyl acrylate, isooctyl substituted, alkyl diol, alkyl diol propenoate, alkyl-oxycarbamate.
P-16-0402 ....	6/22/2016	9/19/2016	CBI .....	(S) Flotation additive for use in mineral processing.	(G) Propanediamine, [(isoalkyloxy)propyl] derivs., salts.
P-16-0403 ....	6/22/2016	9/19/2016	CBI .....	(G) Open, non dispersive use .....	(G) Heteropolycyclic carboxylic acid, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 4-substitutedbenzene, substituted carbomonocycle-and alkyl-substituted carbomonocycle-blocked.
P-16-0404 ....	6/22/2016	9/19/2016	CBI .....	(G) A colorant for dyeing various synthetic fibers and fabrics. Open, non-dispersive use.	(G) Alkyl ester, 2-[(4-[2-(trisubstituted phenyl)azo]-5-acetamido-2-substitutedphenyl)] (substituted alkoxy)amino).
P-16-0405 ....	6/22/2016	9/19/2016	CBI .....	(G) A colorant for dyeing various synthetic fibers and fabrics. Open, non-dispersive use.	(G) Alkyl ester, 2-[(5-acetamido-2-alkoxy-4-[2-(substituted-2,1-benzothiazol-3-yl)azo]phenyl)](disubstituted amino).
P-16-0406 ....	6/22/2016	9/19/2016	CBI .....	(G) Coating .....	(G) Functionalized polyimide.
P-16-0407 ....	6/22/2016	9/19/2016	CBI .....	(G) Coating .....	(G) Functionalized polyamide.
P-16-0408 ....	6/22/2016	9/19/2016	CBI .....	(G) A colorant for dyeing various synthetic fibers and fabrics. Open, non-dispersive use.	(G) 3-pyridinecarbonitrile, 1,2-dihydro-trisubstituted-5-[2-(disubstituted phenyl)azo]-2-oxo.
P-16-0409 ....	6/22/2016	9/19/2016	CBI .....	(G) chemical intermediate for the synthesis of another substance.	(G) Alkylphenol.
P-16-0410 ....	6/22/2016	9/19/2016	CBI .....	(G) Automotive engine fluid additive .....	(G) Silicophosphonate-sodium silicate.

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-16-0411 ....	6/22/2016	9/19/2016	CBI .....	(G) Crosslinking agent .....	(G) Substituted polyalkylene polycarbomonocyclic ester, polymer with polyalkylene glycol, alkoxyalkanol blocked.
P-16-0412 ....	6/22/2016	9/19/2016	Cardolite Corporation	(G) Epoxy Coating .....	(G) Cashew, nutshell liq., polymer with amine and formaldehyde.
P-16-0413 ....	6/22/2016	9/19/2016	Siltech LLC .....	(S) anti-fingerprint material for a metal coating application.	(S) Siloxanes and silicones, di-me, 3-hydroxypropyl me, me 3,3,4,4,5,5,6,6,6-nonfluorohexyl.
P-16-0414 ....	6/22/2016	9/19/2016	CBI .....	(S) Polymerized pigment used in the manufacture of electronic inks.	(G) Dimethylsiloxane methyl methacrylate copolymer.
P-16-0415 ....	6/22/2016	9/19/2016	CBI .....	(G) coating for oil and gas industry .....	(G) Polyurethane.
P-16-0417 ....	6/22/2016	9/19/2016	CBI .....	(G) Adhesive for open, non-descriptive use ...	(G) Isocyanate terminated polyurethane resin.
P-16-0418 ....	6/22/2016	9/19/2016	CBI .....	(G) A colorant for dyeing various synthetic fibers and fabrics. Open, non-dispersive use.	(G) 6-(disubstituted-phenyl azo)-4,7-disubstituted-quinolinepropanoic acid, alkyl ester.
P-16-0419 ....	6/22/2016	9/19/2016	CBI .....	(G) Use as intermediate .....	(G) N-alkyl-dialkylpiperidine.
P-16-0420 ....	6/22/2016	9/19/2016	CBI .....	(S) The notified substance will be used as a fragrance ingredient, being blended (mixed) with other fragrance ingredients to make fragrance oils that will be sold to industrial and commercial customers for their incorporation into soaps, detergents, cleaners and other similar household and consumer products.	(G) Dimethyl cyclohexenyl propanol.
P-16-0421 ....	6/22/2016	9/19/2016	Guardian Industries Corp.	(S) Additive to facilitate melting of sand during manufacture of glass.	(S) Flue dust, glass manufg. desulfurization definition: the dust produced from the flue gas exhaust cleaning of a glass manufacturing process using carbonate containing substances. it consists primarily of na2so4, na2co3, and na4(so4)(co3).
P-16-0422 ....	6/22/2016	9/19/2016	CBI .....	(G) Additive for Polymers .....	(S) 1,2- cyclohexanedicarboxylic acid, 1-(phenylmethyl) ester, ester with 2,2,4-trimethyl-1,3-pentanediol mono(2-methylpropanoate).
P-16-0423 ....	6/22/2016	9/19/2016	CBI .....	(G) Intermediate .....	(G) Tetraalkylpiperidinium halide.
P-16-0424 ....	6/22/2016	9/19/2016	CBI .....	(G) Directing agent .....	(G) Tetraalkylpiperidinium hydroxide.
P-16-0425 ....	6/22/2016	9/19/2016	CBI .....	(G) A chemical reactant used in manufacturing a polymer.	(G) Amino-silane.
P-16-0426 ....	6/22/2016	9/19/2016	CBI .....	(G) Lubricating oil additive .....	(G) Alkenyl bis-succinimide.
P-16-0427 ....	6/22/2016	9/19/2016	CBI .....	(G) adhesive .....	(G) Alkanedioic acid polymer with ethenylbenzene alky-2-alkenoate, alkanediol, .alpha.-hydro.-omega.-hydroxypoly[oxyalkyl-alkanediyl]], hydroxyalkyl-alkyl-alkenoate, and aromatic isocyanate.
P-16-0428 ....	6/22/2016	9/19/2016	Cardolite Corporation	(S) Industrial .....	(G) Phenol, formaldehyde and amine.
P-16-0429 ....	6/22/2016	9/19/2016	CBI .....	(G) Universal tint paste resin having high solids.	(G) Endcapped polysiloxane.
P-16-0430 ....	6/22/2016	9/19/2016	CBI .....	(G) Filler .....	(S) Pentanedioic acid, 2-methyl-
P-16-0432 ....	6/22/2016	9/20/2016	CBI .....	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P-16-0433 ....	6/22/2016	9/20/2016	CBI .....	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P-16-0434 ....	6/22/2016	9/20/2016	CBI .....	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P-16-0435 ....	6/22/2016	9/20/2016	CBI .....	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P-16-0436 ....	6/22/2016	9/20/2016	CBI .....	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P-16-0437 ....	6/22/2016	9/20/2016	CBI .....	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P-16-0439 ....	6/30/2016	9/28/2016	CBI .....	(G) coloring agent .....	(G) Modified carbon black.
P-16-0440 ....	6/30/2016	9/28/2016	CBI .....	(G) coloring agent .....	(G) Modified carbon black.
P-16-0441 ....	6/23/2016	9/21/2016	CBI .....	(G) Oilfield additive .....	(G) Formaldehyde, reaction products with amine-alkylamine reaction products ether amine derivs. residues.
P-16-0442 ....	6/23/2016	9/21/2016	CBI .....	(G) Polymer for coatings .....	(G) Amine salted polyurethane.
P-16-0443 ....	6/23/2016	9/21/2016	CBI .....	(G) Polymer for coatings .....	(G) Amine salted polyurethane.
P-16-0444 ....	6/23/2016	9/21/2016	CBI .....	(G) Polymer for coatings .....	(G) Amine salted polyurethane.
P-16-0445 ....	6/23/2016	9/21/2016	CBI .....	(G) Polymer for coatings .....	(G) Amine salted polyurethane.
P-16-0446 ....	7/8/2016	10/6/2016	Allnex USA Inc .....	(S) Resin in architectural primer coatings .....	(G) Fatty acids, reaction products with alkylamine, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle and substituted alkanoate, lactates (salts),

TABLE—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer importer	Use(s)	Chemical identity
P-16-0447 ....	6/24/2016	9/22/2016	CBI .....	(G) Additive for coatings .....	(G) Alkyl alkenoate, dialkyl alkanediyl, polymer with alkyl alkenoate, substituted carbomonocycle, alkyl alkenoate and heteromonocycle alkyl alkenoate, diazene bis alkyl heteromonocycle initiated.
P-16-0448 ....	6/27/2016	9/25/2016	CBI .....	(G) Oil additive .....	(G) Metal salts branched alkyl substituted carbomonocycle with substituted alkyl carbomonocycle complexes.
P-16-0449 ....	6/27/2016	9/25/2016	CBI .....	(S) Use per FFDC: Cosmetics; (S) Use per TSCA: Fragrance uses; scented papers, detergents, candles etc.	(S) 2,7-decadienal, (2e,7z)-
P-16-0453 ....	6/29/2016	9/27/2016	Miwon North America, Inc.	(S) Resin for Industrial Coating .....	(G) Polyester acrylate.
P-16-0454 ....	6/30/2016	9/28/2016	CBI .....	(G) material for highly dispersive use in consumer products.	(G) Trisubstituted alkenol.
SN-03-0015 ..	6/22/2016	9/19/2016	Degussa Corporation	(S) Anti-graffiti systems; surface treatment of fabrics and porous mineral surfaces.	(G) Fluoro/amino silane mixture.
SN-03-0016 ..	6/22/2016	9/19/2016	Degussa Corporation	(S) Anti-soiling surface treatment of glass and ceramic surfaces.	(S) Silane, triethoxy(3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl)-
SN-12-0005 ..	6/22/2016	9/19/2016	CBI .....	(G) Additive, open, non-dispersive .....	(G) Multi-walled carbon nanotubes.
SN-15-0004 ..	6/22/2016	9/19/2016	CBI .....	(S) Slurry dispersion to be blended with coating compound and applied to fabric.	(G) Brominated compounds.
SN-15-0009 ..	6/22/2016	9/19/2016	CBI .....	(G) Polymer additive .....	(G) Fatty acid amide.
SN-16-0005 ..	6/22/2016	9/19/2016	CBI .....	(G) Abrasion resistant applications .....	(G) Potassium titanate.
SN-16-0009 ..	6/22/2016	9/19/2016	CBI .....	(G) Additive for household products. ....	(G) Trialkylol homopolymer.
SN-16-0011 ..	6/22/2016	9/21/2016	CBI .....	(S) Component of infrared absorption material.	(G) Cesium tungstate.
SN-16-0012 ..	6/22/2016	9/20/2016	CBI .....	(S) Additive for flotation products; (S) Chemical intermediate.	(G) Fatty acid amidoamine.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: October 21, 2016.

**Pamela Myrick,**

*Director, Information Management Division,  
Office of Pollution Prevention and Toxics.*

[FR Doc. 2016-26021 Filed 10-26-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2015-0216; FRL-9954-57-OAR]

**RIN 2060-ZA22**

### Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the availability of a final document titled, “Control Techniques Guidelines for the Oil and Natural Gas Industry” (EPA 453/B-16-001). This Control Techniques Guidelines (CTG) document provides state, local, and tribal air agencies (air agencies) information to assist them in determining reasonably available control technology (RACT) for volatile organic compound (VOC) emissions from select oil and natural gas industry emission sources.

**DATES:** This CTG document is effective October 27, 2016.

**ADDRESSES:** The final “Control Techniques Guidelines for the Oil and Natural Gas Industry” document is available primarily via the Internet at <http://www.epa.gov/airquality/oilandgas/index.html> or <https://www.epa.gov/laws-regulations/significant-guidance-documents-air> or the public docket at <http://www.regulations.gov>, Docket ID No. EPA-HQ-OAR-2015-0216.

**FOR FURTHER INFORMATION CONTACT:** Ms. Charlene Spells, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (E143-05), Research Triangle Park, NC 27711; telephone number: (919) 541-5255; fax number: (919) 541-3470; email: [spells.charlene@epa.gov](mailto:spells.charlene@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Information About the Document

Section 172(c)(1) of the Clean Air Act (CAA) provides that State Implementation Plans (SIP) for nonattainment areas must include RACT, including RACT for existing sources of emissions. Section 182(b)(2)(A) of the CAA requires that for areas designated nonattainment for an ozone national ambient air quality standard (NAAQS) and classified as Moderate, states must revise their SIP to include provisions to implement RACT for each category of VOC sources

covered by a CTG document issued between November 15, 1990, and the date of attainment. CAA section 182(c) through (e) applies this requirement to states with areas designated nonattainment for an ozone NAAQS classified as Serious, Severe, and Extreme.

The CAA also imposes the same requirement on states in Ozone Transport Regions (OTR). Specifically, CAA section 184(b) provides that states in the OTR must revise their SIP to implement RACT with respect to all sources of VOC in the state covered by a CTG document issued before or after November 15, 1990. CAA section 184(a) establishes a single OTR comprised of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area (CMSA) that includes the District of Columbia.

The EPA defines RACT as “the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility” (44 FR 53761, September 17, 1979). In subsequent notices, the EPA has addressed how states can meet the RACT requirements of the CAA. The EPA developed this CTG document to provide air agencies information to assist them in determining what types of

control could constitute RACT for VOC emissions from select oil and natural gas sources. In developing the final CTG document, the EPA evaluated the sources of VOC emissions from the oil and natural gas industry and the available control approaches for addressing these emissions, including the costs of such approaches. Based on available information and data, the EPA is providing final recommendations for RACT for select oil and natural gas industry emission sources. The VOC RACT recommendations contained in this final CTG document were made based on a review of the 1983 CTG document on equipment leaks from natural gas processing plants, the Oil and Natural Gas New Source Performance Standards, existing state and local VOC emission reduction approaches, and information on costs, emissions, and available emission control technologies and in response to comments received on the draft CTG document released for review on September 18, 2015 (80 FR 56577). Also, the EPA released for external peer review five technical white papers on potentially significant sources of emissions in the oil and natural gas industry. We considered information included in these white papers, along with the input we received from the peer reviewers and the public, when evaluating and recommending a RACT level of control for emission sources. Air agencies can use the recommendations in the CTG document to inform their determinations as to what constitutes RACT for VOC for those oil and natural gas industry emission sources in their particular areas. The information contained in the CTG document is provided only as guidance. This guidance does not change, or substitute for, requirements specified in applicable sections of the CAA or the EPA's regulations; nor is it a regulation itself. The RACT recommendations, and corresponding model rule language, contained in the CTG document do not impose any legally binding requirements on any entity. The CTG document provides only recommendations for air agencies to consider in determining RACT. Air agencies are free to implement other technically-sound approaches that are consistent with the CAA and the EPA's regulations.

The recommendations contained in the CTG document are based on data and information currently available to the EPA. These general recommendations may not apply to a particular situation based on circumstances not considered in the

CTG document. Regardless of whether an air agency chooses to implement the recommendations contained in this CTG document, or to issue rules that adopt different approaches for RACT for VOC from oil and natural gas industry emission sources, air agencies must submit their RACT provisions to the EPA for review and approval as part of the SIP submission process. The EPA will evaluate the submissions and determine, through notice and comment rulemaking in the SIP review process, whether the submissions meet the RACT requirements of the CAA and the EPA's regulations. To the extent an air agency adopts any of the recommendations in this CTG document into its RACT provisions, interested parties can raise questions and objections about the appropriateness of the application of this guidance to a particular situation during the development of the rules and the EPA's SIP review process. Such questions and objections can relate to the substance of this guidance.

Section 182(b)(2) of the CAA provides that a CTG document issued after November 15, 1990, include the period for submitting SIP revisions incorporating provisions to require RACT for the category of VOC sources covered by the CTG document. The EPA is providing a 2-year period, from the effective date included in this Notice, for the required SIP submittal.

The Tribal Authority Rule (63 FR 7254, February 12, 1998) (TAR) identifies CAA provisions for which it is appropriate to treat Indian tribes in the same manner as air agencies (TAS). Pursuant to the TAR, tribes may apply for TAS for purposes of CAA section 110 and Part D planning requirements in CAA section 182. As a result, tribes may, but are not required to, apply for TAS for the purpose of developing a tribal implementation plan (TIP) addressing RACT for sources located in an area designated nonattainment for an ozone NAAQS with a classification of Moderate, Serious, Severe or Extreme within the tribe's jurisdiction. If the EPA grants that status and approves the TIP, the tribe would implement RACT in the area within the geographic scope of the TAS designation and the approved TIP. If a tribe does not seek and obtain the authority from the EPA to establish a plan, the EPA will be responsible for establishing CAA section 110 and 182 plans for reservations and trust lands, and any other lands under tribal jurisdiction, if the EPA determines that such a plan is necessary or appropriate to protect air quality in such areas. See 40 CFR 49.4 and 49.11.

A summary of the comments received on the draft CTG document and responses can be found in the docket at <http://www.regulations.gov> (Docket ID No. EPA-HQ-OAR-2015-0216).

Dated: October 20, 2016.

**Gina McCarthy,**  
*Administrator.*

[FR Doc. 2016-25923 Filed 10-26-16; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9954-55-Region 3]

### Notice of Tentative Approval and Opportunity for Public Comment and Public Hearing for Public Water System Supervision Program Revision for Maryland

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of approval and solicitation of requests for public hearing.

**SUMMARY:** Notice is hereby given that the State of Maryland is revising its approved Public Water System Supervision Program. Maryland has adopted drinking water regulations for the Stage 2 Disinfectants and Disinfection By-Products Rule (Stage2). The U.S. Environmental Protection Agency (EPA) has determined that Maryland's Stage 2 Rule meets all minimum federal requirements, and that it is no less stringent than the corresponding federal regulation. Therefore, EPA has tentatively decided to approve the State program revisions.

**DATES:** Comments or a public hearing must be submitted by November 28, 2016. This determination shall become final and effective on November 28, 2016 if no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

**ADDRESSES:** Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

• Water Management Administration, Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Anthony Meadows, Drinking Water Branch (3WP21) at the Philadelphia address given above, or telephone (215) 814-5442 or fax (215) 814-2318.

**SUPPLEMENTARY INFORMATION:** All interested parties are invited to submit written comments on this determination and may request a hearing. All comments will be considered, and if necessary EPA will issue a response. Frivolous or insubstantial requests for a hearing will be denied by the Regional Administrator. If a substantial request for a public hearing is made by November 28, 2016, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: October 17, 2016.

**Shawn M. Garvin,**

*Regional Administrator.*

[FR Doc. 2016-26020 Filed 10-26-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2016-0594; FRL-9953-99]

### Pesticide Product Registration; Receipt of Application for New Use

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received an application to register a new use for a pesticide product containing a currently registered active ingredient. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on this application.

**DATES:** Comments must be received on or before November 28, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2016-0594 and the EPA Registration Number of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

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

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

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

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

###### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

## II. Registration Applications

EPA has received an application to register a new use for a pesticide product containing a currently registered active ingredient. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on this application. Notice of receipt of this application does not imply a decision by the Agency on this application.

*EPA Registration Number:* 62719-649.  
*Docket ID number:* EPA-HQ-OPP-2016-0594. *Applicant:* Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* 2,4-D. *Product type:* Herbicide. *Proposed use:* Cotton, gin byproducts and cotton, undelinted seed. *Contact:* RD.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: October 14, 2016.

**Michael Goodis,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016-25928 Filed 10-26-16; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Open Commission Meeting, Thursday, October 27, 2016

October 20, 2016.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on October 27, 2016 which is scheduled to commence at 10:30 a.m. in Room TW-C305, at 445 12th Street SW., Washington, DC.

Item No.	Bureau	Subject
1 .....	Wireline Competition .....	<i>Title:</i> Protecting the Privacy of Customers of Broadband and Other Telecommunications Services Alerts (WC Docket No. 16–106) <i>Summary:</i> The Commission will consider a Report and Order that applies the privacy requirements of the Communications Act to broadband Internet access service providers and other telecommunications services to provide broadband customers with the tools they need to make informed decisions about the use and sharing of their information by their broadband providers.
2 .....	Enforcement .....	<i>Title:</i> Locus Telecommunications, Inc. <i>Summary:</i> The Commission will consider a Memorandum Opinion and Order that dismisses and denies a Petition for Reconsideration of a Forfeiture Order issued by the Commission for the deceptive marketing of prepaid calling cards.
3 .....	Enforcement .....	<i>Title:</i> Lyca Tel, LLC <i>Summary:</i> The Commission will consider a Memorandum Opinion and Order that dismisses and denies a Petition for Reconsideration of a Forfeiture Order issued by the Commission for the deceptive marketing of prepaid calling cards.
4 .....	Enforcement .....	<i>Title:</i> Touch-Tel USA, LLC <i>Summary:</i> The Commission will consider a Memorandum Opinion and Order that dismisses and denies a Petition for Reconsideration of a Forfeiture Order issued by the Commission for the deceptive marketing of prepaid calling cards.
5 .....	Enforcement .....	<i>Title:</i> NobelTel, LLC <i>Summary:</i> The Commission will consider a Memorandum Opinion and Order that dismisses and denies a Petition for Reconsideration of a Forfeiture Order issued by the Commission for the deceptive marketing of prepaid calling cards.

**Consent Agenda**

The Commission will consider the following subjects listed below as a

consent agenda and these items will not be presented individually:

1 .....	Media .....	<i>Title:</i> Community Radio of Decorah, Postville and Northeast Iowa for a Construction Permit for New Low-Power FM Broadcast Station KCOD–LP, Decorah, Iowa <i>Summary:</i> The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Wennes Communications Stations, Inc., and Decorah Broadcasting, Inc. regarding the grant of a construction permit for low-power FM station KCOD–LP.
2 .....	Media .....	<i>Title:</i> Open Arms Community of El Paso, Application to Construct a New Noncommercial Educational FM Station at Horizon City, Texas; Christian Ministries of El Paso, Inc., Application to Construct a New Noncommercial Educational FM Station at Horizon City, Texas, NCE October 2007 Window, MX Group 431 <i>Summary:</i> The Commission will consider a Memorandum Opinion and Order concerning a Petition for Reconsideration and Petition for Reinstatement <i>Nunc Pro Tunc</i> and Application for Review regarding applications for new NCE construction permits in NCE MX Group 431.
3 .....	General Counsel .....	<i>Title:</i> In the Matter of John Anderson on Request for Inspection of Records (FOIA Control No. 2014–295) <i>Summary:</i> The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by John Anderson, which appealed a decision by the Enforcement Bureau addressing his Freedom of Information Act request.

**Personnel Actions**

The Commission will consider the following personnel actions listed below

and these items will not be presented individually:

1 .....	Managing Director .....	<i>Title:</i> Personnel Action #1 <i>Summary:</i> The Commission will consider a personnel action.
2 .....	Managing Director .....	<i>Title:</i> Personnel Action #2 <i>Summary:</i> The Commission will consider a personnel action.
3 .....	Managing Director .....	<i>Title:</i> Personnel Action #3 <i>Summary:</i> The Commission will consider a personnel action.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with

disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: [fcc504@fcc.gov](mailto:fcc504@fcc.gov)

or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/

Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at [www.fcc.gov/live](http://www.fcc.gov/live).

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services, call (703) 993-3100 or go to [www.capitolconnection.gmu.edu](http://www.capitolconnection.gmu.edu).

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 2016-25936 Filed 10-26-16; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice To All Interested Parties of the Termination of the Receivership of 10355—New Horizons Bank, East Ellijay, Georgia

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for New Horizons Bank, East Ellijay, Georgia ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of New Horizons Bank on April 15, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be

effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: October 21, 2016.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

Assistant Executive Secretary.

[FR Doc. 2016-25952 Filed 10-26-16; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064-0018 & -0137)

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal

of the information collections described below.

**DATES:** Comments must be submitted on or before December 27, 2016.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/notices.html>.
- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov). Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202-898-6768), Counsel, MB-3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Jones, at the FDIC address above.

#### SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Application Pursuant to Section 19 of the Federal Deposit Insurance Act.

*OMB Number:* 3064-0018.

*Form Number:* FDIC 6710/07.

*Affected Public:* Insured Depository Institutions.

2. *Title:* Interagency Guidance on Asset Securitization Activities.

*OMB Number:* 3064-0137.

*Affected Public:* Insured State Nonmember Banks and Savings Associations.

#### BURDEN ESTIMATE

	Estimated number of respondents	Estimated time per response	Frequency of response	Total annual estimated burden
Application Pursuant to Section 19 of the Federal Deposit Insurance Act.	75	16	On Occasion .....	1,200

*General Description of Collection:* Section 19 of the Federal Deposit Insurance Act (FDI), 12 U.S.C. 1829, requires the FDIC's consent prior to any participation in the affairs of an insured depository institution by a person who has been convicted of crimes involving

dishonesty or breach of trust, and included drug-related convictions. To obtain that consent, an insured depository institution must submit an application to the FDIC for approval on Form FDIC 6710/07.



## BURDEN ESTIMATE

	Estimated number of respondents	Estimated time per response	Frequency of response	Total annual estimated burden
Asset Securitization .....	22	7.13	On Occasion .....	157

*General Description of Collection:* The Interagency Guidance on Asset Securitization Activities informs bankers and examiners of safe and sound practices regarding asset securitization. The information collections contained in the Interagency Guidance are needed by institutions to manage their asset securitization activities in a safe and sound manner. Bank management uses this information as the basis for the safe and sound operation of their asset securitization activities and to ensure that they minimize operational risk in these activities.

**Request for Comment**

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 21th day of October 2016.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2016-25953 Filed 10-26-16; 8:45 am]

**BILLING CODE 6714-01-P**

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION****Sunshine Act Notice**

October 25, 2016.

**TIME AND DATE:** 10:00 a.m., Tuesday, November 15, 2016.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Secretary of Labor v. Peabody Twentymile Mining, LLC*, Docket No. WEST 2014-930-R, et al. (Issues include whether the Judge erred in rejecting consideration of the operator's approved ventilation plan because it is inconsistent with the language of a mandatory standard governing ventilation.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:**

Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

**PHONE NUMBER FOR LISTENING TO**

**MEETING:** 1 (866) 867-4769, Passcode: 493-925.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2016-26073 Filed 10-25-16; 11:15 am]

**BILLING CODE 6735-01-P**

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION****Sunshine Act Notice**

October 25, 2016.

**TIME AND DATE:** 10:00 a.m., Thursday, November 10, 2016.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument in the matter *Secretary of Labor v. Peabody Twentymile Mining, LLC*, Docket No. WEST 2014-930-R, et al. (Issues include whether the Judge erred in rejecting consideration of the operator's approved ventilation plan because it is inconsistent with the language of a mandatory standard governing ventilation.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters,

must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:**

Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD, Relay/1-800-877-8339 for toll free.

**PHONE NUMBER FOR LISTENING TO**

**ARGUMENT:** 1 (866) 867-4769, Passcode: 493-925.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2016-26069 Filed 10-25-16; 11:15 am]

**BILLING CODE 6735-01-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 25, 2016.

*A. Federal Reserve Bank of Richmond* (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528. Comments can also be sent electronically to or [Comments.applications@rich.frb.org](mailto:Comments.applications@rich.frb.org):

1. *United Bankshares, Inc., Charleston, West Virginia, and UBV Holding Company, LLC, Fairfax, Virginia*; to acquire 100 percent of the voting shares of Cardinal Financial Corporation, McLean, Virginia, and thereby indirectly, acquire Cardinal Bank, McLean, Virginia.

Board of Governors of the Federal Reserve System, October 24, 2016.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2016-26001 Filed 10-26-16; 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 November 14, 2016.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *The Johnson Financial Group, Inc. Voting Trust Agreement dated October 10, 2016*, Helen P. Johnson-Leipold as trustee; to join the existing Johnson Family Control Group that was approved on January 31, 2012, to acquire voting shares of Johnson Financial Group, Inc., and thereby indirectly acquire Johnson Bank, both of Racine, Wisconsin.

*B. Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Lisa K. Haines, Dallas, Texas, individually, and as trustee, Gary D.*

*Whitcomb, Woodward, Oklahoma, trustee, the Lisa K. Haines Financial Services Trust, Horseshoe Bay, Texas, Julee S. Thummel, Yukon, Oklahoma, individually and as trustee, John T. Phillips, Cashion, Oklahoma, trustee, and the Julee S. Lawrence Financial Services Trust, Horseshoe Bay, Texas*; to retain shares and become members of the Haines Control Group, which controls shares of Haines Financial Corp, Oklahoma City, Oklahoma, and thereby control Bank 7, Oklahoma City, Oklahoma.

*C. Federal Reserve Bank of Dallas* (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Patsy Johnson of Chico, Texas, individually, and Patrick Johnson and Patsy Johnson, both of Chico, Texas, collectively as the "Johnson Family Group", (i) for Patsy Johnson to retain voting shares and (ii) for the Johnson Family Group to retain control of voting shares and (iii) for the Johnson Family Group to increase their ownership of voting shares of Chico Bancorp, Inc., Chico, Texas and thereby indirectly control First State Bank, Chico, Texas.*

Board of Governors of the Federal Reserve System, October 24, 2016.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2016-26000 Filed 10-26-16; 8:45 am]

**BILLING CODE 6210-01-P**

## GENERAL SERVICES ADMINISTRATION

[Notice-MG-2016-04; Docket No. 2016-0002; Sequence No. 25]

### Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Public Advisory Committee Meeting

**AGENCY:** Office of Government-wide Policy, General Services Administration (GSA).

**ACTION:** Meeting notice.

**SUMMARY:** Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2). This notice provides the agenda and schedule for the November 17, 2016 meeting of the Green Building Advisory Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities. Interested individuals must register to attend as instructed below under Supplementary Information.

**DATES:** The meeting will be held on Thursday, November 17, 2016, starting at 9:00 a.m. Eastern daylight time (EDT), and ending approximately at 4:00 p.m., EDT.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, General Services Administration, 1800 F Street NW., Washington, DC 20405, telephone 202-219-1121 (note: This is not a toll-free number). Additional information about the Committee, including meeting materials and updates on the task groups and their schedules, will be available on-line at <http://www.gsa.gov/gbac>.

### SUPPLEMENTARY INFORMATION:

*Procedures for Attendance and Public Comment:* Contact Mr. Ken Sandler at [ken.sandler@gsa.gov](mailto:ken.sandler@gsa.gov) to register to attend the meeting. To attend the meeting, submit your full name, organization, email address, and phone number. Requests to attend the November 17, 2016 meeting must be received by 5:00 p.m., EDT, on Monday, November 14, 2016.

Contact Ken Sandler at [ken.sandler@gsa.gov](mailto:ken.sandler@gsa.gov) to register to comment during the meeting public comment period. Registered speakers/organizations will be allowed a maximum of 5 minutes each and will need to provide written copies of their presentations. Requests to comment at the meeting must be received by 5:00 p.m., EDT, on Monday, November 14, 2016. Written comments also may be provided to Mr. Sandler at [ken.sandler@gsa.gov](mailto:ken.sandler@gsa.gov) by the same deadline.

*Background:* The Administrator of the U.S. General Services Administration established the Committee on June 20, 2011 (**Federal Register**/Vol. 76, No. 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123). Under this authority, the Committee advises GSA on the rapid transformation of the Federal building portfolio to sustainability. The Committee reviews strategic plans, products and activities of the Office of Federal High-Performance Green Buildings and provides advice regarding how the Office can accomplish its mission most effectively.

### November 17, 2016 Meeting Agenda

- Welcome, Plans for Today & Introductions
- Green Leasing: Task Group Report & Discussion
- Energy Use Intensity: Task Group Report & Discussion

- Following Up on Committee Recommendations: Update
  - Election of Committee Chair, 2017–2019
  - Working Lunch with Presentation
  - Committee Planning Exercise
  - Public Comment Period
  - Closing Comments & Adjournment
- Detailed agendas, background information and updates for the meeting will be posted on GSA's Web site at <http://www.gsa.gov/gbac>.

**Meeting Access:** The Committee will convene its November 17, 2016 meeting at the U.S. Access Board, 8th Floor Conference Room, at 1331 F Street NW., Suite 800, Washington, DC. The site is accessible to individuals with disabilities. Persons attending meetings in the Access Board's conference space are requested to refrain from using perfume, cologne, and other fragrances (see <https://www.access-board.gov/the-board/policies/fragrance-free-environment>) for more information).

Dated: October 20, 2016.

**Donald R. Horn,**

*Deputy Director, Office of Federal High-Performance Green Buildings, General Services Administration.*

[FR Doc. 2016–26038 Filed 10–26–16; 8:45 am]

**BILLING CODE 6820–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day–17–0026]

#### 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](mailto:omb@cdc.gov). Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

#### Proposed Project

Report of Verified Case of Tuberculosis (RVCT), (OMB Control No. 0920–0026 exp. 3/31/2017)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

In the United States, an estimated 10 to 15 million people are infected with *Mycobacterium tuberculosis* and about 10% of these persons will develop tuberculosis (TB) disease at some point in their lives. The purpose of this project is to continue ongoing national tuberculosis surveillance using the standardized Report of Verified Case of Tuberculosis (RVCT). Data collected

using the RVCT help state and federal infectious disease officials to assess changes in the diagnosis and treatment of TB, monitor trends in TB epidemiology and outbreaks, and develop strategies to meet the national goal of TB elimination.

CDC currently conducts and maintains the national TB surveillance system (NTSS) pursuant to the provisions of Section 301 (a) of the Public Service Act [42 U.S.C. 241] and Section 306 of the Public Service Act [42 U.S.C. 241 (a)]. Data are collected by 60 reporting areas (the 50 states, the District of Columbia, New York City, Puerto Rico, and 7 jurisdictions in the Pacific and Caribbean). The last major revision of the RVCT data collection instrument was approved in 2009, in consultation with CDC's Division of Tuberculosis Elimination (DTBE), state and local health departments, and partner organizations including the National TB Controllers Association, the Council for State and Territorial Epidemiologists, and the Advisory Committee for the Elimination of Tuberculosis. No revisions to the RVCT are proposed in this data collection extension request.

CDC publishes an annual report using RVCT data to summarize national TB statistics and also periodically conducts special analyses for publication to further describe and interpret national TB data. These data assist in public health planning, evaluation, and resource allocation. Reporting areas also review and analyze their RVCT data to monitor local TB trends, evaluate program success, and focus resources to eliminate TB. No other Federal agency collects this type of national TB data.

In addition to providing technical assistance on the use of RVCT, CDC provides technical support for reporting software. In this request, CDC is requesting approval for approximately 5496 burden hours, an estimated decrease of 350 hours from 2014. This decrease is due to having fewer TB cases in the United States as we continue progress towards TB elimination. There is no cost to respondents other than their time.

#### ESTIMATE OF ANNUALIZED BURDEN TABLE

Types of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Local, state, and territorial health departments .....	60	157	35/60

**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. 2016-26019 Filed 10-26-16; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Performance Review Board Members

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) is publishing the names of the Performance Review Board Members who are reviewing performance for Fiscal Year 2016.

**FOR FURTHER INFORMATION CONTACT:** Sharon O'Brien, Deputy Director, Executive and Scientific Resources Office, Human Resources Office, Centers for Disease Control and Prevention, 4770 Buford Highway NE., Mailstop K-15, Atlanta, Georgia 30341, Telephone (770) 488-1781.

**SUPPLEMENTARY INFORMATION:** Title 5, U.S.C. Section 4314(c) (4) of the Civil Service Reform Act of 1978, Public Law 95-454, requires that the appointment of Performance Review Board Members be published in the **Federal Register**. The following persons will serve on the CDC Performance Review Boards or Panels, which will oversee the evaluation of performance appraisals of Senior Executive Service members for the Fiscal Year 2016 review period:

Branche, Christine, Co-Chair  
 Seligman, James, Co-Chair  
 Arispe, Irma  
 Curlee, Robert  
 Dean, Hazel  
 Henderson, Joseph  
 Kotch, Alan  
 Kosmos, Christine  
 Qualters, Judith  
 Shelton, Dana  
 Smagh, Kevin

Dated: October 24, 2016.

**Sandra Cashman,**  
*Executive Secretary, Centers for Disease  
 Control and Prevention.*

[FR Doc. 2016-26023 Filed 10-26-16; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357-6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857; (301) 443-6593, or visit our Web site at: <http://www.hrsa.gov/vaccinecompensation/index.html>.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 et seq., provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered

childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that "[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**." Set forth below is a list of petitions received by HRSA on September 1, 2016, through September 30, 2016. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

a. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by" one of the vaccines referred to in the Table, or

b. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER**

**INFORMATION CONTACT)**, with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: October 20, 2016.

**James Macrae,**

*Acting Administrator.*

#### List of Petitions Filed

1. Georgina Russell, Oskaloosa, Iowa, Court of Federal Claims No: 16-1091V.
2. Darla Shaffer, DuBois, Pennsylvania, Court of Federal Claims No: 16-1092V.
3. Alvis Sutton, Ft. Wright, Kentucky, Court of Federal Claims No: 16-1093V.
4. Thomas Rose, Boston, Massachusetts, Court of Federal Claims No: 16-1095V.
5. Sue Frampton, Fillmore, Utah, Court of Federal Claims No: 16-1096V.
6. Tamara Cain, Cleveland, Ohio, Court of Federal Claims No: 16-1097V.
7. Meryl Braun, New York, New York, Court of Federal Claims No: 16-1098V.
8. Shanda Anderson on behalf of A. A. Ashdown, Arkansas, Court of Federal Claims No: 16-1099V.
9. Kristi Weyland-Taylor, Tigard, Oregon, Court of Federal Claims No: 16-1100V.
10. Linda S. McGuire, Monroeville, Pennsylvania, Court of Federal Claims No: 16-1101V.
11. John Squadroni, Vallejo, California, Court of Federal Claims No: 16-1102V.
12. Jacqueline Schmitt, St. Louis, Missouri, Court of Federal Claims No: 16-1103V.
13. Raymond Decker, Melbourne, Florida, Court of Federal Claims No: 16-1104V.
14. Judy Linette Gentry, Marietta, Georgia, Court of Federal Claims No: 16-1108V.
15. Katherine Kesterson, Boston, Massachusetts, Court of Federal Claims No: 16-1109V.
16. Laura Munilla, Chicago, Illinois, Court of Federal Claims No: 16-1111V.
17. Kirk Franceschini, Austin, Texas, Court of Federal Claims No: 16-1112V.
18. Beverly Towne, Freeport, Maine, Court of Federal Claims No: 16-1116V.
19. Barry Reese, Milwaukie, Oregon, Court of Federal Claims No: 16-1117V.
20. Vera Spearman, Cleveland, Ohio, Court of Federal Claims No: 16-1119V.
21. Shari Herb, New York, New York, Court of Federal Claims No: 16-1120V.
22. Karen L. Christner, Columbus, Ohio, Court of Federal Claims No: 16-1122V.
23. Dale Drechsler, Shelton, Connecticut, Court of Federal Claims No: 16-1123V.
24. Deborah Carrillo, Washington, District of Columbia, Court of Federal Claims No: 16-1124V.
25. Joseph Bonica, Washington, District of Columbia, Court of Federal Claims No: 16-1127V.
26. Cary A. Johnson, Kansas City, Missouri, Court of Federal Claims No: 16-1129V.
27. David Holmes, Milford, Massachusetts, Court of Federal Claims No: 16-1130V.
28. Cheron Golding, New York, New York, Court of Federal Claims No: 16-1132V.
29. Angel Tajah Drakeford, Timmonsville, South Carolina, Court of Federal Claims No: 16-1134V.
30. Mark David Lundin, Baltimore, Maryland, Court of Federal Claims No: 16-1135V.
31. Christina Lynn Harris, Ooltewah, Tennessee, Court of Federal Claims No: 16-1137V.
32. Jamie Mohr, Marietta, Georgia, Court of Federal Claims No: 16-1139V.
33. Tramella Hinton on behalf of S. A. H., Tarboro, North Carolina, Court of Federal Claims No: 16-1140V.
34. Christina Jelic, Cleveland, Ohio, Court of Federal Claims No: 16-1141V.
35. Ismael Blanco, Novi, Michigan, Court of Federal Claims No: 16-1142V.
36. Mariela Rothermel, Brookeville, Maryland, Court of Federal Claims No: 16-1143V.
37. Zachariah Otto, Santa Ana, California, Court of Federal Claims No: 16-1144V.
38. Naomi Engel, Houston, Texas, Court of Federal Claims No: 16-1145V.
39. Bethany Ritting, Lansdale, Pennsylvania, Court of Federal Claims No: 16-1146V.
40. Jane Ahler, Mesa, Arizona, Court of Federal Claims No: 16-1147V.
41. Teri Ennis and Joshua Ennis on behalf of B. E., Henderson, Kentucky, Court of Federal Claims No: 16-1148V.
42. Jean Kusiak, Seekonk, Massachusetts, Court of Federal Claims No: 16-1149V.
43. Susan Itsell, Phoenix, Arizona, Court of Federal Claims No: 16-1150V.
44. Stephanie Roberts, Lake Success, New York, Court of Federal Claims No: 16-1151V.
45. Devon Engstrom and Eric Engstrom on behalf of C. E., Washington, District of Columbia, Court of Federal Claims No: 16-1152V.
46. Virginia Lovitto, Rehoboth, Massachusetts, Court of Federal Claims No: 16-1153V.
47. Nadine Whitsett Makstell and LLOYD Makstell on behalf of Edward B. Makstell, Deceased, Cincinnati, Ohio, Court of Federal Claims No: 16-1154V.
48. Lorin M. Murphy, Columbiana, Ohio, Court of Federal Claims No: 16-1155V.
49. Robin Flick, Black River Falls, Wisconsin, Court of Federal Claims No: 16-1156V.
50. Charlene Piatt, Weatherford, Texas, Court of Federal Claims No: 16-1161V.
51. Brenda Pritchard, Fort Worth, Texas, Court of Federal Claims No: 16-1162V.
52. Lloyd Fred Bopp, Las Vegas, Nevada, Court of Federal Claims No: 16-1163V.
53. Martin Cowles, Jacksonville, Florida, Court of Federal Claims No: 16-1164V.
54. Robert Stevenson, Springfield, Massachusetts, Court of Federal Claims No: 16-1165V.
55. Susan Peterson, Onalaska, Wisconsin, Court of Federal Claims No: 16-1166V.
56. Kimberly Albers-Fehr, St. Louis, Missouri, Court of Federal Claims No: 16-1167V.
57. Chelsie Mann on behalf of E. D., New Castle, Indiana, Court of Federal Claims No: 16-1168V.
58. Gina Dodd, Gainesville, Georgia, Court of Federal Claims No: 16-1169V.
59. Nancy Webb, Fayetteville, North Carolina, Court of Federal Claims No: 16-1170V.
60. Richard Rhoades, Kansas City, Kansas, Court of Federal Claims No: 16-1171V.
61. Barbara Sheets, Washington, District of Columbia, Court of Federal Claims No: 16-1173V.
62. Merry Whelan, Cherry Hill, New Jersey, Court of Federal Claims No: 16-1174V.
63. Andrew Hough, Philadelphia, Pennsylvania, Court of Federal Claims No: 16-1175V.
64. Marie Cronin, Newtown, Massachusetts, Court of Federal Claims No: 16-1176V.
65. Cheryl Stevenson, Oceanside, California, Court of Federal Claims No: 16-1179V.
66. Cynthia Ramirez on behalf of Camila Ramirez, Fort Worth, Texas, Court of Federal Claims No: 16-1180V.
67. Phillip Bernotas, Hazelton, Pennsylvania, Court of Federal Claims No: 16-1182V.
68. Jaclyn Arnold, Peoria, Illinois, Court of Federal Claims No: 16-1184V.
69. Samantha Massey and Wardell Massey on behalf of J. M., Exton, Pennsylvania, Court of Federal Claims No: 16-1185V.
70. A. Hart, Oklahoma City, Oklahoma, Court of Federal Claims No: 16-1186V.
71. James Smith, Hiawatha, Iowa, Court of Federal Claims No: 16-1188V.
72. Ipuna Black and Kline Black on behalf of J. B., Beverly Hills, California, Court of Federal Claims No: 16-1189V.
73. James Bacher, New York, New York, Court of Federal Claims No: 16-1190V.
74. Nathaniel J. Boone, Greensboro, North Carolina, Court of Federal Claims No: 16-1191V.
75. Megan C. McFadden, Okinawa Japan, International Address, Court of Federal Claims No: 16-1192V.
76. Teresa Swango, Burlington, Massachusetts, Court of Federal Claims No: 16-1193V.
77. Harold Jackson on behalf of Stephanie Jackson, Slidell, Louisiana, Court of Federal Claims No: 16-1194V.
78. Christen Terrore, Rochester, New York, Court of Federal Claims No: 16-1195V.
79. Jane Newman, Boston, Massachusetts, Court of Federal Claims No: 16-1196V.
80. Leon Klempner, Fort Belvoir, Virginia, Court of Federal Claims No: 16-1197V.
81. Makenna Weaver, Cincinnati, Ohio, Court of Federal Claims No: 16-1198V.
82. Amy Painter, Union Grove, Wisconsin, Court of Federal Claims No: 16-1200V.
83. James Caperton, Kernersville, North Carolina, Court of Federal Claims No: 16-1202V.
84. Raymond T. Howell, Wellesley Hills, Massachusetts, Court of Federal Claims No: 16-1203V.
85. Frederick Stahl, Tarpon Springs, Florida, Court of Federal Claims No: 16-1204V.
86. Kyle Burt, Greensboro, North Carolina, Court of Federal Claims No: 16-1208V.
87. Yvette A. Suomala, Greensboro, North

- Carolina, Court of Federal Claims No: 16–1210V.
88. Jiangyue Wang, Lawrenceville, New Jersey, Court of Federal Claims No: 16–1211V.
89. Diane Gibson, Mesa, Arizona, Court of Federal Claims No: 16–1212V.
90. Rebecca Ilnicky and Odin Ilnicky on behalf of S. I., Riverside, California, Court of Federal Claims No: 16–1213V.
91. Tracy Sarmiento, Honolulu, Hawaii, Court of Federal Claims No: 16–1214V.
92. Randy O. Harper, Washington, District of Columbia, Court of Federal Claims No: 16–1215V.
93. Cheryl Lagamma, Glen Rock, New Jersey, Court of Federal Claims No: 16–1216V.
94. Nancy Sweeney, Sacramento, California, Court of Federal Claims No: 16–1217V.
95. Lori Clark, Newark, Delaware, Court of Federal Claims No: 16–1218V.
96. Carla Pingel, St. Louis, Missouri, Court of Federal Claims No: 16–1219V.
97. Kerry Lanigan, Philadelphia, Pennsylvania, Court of Federal Claims No: 16–1220V.
98. Marina Angdahl-Wangler, Salem, Oregon, Court of Federal Claims No: 16–1222V.
99. Shauna Lou Roesler, Boston, Massachusetts, Court of Federal Claims No: 16–1223V.
100. James I. Moran, Baton Rouge, Louisiana, Court of Federal Claims No: 16–1224V.
101. Charles Stauber, Traverse City, Michigan, Court of Federal Claims No: 16–1225V.
102. Samantha Krieg, Marion, Indiana, Court of Federal Claims No: 16–1226V.
103. Jennifer L. Ratzlaff, Greensboro, North Carolina, Court of Federal Claims No: 16–1228V.
104. Yahvel Murphy on behalf of Elizabeth Davis, Salt Lake City, Utah, Court of Federal Claims No: 16–1229V.
105. Kelly Williams, St. Louis, Missouri, Court of Federal Claims No: 16–1231V.
106. Jeffrey D. Musumeci, Middleton, New York, Court of Federal Claims No: 16–1232V.
107. Betsy Le, Dallas, Texas, Court of Federal Claims No: 16–1234V.

108. Shelia Yagodzinski, Hadley, Massachusetts, Court of Federal Claims No: 16–1235V.
109. Crystal Cloud, Marianna, Florida, Court of Federal Claims No: 16–1236V.
110. Tracy Kunca, Greensboro, North Carolina, Court of Federal Claims No: 16–1237V.
111. Shirley Dew, New York, New York, Court of Federal Claims No: 16–1238V.
112. Suzette McLeod, Reston, Virginia, Court of Federal Claims No: 16–1239V.
113. William Moore, Dallas, Texas, Court of Federal Claims No: 16–1240V.
114. Tara Heine, Chicago, Illinois, Court of Federal Claims No: 16–1241V.
115. Susan Dean, Charleston, West Virginia, Court of Federal Claims No: 16–1245V.
116. Susan Wigley, Aurora, Colorado, Court of Federal Claims No: 16–1247V.
117. Reginald Grose, Philadelphia, Pennsylvania, Court of Federal Claims No: 16–1248V.
118. Josephine Plotkin, Sarasota, Florida, Court of Federal Claims No: 16–1249V.

[FR Doc. 2016–26012 Filed 10–26–16; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Project: Voluntary Customer Satisfaction Surveys to Implement Executive Order 12862 in the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930–0197)—Extension

Executive Order 12862 directs agencies that “provide significant services directly to the public” to “survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.” SAMHSA provides significant services directly to the public, including treatment providers and State substance abuse and mental health agencies, through a range of mechanisms, including publications, training, meetings, technical assistance and Web sites. Many of these services are focused on information dissemination activities. The purpose of this submission is to extend the existing generic approval for such surveys.

The primary use for information gathered is to identify strengths and weaknesses in current service provisions by SAMHSA and to make improvements that are practical and feasible. Several of the customer satisfaction surveys expected to be implemented under this approval will provide data for measurement of program effectiveness under the Government Performance and Results Act (GPRA). Information from these customer surveys will be used to plan and redirect resources and efforts to improve or maintain a high quality of service to health care providers and members of the public. Focus groups may be used to develop the survey questionnaire in some instances.

The estimated annual hour burden is as follows:

Type of data collection	Number of respondents	Responses/ respondent	Hours/ response	Total hours
Focus groups .....	250	1	2.50	625
Self-administered, mail, telephone and e-mail surveys .....	89,750	1	.250	22,438
<b>TOTAL .....</b>	<b>90,000</b>	<b>.....</b>	<b>.....</b>	<b>23,063</b>

Written comments and recommendations concerning the proposed information collection should be sent by November 28, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB’s receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to:

*OIRA\_Submission@omb.eop.gov.*  
Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory

Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**  
*Statistician.*

[FR Doc. 2016–25956 Filed 10–26–16; 8:45 am]

**BILLING CODE 4162–20–P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4285-DR; Docket ID FEMA-2016-0001]

**North Carolina; Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA-4285-DR), dated October 10, 2016, and related determinations.

**DATES:** Effective October 10, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated October 10, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from Hurricane Matthew beginning on October 4, 2016, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage

under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this major disaster:

Beaufort, Bladen, Columbus, Cumberland, Edgecombe, Hoke, Lenoir, Nash, Pitt, and Robeson Counties for Individual Assistance.

Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Greene, Hoke, Hyde, Johnston, Lenoir, Nash, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Tyrrell, Washington, and Wayne Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All areas within the State of North Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016-25598 Filed 10-26-16; 8:45 am]

**BILLING CODE 9111-23-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs**

[178A2100DD/AAKC001030/AOA501010.999900 253G]

**Court of Indian Offenses Serving the Wind River Indian Reservation**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Waiver of Certain Parts of 25 CFR Part 11.

**SUMMARY:** This notice accompanies the interim final rule establishing a Court of Indian Offenses (also known as CFR Court) for the Wind River Indian Reservation. It waives the application of certain sections of the regulations for the Court of Indian Offenses serving the Wind River Indian Reservation to allow BIA to establish a CFR court when necessary. It will also allow the Assistant Secretary—Indian Affairs to appoint a magistrate without the need for confirmation by the tribal governing body.

**DATES:** This notice is effective on October 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, (202) 273-4680; [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov).

**SUPPLEMENTARY INFORMATION:** Courts of Indian Offenses operate in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of State jurisdiction but where tribal courts have not been established to fully exercise that jurisdiction. The Eastern Shoshone Tribe and the Northern Arapaho Tribe have a joint interest in the Wind River Indian Reservation; however, the current tribal court operating on the reservation, the Shoshone & Arapaho Tribal Court, is currently operating without the support of both Tribes, and with limited resources. To ensure the continued administration of justice on the Reservation, BIA is taking steps to ensure that judicial services will continue to be provided if the Shoshone & Arapaho Tribal Court ceases operations. Therefore, the Secretary has determined, in her discretion, that it is necessary to waive 25 CFR 11.104(a) and 25 CFR 11.201(a) on the Wind River Indian Reservation to ensure that the Bureau of Indian Affairs can establish and operate a Court of Indian Offenses immediately in the event that the Shoshone and Arapaho Tribal Court ceases operations.

Section 11.104(a) provides that 25 CFR part 11 applies to Tribes listed in



§ 11.100 until either BIA and the Tribe enter into a contract or compact for the Tribe to provide judicial services, or until the Tribe has put into effect a law-and-order code that meets certain requirements.

Section 11.201(a) provides that the Assistant Secretary—Indian Affairs appoints a magistrate subject to confirmation by a majority vote of the Tribal governing bodies.

The waiver will allow BIA to establish a CFR court when necessary and to allow the Assistant Secretary—Indian Affairs to appoint a magistrate without the need for confirmation by the Tribal governing body.

Dated: October 17, 2016.

**Lawrence S. Roberts,**

*Principal Deputy Assistant Secretary, Indian Affairs.*

[FR Doc. 2016–26041 Filed 10–26–16; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–NER–FIIS–DTS–21798;  
PX.P0201786a.00.1]

#### **Draft Fire Island Wilderness Breach Management Plan/Environmental Impact Statement, Fire Island National Seashore, New York**

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The National Park Service (NPS) announces the availability of the Draft Fire Island Wilderness Breach Management Plan and Environmental Impact Statement (Draft Breach Plan/EIS) for Fire Island National Seashore, New York. The Draft Breach Plan/EIS presents and analyzes the potential consequences of three alternatives that will guide the management of the breach that occurred in the Otis Pike Fire Island High Dune Wilderness during Hurricane Sandy in October, 2012.

**DATES:** The comment period will end on December 12, 2016. A public meeting will be held on November 7, 2016.

**ADDRESSES:** Copies of the Draft Breach Plan/EIS will be available online for public review at <http://parkplanning.nps.gov/FireIslandBreachManagementPlan>. A limited number of hard copies will be available upon request. The public meeting will be held at the Patchogue-Watch Hill Ferry Terminal at 150 West Ave. in Patchogue, New York. Comments can be submitted

electronically at <http://parkplanning.nps.gov/FireIslandBreachManagementPlan>. Comments in hard copy (e.g., in a letter) can be sent by U.S. Postal Service or other mail delivery service or hand-delivered to: Chris Soller, Superintendent, Fire Island National Seashore, 120 Laurel Street Patchogue, NY 11772. Written comments will also be accepted at the public meeting.

#### **FOR FURTHER INFORMATION CONTACT:**

Kaetlyn Jackson, Fire Island National Seashore, 120 Laurel Street Patchogue, NY, 11772, 631–687–4770.

#### **SUPPLEMENTARY INFORMATION:**

On October 29, 2012, Hurricane Sandy created three breaches in the barrier island system off the south shore of Long Island, New York, including one within the Otis Pike Fire Island High Dune Wilderness Area (Fire Island Wilderness) which is within the boundaries of Fire Island National Seashore (Seashore).

The existing Breach Contingency Plan, developed by the U.S. Army Corps of Engineers in 1996, is the only guidance currently in effect to address breaches along coastal Long Island from Fire Island Inlet east to Montauk Point. Action is needed at this time because the Breach Contingency Plan is outdated and does not adequately address management of breaches in the Fire Island Wilderness.

Managing a breach in designated wilderness is different from managing breaches outside wilderness areas, as the NPS must manage federal wilderness to preserve wilderness character. Management of the Fire Island Wilderness must comply with the Wilderness Act of 1964; the 1980 Otis Pike Fire Island High Dune Wilderness Act (Pub. L. 96–585); and the 1983 *Wilderness Management Plan, Fire Island National Seashore*, which governs NPS actions taken in the Fire Island Wilderness. However, while the wilderness breach must be managed to protect wilderness character, the Otis Pike Fire Island High Dune Wilderness Act does not preclude closure of a wilderness breach if closure were needed “to prevent loss of life, flooding, and other severe economic and physical damage to the Great South Bay and surrounding areas.” Therefore, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the NPS prepared this Draft Fire Island Wilderness Breach Management Plan and Environmental Impact Statement (Draft Breach Plan/EIS) to develop a management strategy for the breach in the Fire Island Wilderness. The Draft Breach Plan/EIS has several goals:

- Ensuring the continued integrity of the wilderness character;
- protecting the natural and cultural features of the Seashore and its surrounding ecosystems;
- protecting human life; and
- managing the risk of economic and physical damage to the surrounding areas.

Scoping and early engagement with other agencies, tribes, stakeholders, and the public began in late 2014 and continued through 2015. Formal public scoping was initiated with the publication of a Notice of Intent to Prepare an EIS in the **Federal Register** (80 FR 53886, Sept. 8, 2015). Early in the scoping period, the US Army Corps of Engineers, New York district and the State of New York, Department of Environmental Conservation agreed to be cooperating agencies in development of the Breach Plan/EIS.

The Draft Breach Plan/EIS evaluates two action alternatives and the no-action alternative.

**Alternative 1**—Mechanical closure of the wilderness breach as soon as possible.

**Alternative 2** (no action)—The evolution, growth, and/or closure of the wilderness breach would be determined by natural barrier island processes and no human intervention would occur to close the breach or to reopen the breach if it were to close by natural processes.

**Alternative 3** (proposed action and NPS preferred alternative)—The evolution, growth, and/or closure of the breach would be determined by natural barrier island processes, and human intervention to close the breach would occur only “to prevent loss of life, flooding, and other severe economic and physical damage to the Great South Bay and surrounding areas.” The NPS would develop criteria that indicate the breach poses a threat to life and/or property. As long as monitoring data show that the established criteria have not been exceeded, the NPS would allow the breach to be shaped entirely by natural processes with no human intervention. The breach may remain open or it may close naturally. If monitoring data indicate that the established criteria have been exceeded, the breach would be mechanically closed as soon as practicable.

Alternative 3 is identified as the NPS preferred alternative because it allows the breach to be managed according to NPS resource management policies and wilderness directives while allowing closure if necessary to prevent “loss of life, flooding, and other severe economic and physical damage to the Great South Bay and surrounding areas.”



The Draft Breach Plan/EIS analyzes the impacts of these three alternatives on the human environment by examining five key issues:

(1) The wilderness breach is geologically bound by erosion-resistant clay in the geological record to the east and west of the breach; however, there is uncertainty regarding how the breach will evolve in the future (narrow or widen from existing conditions), how far it might migrate along the coast, and how it affects sediment transport.

(2) There is concern that the presence of the wilderness breach increases the potential for flooding on the mainland of Long Island during storm events, increasing the potential risk to life and property.

(3) The wilderness breach has altered the physical characteristics of the Fire Island Wilderness and Great South Bay, which has led to changes in the ecological communities.

(4) The wilderness breach resulted in the creation of a marine wilderness area that did not previously exist. The mechanical closure of the breach would alter the existing wilderness qualities of the area.

(5) Driving access has changed since formation of the wilderness breach. There is concern that changes in driving access for emergency response could increase risks to public health and safety in several Fire Island communities.

To examine these issues, the environmental analysis focuses on the following resources:

- Wilderness character;
- sediment transport and geomorphology;
- water quality;
- ecosystem structure and processes;
- benthic communities;
- finfish and decapod crustaceans;
- socioeconomics; and
- public health and safety.

The NPS encourages commenting electronically through the NPS Planning, Environment, and Public Comment Web site. If you wish to comment electronically, you may submit your comments online at <http://parkplanning.nps.gov/FireIslandBreachManagementPlan>.

If you wish to submit your comments in hard copy (e.g., in a letter), you may send them by U.S. Postal Service or other mail delivery service or hand-deliver them to: Chris Soller, Superintendent, Fire Island National Seashore, 120 Laurel Street Patchogue, NY 11772.

A public meeting will be held on November 7th from 7:00 to 8:30 p.m. at the Patchogue-Watch Hill Ferry Terminal at 150 West Ave. in

Patchogue, New York. The public meeting will provide an opportunity to learn more about the plan and to ask questions about the plan. Written comments will be accepted during the public meeting.

Comments will not be accepted by fax, email, or in any form other than those specified above. All comments received on the Draft Breach Plan/EIS will be reviewed and considered. An analysis of substantive comments with NPS responses will be provided in a comment analysis report that will be included in the Final Breach Plan/EIS. A comment is considered to be substantive if it raises, debates, or questions a point of fact or policy discussed in the Draft Breach Plan/EIS. Comments that merely state support for or opposition to the proposed action, alternatives, or NPS policy, without providing supporting information, will not be considered substantive. Although all comments will be read and considered in shaping the Final Breach Plan/EIS, only those that are determined to be substantive will be explicitly addressed by the NPS response.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 22, 2016.

**Jonathan Meade,**  
*Deputy Regional Director, National Park Service, Northeast Region.*

[FR Doc. 2016-26009 Filed 10-26-16; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS-MWR-HOCU-21607;  
PS.SHOCU0001.01.1]**

### Boundary Adjustment at Hopewell Culture National Historical Park

**AGENCY:** National Park Service, Interior.

**ACTION:** Notification of boundary adjustment.

**SUMMARY:** The boundary of Hopewell Culture National Historical Park is adjusted to include an adjacent nonfederal parcel of land containing 4.03 acres. Upon completion of this adjustment, fee simple interest in the land will be acquired by exchange for a

federal parcel within the park. The federal parcel will be conveyed subject to restrictions to ensure continued compatible use of the property within the park. Both parcels are located in Ross County, Ohio.

**DATES:** The effective date of this boundary adjustment is October 27, 2016.

**ADDRESSES:** The map depicting this boundary adjustment is available for inspection at the following locations: National Park Service, Land Resources Program Center, Midwest Region, 601 Riverfront Drive, Omaha, NE 68102 and National Park Service, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Superintendent Dean Alexander, Hopewell Culture National Historical Park, 16062 State Route 104, Chillicothe, OH 45601-8694, telephone (740) 774-1126.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 16 U.S.C. 410uu-1(c), the boundary of Hopewell Culture National Historical Park is adjusted to include an additional 4.03 acres. This boundary adjustment is depicted on Map No. 353/132767 dated May 2016.

16 U.S.C. 410uu-1(c) states that the Secretary of the Interior may, by publication of notice in the **Federal Register** after receipt of public comment, make minor adjustments to the boundary of Hopewell Culture National Historical Park, provided that such adjustments cumulatively do not exceed a limit presently calculated to be 165.16 acres. To date, 114.58 acres have been added to the park under such authority; an additional 50.58 acres remain authorized for inclusion in the park. This boundary adjustment will include an additional 4.03 acres needed for trail development.

Dated: September 2, 2016.

**Cameron H. Sholly,**  
*Regional Director, Midwest Region.*

[FR Doc. 2016-26013 Filed 10-26-16; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS-WASO-NAGPRA-22121;  
PPWOCRADN0-PCU00RP14.R50000]**

### Notice of Inventory Completion: San Diego Museum of Man, San Diego, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The San Diego Museum of Man has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the San Diego Museum of Man. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the San Diego Museum of Man at the address in this notice by November 28, 2016.

**ADDRESSES:** Ben Garcia, Deputy Director, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239-2001 ext. 17, email [bgarcia@museumofman.org](mailto:bgarcia@museumofman.org).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the San Diego Museum of Man, San Diego, California. The human remains and associated funerary objects were removed from Del Mar, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains and associated funerary objects was made by the San Diego Museum of

Man professional staff in consultation with representatives of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California: (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiapaayp Band of Kumeyaay Indians, California; Lipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and the Sycuan Band of the Kumeyaay Nation (hereafter referred to as "The Tribes").

#### History and Description of the Human Remains and Associated Funerary Objects

In 1929, human remains representing, at minimum, two individuals were removed from a coastal bluff facing the Pacific Ocean, north of the San Dieguito River mouth (SDM W-34) in Del Mar, San Diego County, CA. The remains were excavated by Malcolm J. Rogers, on behalf of the San Diego Museum of Man. Rogers was conducting archaeological reconnaissance work in the Southern California coastal, mountain and desert regions under a grant funded by the Smithsonian Institution. Later, he became a field archaeologist and Curator of Anthropology at the San Diego Museum of Man. Shortly after excavation, Rogers transferred control of the remains of these individuals to the San Diego Museum of Man. No known individuals were identified. The 98 associated funerary objects are 3 metates, 1 groundstone tool, 1 mano, 2 battered stones, 7 core tools, 2 ceramic pot sherds, 2 olivella beads, 1 chione pendant, 1 cottonwood biface, 1 biface tool, 28 utilized flakes, 10 fish vertebrae, 9 unidentified faunal remains, 1 fish palate, 5 stone ecofacts, 5 lots of various shell, 1 rock oyster, 2 argopectin shells, 3 limpets, 3 gastropods, 1 barnacle, 1 olivella shell, 1 moonshell, 2 lots of

small rock, 1 lot of charcoal, 1 abalone pry bar and 3 soil samples.

In 1972, human remains representing, at minimum, one individual were removed north of the La Zanja Canyon near Circo Diegueno Rd. (SDM W-467) in Del Mar, San Diego County, CA. The remains were removed by Mr. Phil McDonald during an independent excavation. The same year, McDonald donated the remains of this individual to the San Diego Museum of Man. No known individuals were identified. The 7 associated funerary objects are 6 core tools and 1 utilized flake.

Sites, SDM W-34 and SDM W-467, are located within territory traditionally occupied by the Kumeyaay Nation as represented by The Tribes. Based on collection research, archeological evidence, geographic location, ethnographic information, and oral history evidence, these remains have been identified as prehistoric Kumeyaay.

#### Determinations Made by the San Diego Museum of Man

- Officials of the San Diego Museum of Man have determined that: Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(3)(A), the 105 associated funerary objects described in this notice are reasonably believed to have been placed with or near individual human remains at time of death or later as part of the death rite or ceremony.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

#### Additional Requestors and Disposition

Lineal descendants and representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ben Garcia, Deputy Director, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239-2001 ext. 17, email [bgarcia@museumofman.org](mailto:bgarcia@museumofman.org) by November 28, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes.

The San Diego Museum of Man is responsible for notifying The Tribes that this notice has been published.

Dated: October 6, 2016.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2016-25945 Filed 10-26-16; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

[OMB Number 1010-0106]

#### Information Collection: Oil Spill Financial Responsibility for Offshore Facilities; Submitted for OMB Review; Comment Request MMAA104000

**ACTION:** 30-day notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Ocean Energy Management (BOEM) is notifying the public that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements for 30 CFR 553, Oil Spill Financial Responsibility for Offshore Facilities, as well as the revised forms. The OMB previously approved this information collection activity, and assigned it control number 1010-0106. This notice provides the public a second opportunity to comment on the paperwork burden of this collection.

**DATES:** Submit written comments by November 28, 2016.

**ADDRESSES:** Submit comments on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) (email). Please provide a copy of your comments to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, 135-C10, Sterling, Virginia 20166 (mail) or [anna.atkinson@boem.gov](mailto:anna.atkinson@boem.gov) (email). Please reference ICR 1010-0106 in your comment and include your name and return address.

#### FOR FURTHER INFORMATION CONTACT:

Anna Atkinson, Office of Policy, Regulations, and Analysis at (703) 787-1025 (phone). You may review the ICR and revised forms online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act (44 U.S.C. 3501-3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on August 15, 2016 (81 FR 54123), and the comment period ended October 14, 2016. BOEM received no comments.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .” BOEM now requests comments to: (a) evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden estimates; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology. Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1010-0106 in your correspondence.

The following information pertains to this request:

**OMB Control Number:** 1010-0106.

**Title:** 30 CFR 553, Oil Spill Financial Responsibility for Offshore Facilities.

#### Forms:

- BOEM-1016, Designated Applicant Information Certification;
- BOEM-1017, Appointment of Designated Applicant;
- BOEM-1018, Self-Insurance Information;

- BOEM-1019, Insurance Certificate;
- BOEM-1020, Surety Bond;
- BOEM-1021, Covered Offshore Facilities;
- BOEM-1022, Covered Offshore Facility Changes;
- BOEM-1023, Financial Guarantee; and
- BOEM-1025, Independent Designated Applicant Information Certification.

**Abstract:** This information collection request addresses the regulations at 30 CFR 553, Oil Spill Financial Responsibility (OSFR) for Offshore Facilities, including any supplementary notices to lessees and operators that provide clarification, description, or explanation of these regulations, and forms BOEM-1016 through 1023 and BOEM-1025.

The BOEM uses the information collected under 30 CFR 553 to verify compliance with section 1016 of the Oil Pollution Act, as amended (OPA). The information is necessary to confirm that applicants can pay for cleanup and damages resulting from oil spills and other hydrocarbon discharges that originate from Covered Offshore Facilities (COFs).

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 550.197, “Data and information to be made available to the public or for limited inspection.” No items of a sensitive nature are collected. Responses are mandatory.

**Frequency:** On occasion or annual.

**Description of Respondents:** Lessees, permittees, and holders of pipeline right-of-way and right-of-use and easement grants in the Outer Continental Shelf and in State coastal waters who will appoint designated applicants. Other respondents will be the designated applicants’ insurance agents and brokers, bonding companies, and guarantors. Some respondents may also be claimants.

**Estimated Reporting and Recordkeeping Hour Burden:** The estimated annual hour burden for this collection is 22,132 hours. The following table details the individual components and respective hour burden estimates of this ICR.

#### BURDEN BREAKDOWN

Citation 30 CFR 553	Reporting requirement*	Hour burden	Average number of annual reponses	Annual burden hours
Various sections .....	The burdens for all references to submitting evidence of OSFR, as well as required or supporting information, are covered with the forms below.			0

## BURDEN BREAKDOWN—Continued

Citation 30 CFR 553	Reporting requirement *	Hour burden	Average number of annual reponses	Annual burden hours
<b>Applicability and Amount of OSFR</b>				
11(a)(1); 40; 41 .....	Form BOEM-1016—Designated Applicant Information Certification.	1	200	200
11(a)(1); 40; 41 .....	Form BOEM-1017—Appointment of Designated Applicant .....	9	600	5,400
11(a)(2) .....	Form BOEM-1025—Independent Designated Applicant Information Certification.	1	200	200
12 .....	Request for determination of OSFR applicability. Provide required and supporting information.	2	5	10
15 .....	Notify BOEM of change in ability to comply .....	1	1	1
15(f) .....	Provide claimant written explanation of denial .....	1	15	15
Subtotal .....	.....	.....	1,021	5,826
<b>Methods for Demonstrating OSFR</b>				
21; 22; 23; 24; 26; 27; 30; 40; 41; 43.	Form BOEM-1018—Self-Insurance Information .....	1	50	50
29; 40; 41; 43 .....	Form BOEM-1023—Financial Guarantee .....	1.5	25	38
31; 40; 41; 43 .....	Form BOEM-1019—Insurance Certificate .....	120	120	14,400
32 .....	Form BOEM-1020—Surety Bond .....	24	4	96
.....	Proposal and supporting information for alternative method to evidence OSFR (anticipate no proposals, but regulations provide the opportunity).	120	1	120
Subtotal .....	.....	.....	200	14,704
<b>Requirements for Submitting OSFR Information</b>				
40; 41; 43 .....	Form BOEM-1021—Covered Offshore Facilities .....	6	200	1,200
40; 41; 42 .....	Form BOEM-1022—Covered Offshore Facility Changes .....	1	400	400
Subtotal .....	.....	.....	600	1,600
<b>Claims for Oil-Spill Removal Costs and Damages</b>				
Subpart F .....	Claims: BOEM is not involved in the claims process. Assessment of burden for claims against the Oil Spill Liability Trust Fund (30 CFR parts 135, 136, 137) falls under the responsibility of the U.S. Coast Guard.	0		
60(d) .....	Claimant request for BOEM assistance to determine whether a guarantor may be liable for a claim.	2	1	2
Subtotal .....	.....	.....	1	2
Total Burden	.....	.....	1,822	22,132

\* In the future, BOEM may require specified electronic filing of financial/bonding submissions.

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:*  
We have identified no reporting and recordkeeping non-hour cost burdens for this collection.

*Public Availability of Comments:*  
Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 17, 2016.  
**Deanna Meyer-Pietruszka,**  
*Chief, Office of Policy, Regulations, and Analysis.*  
[FR Doc. 2016-25943 Filed 10-26-16; 8:45 am]  
**BILLING CODE 4310-MR-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Safety and Environmental Enforcement**

[Docket ID BSEE-2016-0009; OMB Number 1014-0004; 17XE1700DX EEEE500000 EX1SF0000.DAQ000]

**Information Collection Activities: Oil and Gas Well-Completion Operations; Submitted for Office of Management and Budget (OMB) Review; Comment Request**

**AGENCY:** Bureau of Safety and Environmental Enforcement, Interior.

**ACTION:** 30-Day notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart E, *Oil and Gas Well Completion Operations*. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

**DATES:** You must submit comments by November 28, 2016.

**ADDRESSES:** Submit comments by either fax (202) 395-5806 or email ([OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov)) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014-0004). Please provide a copy of your comments to BSEE by any of the means below.

- *Electronically:* go to <http://www.regulations.gov>. In the Search box, enter BSEE-2016-0009 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

- *Email:* [Kelly.Odom@bsee.gov](mailto:Kelly.Odom@bsee.gov), fax (703) 787-1546, or mail or hand-carry comments to: Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Kelly Odom; 45600 Woodland Road, Sterling, VA 20166. Please reference 1014-0004 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Kelly Odom, Regulations and Standards Branch, (703) 787-1775, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to <http://www.reginfo.gov> (select Information Collection Review, Currently Under Review).

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations.

*OMB Control Number:* 1014-0004.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended at 43

U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resources development with protection of the human, marine, and coastal environment; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR 250, Subpart E, concern oil and gas well-completion operations and are the subject of this collection. This request also covers the related Notices to Lessees and Operators

(NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

All responses are mandatory. This collection does not contain questions of a sensitive nature. BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2); 30 CFR part 250.197, *Data and information to be made available to the public or for limited inspection*; and 30 CFR part 252, *OCS Oil and Gas Information Program*. BSEE uses the information collected under Subpart E to ensure that planned well-completion operations will protect personnel and natural resources. We use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, BSEE uses the information to ensure:

- Compliance with personnel safety training requirements;
- Crown block safety device is operating and can be expected to function to avoid accidents;
- Proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources;
- Well-completion operations are conducted on well casings that are structurally competent; and
- Sustained casing pressures are within acceptable limits.

*Frequency:* Weekly, monthly, biannually, and vary by section.

*Description of Respondents:* Potential respondents comprise Federal oil, gas, or sulfur lessees and/or operators, and holders of pipeline rights-of-way.

*Estimated Reporting and Recordkeeping Hour Burden:* The estimated annual hour burden for this information collection is a total of 14,890 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

30 CFR 250 subpart E	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours (rounded)
500-531 .....	General departure and alternative compliance requests not specifically covered elsewhere in Subpart E regulations.	Burden covered under Subpart A—1014-0022		0

30 CFR 250 subpart E	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours (rounded)
513 .....	These sections contain references to information, approvals, requests, payments, etc., which are submitted with an APD, the burdens for which are covered under its own information collection.	APD burden covered under 1014–0025		0
513(a); 518(f); 526(a); 527 .....	These sections contain references to information, approvals, requests, payments, etc., which are submitted with an APM, the burdens for which are covered under its own information collection.	APM burden covered under 1014–0026		0
511 .....	Record weekly results of traveling-block safety device in operations log.	1.5	455 completions × 1 recordings = 455.	683
512 .....	Request establishment, amendment, or cancellation of well-completion field rules.	13	20 requests .....	260
513(c), (d) .....	Submit End of Operations Report (Form BSEE–0125) to District Manager 30-days after completion; including additional supporting information and public info. copy.	Burden covered under Subpart D—1014–0018		0
514(c) .....	Post the number of stands of drill pipe/collars that may be pulled and equivalent well-control fluid volume.	1.5	807 postings .....	1,211
524 .....	Retain records of casing pressure and diagnostic tests for 2 years or until the well is abandoned.	1.75	3,547 records .....	6,207
526(b); 528 .....	Submit a casing pressure request; any additional information as needed.	8	681 requests .....	5,448
530(a) .....	Submit correction action plan to District Manager; notify BSEE after completion of corrected action within 30 days.	13	71 plans .....	923
530(b) .....	Submit the casing pressure diagnostic test data within 14 days.	2.5	63 submittals .....	158
Total Burden .....	.....	.....	5,644 .....	14,890

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have identified no non-hour cost burdens associated with this collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .” Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on June 13, 2016,

we published a **Federal Register** notice (81 FR 38215) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB Control Number for the information collection requirements imposed by 30 CFR 250, Subpart E regulations. The regulation also informs the public that they may comment at any time on the collection of information and provides the address to which they should send comments. We did not receive any comments in response to the **Federal Register** notice.

*Public Availability of Comments:* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*BSSE Information Collection Clearance Officer:* Nicole Mason, (703) 787–1607.

**Robert W. Middleton,**  
Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2016–25959 Filed 10–26–16; 8:45 am]

**BILLING CODE 4310–VH–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA–2016–0005]

#### Preparations for the 32nd Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCGHS)

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is to advise interested persons that on Tuesday, November 15, 2016, OSHA will conduct a public meeting to discuss proposals in preparation for the 32nd session of the

United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCGHS) to be held December 7 through December 9, 2016 in Geneva, Switzerland. OSHA, along with the U.S. Interagency GHS (Globally Harmonized System of Classification and Labelling of Chemicals) Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the UNSCGHS meeting. OSHA also will give an update on the Regulatory Cooperation Council (RCC).

Also, on Tuesday, November 15, 2016, the Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) will conduct a public meeting (See Docket No. PHMSA–2016–0114 Notice No. 16–19) to discuss proposals in preparation for the 50th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCG TDG) to be held November 27 to December 6, 2016, in Geneva, Switzerland. During this meeting, PHMSA is also requesting comments relative to potential new work items that may be considered for inclusion in its international agenda. PHMSA will also provide an update on recent actions to enhance transparency and stakeholder interaction through improvements to the international standards portion of its Web site.

**DATES:** Tuesday, November 15, 2016.

**ADDRESSES:** Both meetings will be held at the DOT Headquarters Conference Center, West Building, Oklahoma City Conference Room, 1200 New Jersey Avenue SE., Washington, DC 20590.

**Times and Locations:** PHMSA public meeting: 9:00 a.m. to 12:00 p.m. EDT, Oklahoma City Conference Room, OSHA public meeting: 1:00 p.m. to 4:00 p.m. EDT, Oklahoma City Conference Room

**Advanced Meeting Registration:** The DOT requests that attendees pre-register for these meetings by completing the form at: <https://www.surveymonkey.com/r/CRPK2YY>.

Failure to pre-register may delay your access into the DOT Headquarters building. Additionally, if you are attending in-person, arrive early to allow time for security checks necessary to access the building. Conference call-in and “live meeting” capability will be provided for both meetings.

Specific information on call-in and live meeting access will be posted when available at: <http://www.phmsa.dot.gov/hazmat/regs/international> under Upcoming Events. This information will

also be posted on OSHA’s Hazard Communication Web site on the international tab at: [https://www.osha.gov/dsg/hazcom/hazcom\\_international.html#meeting-notice](https://www.osha.gov/dsg/hazcom/hazcom_international.html#meeting-notice).

**FOR FURTHER INFORMATION CONTACT:** At the Department of Transportation, please contact Mr. Steven Webb or Mr. Aaron Wiener, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590, telephone: (202) 366–8553.

At the Department of Labor, please contact Ms. Maureen Ruskin, OSHA Directorate of Standards and Guidance, Department of Labor, Washington, DC 20210, telephone: (202) 693–1950, email: [ruskin.maureen@dol.gov](mailto:ruskin.maureen@dol.gov).

**SUPPLEMENTARY INFORMATION:**

**The OSHA Meeting:** OSHA is hosting an open informal public meeting of the U.S. Interagency GHS Coordinating Group to provide interested groups and individuals with an update on GHS-related issues and an opportunity to express their views orally and in writing for consideration in developing U.S. Government positions for the upcoming UNSCGHS meeting.

General topics on the agenda include:

- Review of Working papers
- Correspondence Group updates
- Regulatory Cooperation Council (RCC) Update

Information on the work of the UNSCGHS including meeting agendas, reports, and documents from previous sessions, can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division Web site located at the following Web address: [http://www.unece.org/trans/danger/publi/ghs/ghs\\_welcome\\_e.html](http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html). The UNSCGHS bases its decisions on Working Papers. The Working Papers for the 32nd session of the UNSCGHS are located at: <http://www.unece.org/trans/main/dgdb/dgsubc4/c42016.html>.

Informal Papers submitted to the UNSCGHS provide information for the Sub-committee and are used either as a mechanism to provide information to the Sub-committee or as the basis for future Working Papers. Informal Papers for the 32nd session of the UNSCGHS are located at: <http://www.unece.org/trans/main/dgdb/dgsubc4/c4inf32.html>.

In addition to participating at the Public meeting, interested parties may submit comments on the Working and Informal Papers for the 32nd session of the UNSCGHS to the docket established for International/Globally Harmonized System (GHS) efforts at <http://www.regulations.gov>, Docket No. OSHA–2016–0005.

**The PHMSA Meeting:** The **Federal Register** notice and additional detailed

information relating to PHMSA’s public meeting will be available upon publication at: <http://www.regulations.gov> (Docket No. PHMSA–2016–0114, Notice No. 16–19), and on the PHMSA Web site at: <http://www.phmsa.dot.gov/hazmat/regs/international>.

PHMSA will host the meeting to gain input from the public concerning proposals submitted to the UNSCOE TDG for the 20th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations, which may be implemented into relevant domestic, regional, and international regulations from January 1, 2019. During this meeting, PHMSA is also soliciting input relative to preparing for the 50th session of the UNSCE TDG as well as potential new work items which may be considered for inclusion in its international agenda.

Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations Transport Division’s Web site at: <http://www.unece.org/trans/danger/danger.html>.

**Authority and Signature:** This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), and Secretary’s Order 1–2012 (77 FR 3912), (Jan. 25, 2012).

Signed at Washington, DC, on October 24, 2016.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2016–26002 Filed 10–26–16; 8:45 am]

**BILLING CODE 4510–26–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Request for Comments on Information Technology Modernization Initiative

**AGENCY:** Office of Management and Budget

**ACTION:** Notice of public comment period.

**SUMMARY:** The Office of Management and Budget (OMB) is seeking public comment on a draft memorandum titled, “*Information Technology Modernization Initiative*.”

**DATES:** The 30-day public comment period on the draft memorandum begins on October 26, 2016 in the **Federal**

**Register** and will last for 30 days. The public comment period will end on November 25, 2016.

**ADDRESSES:** Interested parties should provide comments at the following link: <https://policy.cio.gov/it-modernization/>. The Office of Management and Budget is located at 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

Sean Casey at [Sean\\_C\\_Casey@omb.eop.gov](mailto:Sean_C_Casey@omb.eop.gov) or [OFCIO@omb.eop.gov](mailto:OFCIO@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) is proposing a new policy to modernize the Federal government's aging IT systems. This memorandum would require the CFO-Act agencies to identify systems as candidates for modernization and submit modernization proposals to OMB. Research and agency-submitted analysis indicates that aging legacy systems pose operations risks for the agencies and the government as a whole when these systems cannot adapt to current or expected mission requirements, user needs, or operating environments. This memorandum strives to assist agencies with the costs and risks of modernizing critical systems, and it seeks to promote cost reductions, risk reductions, and improved delivery of services to the American public through modernization of these systems. Authority for this notice is granted under the Clinger-Cohen Act, 40 U.S.C. Subtitle III.

**Tony Scott,**

*U.S. Federal Chief Information Officer.*

[FR Doc. 2016-25948 Filed 10-26-16; 8:45 am]

**BILLING CODE P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:**

Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: [ACAPermits@nsf.gov](mailto:ACAPermits@nsf.gov).

**SUPPLEMENTARY INFORMATION:** On September 9, 2016 the National Science Foundation published a notice in the

**Federal Register** of permit applications received. The permits were issued on October 21, 2016 to:

Dr. George Watters  
Permit Nos. 2017-012; 2017-013

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2016-25932 Filed 10-26-16; 8:45 am]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-0348 and 50-0364; NRC-2015-0015]

### Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; withdrawal by applicant.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has granted the request of the Southern Nuclear Operating Company, Inc. (SNC—the licensee) to withdraw its license amendment application dated November 24, 2014, as supplemented on September 28, 2015; March 3, 2016; and July 25, 2016, for proposed amendments to Renewed Facility Operating License Nos. NPF 2 and NPF 8 for the Joseph M. Farley Nuclear Plant, Units 1 and 2, respectively, located in Houston County, Alabama. The application contained 24 requests. Twenty-three of those requests were addressed in NRC letter dated August 3, 2016. The amendments adopted previously approved Technical Specifications Task Force Travelers and made two changes not associated with Travelers. A request to incorporate TSTF-312-A, Revision 1, “Administratively Control Containment Penetrations,” has been withdrawn by SNC in a letter dated October 17, 2016. **DATES:** The license amendment was withdrawn by the licensee on October 17, 2016.

**ADDRESSES:** Please refer to Docket ID NRC-2015-0015 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0015. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the

individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:**

Shawn Williams, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1009, email: [Shawn.Williams@nrc.gov](mailto:Shawn.Williams@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The NRC has granted the request of the licensee to withdraw its November 24, 2014, license amendment application (ADAMS Package Accession No. ML14335A689), as supplemented on September 28, 2015 (ADAMS Accession No. ML15271A223); March 3, 2016 (ADAMS Accession No. ML16063A516); and July 25, 2016 (ADAMS Accession Package No. ML16214A040), for proposed amendments to Renewed Facility Operating License Nos. NPF 2 and NPF 8 for the Joseph M. Farley Nuclear Plant, Units 1 and 2, respectively, located in Houston County, Alabama.

The licensee requested to change the Technical Specifications related to TSTF-312-A, Revision 1, “Administratively Control Containment Penetrations.”

The proposed amendment was noticed in the **Federal Register** on February 3, 2015 (80 FR 5804). By letter dated October 17, 2016 (ADAMS Accession No. ML16291A520), the licensee withdrew its license amendment application.

Dated at Rockville, Maryland, this 20th day of October 2016.



For the Nuclear Regulatory Commission.

**Michael T. Markley,**

Chief, Plant Licensing Branch II-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016-25987 Filed 10-26-16; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-025 and 52-026; NRC-2008-0252]

### Southern Nuclear Operating Company, Vogtle Electric Generating Plant, Units 3 and 4; Passive Core Cooling System (PXS) Design Changes To Address Potential Gas Intrusion

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption and combined license amendment; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 55 to Combined Licenses (COL), NPF-91 and NPF-92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

**ADDRESSES:** Please refer to Docket ID NRC-2008-0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2008-0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated May 5, 2016 (ADAMS Accession No. ML16126A276).

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2809; email: [Paul.Kallan@nrc.gov](mailto:Paul.Kallan@nrc.gov).

## SUPPLEMENTARY INFORMATION:

### I. Introduction

The NRC is granting an exemption from paragraph B of section III, "Scope and Contents," of Appendix D, "Design Certification Rule for the AP1000," to part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 55 to COLs, NPF-91 and NPF-92, to the licensee. The exemption is required by paragraph A.4 of section VIII, "Processes for Changes and Departures," Appendix d, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would revise the Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific DCD Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing

a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of Appendix d to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16237A393.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF-91 and NPF-92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML16237A325 and ML16237A344, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF-91 and NPF-92 are available in ADAMS under Accession Nos. ML16237A315 and ML16237A319, respectively. A summary of the amendment documents is provided in Section III of this document.

## II. Exemption

Reproduced below is the exemption document issued to Vogtle Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated May 5, 2016, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, Appendix d, Section III.B, as part of License Amendment Request 16-004, "Passive Core Cooling System (PXS) Design Changes to Address Potential Gas Intrusion (LAR-16-004)."

For the reasons set forth in Section 3.1, "Evaluation of Exemption," of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML16237A393, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the facility COLs as described in the licensee's request dated May 5, 2016. This exemption is related to, and necessary for, the granting of License Amendment No. 55, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, "Environmental Consideration," of the NRC staff's Safety Evaluation this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

### III. License Amendment Request

By letter dated May 5, 2016, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF-91 and NPF-92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on July 19, 2016 (81 FR 46958). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

### IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the

amendment that the licensee requested on May 5, 2016.

The exemption and amendment were issued on October 4, 2016 as part of a combined package to the licensee (ADAMS Accession No. ML16237A283).

Dated at Rockville, Maryland, this 20th day of October 2016.

For the Nuclear Regulatory Commission.

**Jennifer Dixon-Herrity,**

*Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2016-25981 Filed 10-26-16; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-333; NRC-2016-0221]**

### Entergy Nuclear Operations, Inc.; FitzPatrick Nuclear Power Plant

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a January 15, 2016, request from Entergy Nuclear Operations, Inc. (Entergy or the licensee), from certain regulatory requirements. The exemption would permit a certified fuel handler to approve the emergency suspension of security measures for James A. Fitzpatrick Nuclear Power Plant (JAF) during certain emergency conditions or during severe weather. The exemption will be effective after JAF has submitted the certifications that it has permanently ceased power operation and has permanently removed fuel from the reactor vessel.

**ADDRESSES:** Please refer to Docket ID NRC-2016-0221 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0221. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/>

[adams.html](#). To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### FOR FURTHER INFORMATION CONTACT:

Thomas Wengert, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-4037; email: [Thomas.Wengert@nrc.gov](mailto:Thomas.Wengert@nrc.gov).

### I. Background

Entergy is the holder of Renewed Facility Operating License No. DPR-59, which authorizes operation of JAF. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The facility consists of a boiling-water reactor located in Oswego County, New York.

By letter dated November 18, 2015 (ADAMS Accession No. ML15322A273), Entergy submitted to the NRC, the certification, in accordance with § 50.82(a)(1)(i) of title 10 of the *Code of Federal Regulations* (10 CFR), indicating that it intended to permanently cease operations of JAF. By letter dated March 16, 2016 (ADAMS Accession No. ML16076A391), Entergy certified that it plans to permanently cease power operations at JAF on January 27, 2017.

### II. Request/Action

On January 15, 2016 (ADAMS Accession No. ML16015A457), the licensee requested an exemption from § 73.55(p)(1)(i) and (ii), pursuant to § 73.5, "Specific exemptions." Section 73.55(p)(1)(i) and (ii) require, in part, that the suspension of security measures during certain emergency conditions or during severe weather be approved by a licensed senior operator. The exemption request relates solely to the licensing requirements specified in the regulations directing suspension of security measures in accordance with § 73.55(p)(1)(i)-(ii), and would expand on the requirement for a licensed senior operator to provide this approval. The exemption would allow the suspension of security measures during certain emergency conditions or during severe weather by a certified fuel handler

(CFH) after the certifications required under § 50.82(a)(1) have been docketed.

### III. Discussion

Historically, the NRC's security regulations have long recognized the potential to suspend security or safeguards measures under certain conditions. Accordingly, 10 CFR 50.54(x) and (y), first issued or published in 1983, allow a licensee to take reasonable steps in an emergency that deviate from license conditions when those steps are "needed to protect the public health and safety" and there are no conforming comparable measures (48 FR 13970; April 1, 1983). As originally issued, the deviation from license conditions must be approved by, as a minimum, a licensed senior operator. In 1986, in its final rule, "Miscellaneous Amendments Concerning the Physical Protection of Nuclear Power Plants" (51 FR 27817; August 4, 1986), the Commission issued 10 CFR 73.55(a), stating in part:

In accordance with § 50.54 (x) and (y) of Part 50, the licensee may suspend any safeguards measures pursuant to § 73.55 in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specification that can provide adequate or equivalent protection is immediately apparent. This suspension must be approved as a minimum by a licensed senior operator prior to taking the action.

In 1995, the NRC made a number of regulatory changes to address decommissioning. Among the changes was new text that amended § 50.54(x) and (y) by allowing a non-licensed operator called a "Certified Fuel Handler," in addition to a licensed senior operator, to authorize protective steps. Specifically, in addressing the role of the CFH during emergencies, the NRC stated in the proposed rule, "Decommissioning of Nuclear Power Reactors" (60 FR 37379; July 20, 1995):

The Commission is proposing to amend 10 CFR 50.54(y) to permit a certified fuel handler at nuclear power reactors that have permanently ceased operations and permanently removed fuel from the reactor vessel, subject to the requirements of § 50.82(a) and consistent with the proposed definition of "Certified Fuel Handler" specified in § 50.2, to make these evaluations and judgments. A nuclear power reactor that has permanently ceased operations and no longer has fuel in the reactor vessel does not require a licensed individual to monitor core conditions. A certified fuel handler at a permanently shutdown and defueled nuclear power reactor undergoing decommissioning is an individual who has the requisite knowledge and experience to evaluate plant conditions and make these judgments.

In the final rule (61 FR 39298; July 29, 1996), the NRC added the following definition to § 50.2: "*Certified fuel handler* means, for a nuclear power reactor facility, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission." However, the decommissioning rule did not propose or make parallel changes to § 73.55(a), and did not discuss the role of a non-licensed certified fuel handler.

In the final rule, "Power Reactor Security Requirements" (74 FR 13926; March 27, 2009), the NRC removed the security suspension requirements from § 73.55(a) and added them to § 73.55(p)(1)(i) and (ii). The CFHs were not discussed in the rulemaking, so the requirements of § 73.55(p) to use a licensed senior operator remain, even for a site that otherwise no longer operates.

However, pursuant to § 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73, as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

#### A. The Exemption Is Authorized by Law

The exemption from § 73.55(p)(1)(i) and (ii) would expand upon the requirement that only a licensed senior operator could approve the suspension of security measures under certain emergency conditions or severe weather. The licensee intends to use the exemption to authorize the use of a non-licensed CFH, in place of a licensed senior operator, to approve the suspension of security measures during certain emergency conditions or during severe weather after JAF permanently ceases operation and the licensee has submitted the certifications required under § 50.82(a)(1).

Per § 73.5, the Commission is allowed to grant exemptions from the regulations in 10 CFR part 73, as authorized by law. The NRC staff has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Therefore, the exemption is authorized by law.

#### B. Will Not Endanger Life or Property or the Common Defense and Security

Expanding the requirement to have a licensed senior operator or a CFH approve suspension of security measures during emergencies or severe weather will not endanger life or property or the common defense and

security for the reasons described in this section.

First, § 73.55(p)(2) continues to require that "[s]uspended security measures must be reinstated as soon as conditions permit."

Second, the suspension for nonweather emergency conditions under § 73.55(p)(1)(i) will continue to be invoked only "when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent." Thus, the exemption would not prevent the licensee from meeting the underlying purpose of § 73.55(p)(1)(i) to protect public health and safety.

Third, the suspension for severe weather under § 73.55(p)(1)(ii) will continue to be used only when "the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection." The requirement to receive input from the security supervisor or manager will remain. The exemption would not prevent the licensee from meeting the underlying purpose of § 73.55(p)(1)(ii) to protect the health and safety of the security force.

Additionally, by letter dated October 17, 2016 (ADAMS Accession No. ML16259A347), the NRC approved Entergy's CFH training and retraining program for the JAF facility. The NRC staff found that, among other things, the program addresses the safe conduct of decommissioning activities, safe handling and storage of spent fuel, and the appropriate response to plant emergencies. Because the CFH is qualified under an NRC-approved program, the NRC staff considers a CFH to have sufficient knowledge of operational and safety concerns, such that allowing a CFH to suspend security measures during emergencies or severe weather will not result in undue risk to public health and safety.

In addition, the exemption does not reduce the overall effectiveness of the physical security plan and has no adverse impacts to Entergy's ability to physically secure the site or protect special nuclear material at JAF, and thus would not have an effect on the common defense and security. The NRC staff has concluded that the exemption would not reduce security measures currently in place to protect against radiological sabotage. Therefore,

removing the requirement for a licensed senior operator to approve the suspension of security measures in an emergency or during severe weather, to allow suspension of security measures to be authorized by a CFH, does not adversely affect public health and safety issues or the assurance of the common defense and security.

#### *C. Is Otherwise in the Public Interest*

Entergy's proposed exemption would allow a CFH, following permanent cessation of operation and permanent removal of fuel from the reactor vessel, to approve suspension of security measures in an emergency when "immediately needed to protect the public health and safety" or during severe weather when "immediately needed to protect the personal health and safety of security force personnel." Without the exemption, the licensee cannot implement changes to its security plan to authorize a CFH to approve the temporary suspension of security regulations during an emergency or severe weather, comparable to the authority given to the CFH by the NRC when it published § 50.54(y). Instead, the regulations would continue to require that a licensed senior operator be available to make decisions for a permanently shutdown plant, even though JAF would no longer require a licensed senior operator. However, it is unclear how the licensee would implement emergency or severe weather suspensions of security measures without a licensed senior operator. This exemption is in the public interest for two reasons. First, without the exemption, there is uncertainty on how the licensee will invoke temporary suspension of security matters that may be needed for protecting public health and safety or the safety of the security force during emergencies and severe weather. The exemption would allow the licensee to make decisions pursuant to § 73.55(p)(1)(i) and (ii) without having to maintain a staff of licensed senior operators. The exemption would also allow the licensee to have an established procedure in place to allow a trained CFH to suspend security measures in the event of an emergency or severe weather. Second, the consistent and efficient regulation of nuclear power plants serves the public interest. This exemption would assure consistency between the security regulations in 10 CFR part 73 and the operating reactor regulations in 10 CFR part 50, and the requirements concerning licensed operators in 10 CFR part 55. The NRC staff has determined that granting the licensee's proposed

exemption would allow the licensee to designate an alternative position, with qualifications appropriate for a permanently shutdown and defueled reactor, to approve the suspension of security measures during an emergency to protect the public health and safety, and during severe weather to protect the safety of the security force, consistent with the similar authority provided by § 50.54(y). Therefore, the exemption is in the public interest.

#### *D. Environmental Considerations*

The NRC's approval of the exemption to security requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under § 51.22(c)(25).

Under § 51.22(c)(25), the granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that: (i) There is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: Safeguard plans, and materials control and accounting inventory scheduling requirements; or involve other requirements of an administrative, managerial, or organizational nature.

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request involves no significant hazards consideration because expanding the requirement to allow a CFH to approve the security suspension at a defueled shutdown power plant does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted security regulation is unrelated to any operational restriction. Accordingly, there is no significant change in the

types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.*, potential amount of radiation in an accident), nor mitigation. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. The requirement to have a licensed senior operator approve departure from security actions may be viewed as involving either safeguards, materials control, or managerial matters.

Therefore, pursuant to § 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

#### **IV. Conclusions**

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, the exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee's request for an exemption from the requirements of 10 CFR 73.55(p)(1)(i) and (ii), which otherwise would require suspension of security measures during emergencies and severe weather, respectively, to be approved by a licensed senior operator following permanent cessation of operations and permanent removal of fuel from the reactor vessel. The exemption is effective upon the docketing of the certification of permanent removal of fuel in accordance with 10 CFR 50.82(a)(1)(ii).

Dated at Rockville, Maryland, this 20th day of October 2016.

For the Nuclear Regulatory Commission.

**George A. Wilson,**

*Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2016-25989 Filed 10-26-16; 8:45 am]

**BILLING CODE 7590-01-P**

#### **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-182; NRC-2011-0186]**

#### **Purdue University Reactor**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering renewal of Facility Operating License No. R-87, held by Purdue University (the applicant), for the continued operation of the Purdue University Reactor (PUR-1), located in West Lafayette, Tippecanoe County, Indiana for an additional 20 years. In connection with the renewed license, the applicant is also seeking a power increase from 1 kilowatt thermal (kW(t)) to a licensed power level of 12 kW(t). The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the renewal of the license.

**DATES:** The EA and FONSI referenced in this document is available on October 27, 2016.

**ADDRESSES:** Please refer to Docket ID NRC-2011-0186 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0186. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Cindy K. Montgomery, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington,

DC 20555-0001; telephone: 301-415-3398; email: [Cindy.Montgomery@nrc.gov](mailto:Cindy.Montgomery@nrc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

The NRC is considering issuance of a renewed Facility Operating License No. R-87, held by Purdue University, which would authorize continued operation of PUR-1, located in West Lafayette, Tippecanoe County, Indiana, for an additional 20 years. In connection with the renewed license, the applicant is also seeking a power increase from 1 kW(t) to 12 kW(t). As required by section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), "Criteria for and identification of licensing and regulatory actions requiring environmental assessments," the NRC performed an EA. Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the proposed action and is issuing a FONSI.

### **II. Environmental Assessment**

#### *Description of the Proposed Action*

The proposed action would renew Facility Operating License No. R-87 for a period of 20 years from the date of issuance of the renewed license. The proposed action would also authorize a power increase from 1 kW(t) to 12 kW(t). The proposed action is in accordance with Purdue University's application dated July 7, 2008, as supplemented by letters dated June 30, 2008; June 3, and June 4, 2010; November 15, 2011; January 4, January 30, January 31, June 1, June 15, June 29, July 13, and August 11, 2012; April 10, 2013; July 24, 2015; and January 29, February 26, March 31, May 9, July 7, July 19, September 19, and September 29, 2016 (collectively referred to as "the renewal application"). In accordance with § 2.109, "Effect of timely renewal application," the existing license remains in effect until the NRC takes final action on the renewal application.

#### *Need for the Proposed Action*

The proposed action is needed to allow the continued operation of the PUR-1, which is used for teaching and research to support the mission of Purdue University, for a period of 20 years. Operation of the PUR-1 at the requested higher power level would expand the educational and research uses of the facility.

#### *Environmental Impacts of the Proposed Action*

Separate from the environmental assessment referenced in this document,

the NRC is writing a safety evaluation (SE) of the proposed action to issue renewed Facility Operating License No. R-87 to allow continued operation of the PUR-1 for a period of 20 years. The details of the NRC's SE will be provided with the renewed license, if approved. This document contains the EA of the proposed action.

The applicant has requested a power increase from 1 kW(t) to 12 kW(t) maximum allowed licensed power. The applicant performed analyses at 18 kW(t) to bound the requested power increase. The applicant's required annual reports from 2011 through 2015 indicate that no measurable amount of radioactive effluent was released from the PUR-1 to the environment.

#### *Facility Site and Environs*

The PUR-1 is a heterogeneous, pool-type non-power reactor that has been in operation since 1962 for teaching and research purposes. The PUR-1 is located in the Duncan Annex of the Electrical Engineering Building on the eastern edge of the Purdue University campus. The building was originally designed as a high voltage laboratory, and the space was later converted into classrooms, laboratories, and offices. The building is constructed of brick, concrete block, and reinforced concrete. Within the Duncan Annex, the PUR-1 is located within a 6,400-gallon cylindrical water tank that is 17 feet deep and 8 feet in diameter. The tank is enclosed by a concrete shielding structure.

The PUR-1 operates about 90 times per year on average. The reactor is fueled with standard low-enriched uranium plate-type fuel and is cooled by natural convection of light water. The reactor coolant system includes a process system, which controls the pool water temperature, and a purification system, which is designed to maintain pool water quality by limiting corrosion and coolant activation by the use of microfilters and ion exchange resins. Water from the pool is drawn out from the scupper drain or suction line via polyvinyl chloride piping leading to the circulating pump; a second source of water for the pump is a water supply tank supplied with city service water and controlled by a float valve. Ball valves for water shutoff and a vacuum cleaning connection are provided in the pump supply line. From the pump, a pipe with a ball valve installed leads first to the filter and then to a demineralizer. An adjustable by-pass or throttling valve is inserted in the system to regulate water flow through the demineralizer. A flow indicator and a conductivity indicator are installed as a check on flow rate and water purity.

from the demineralizer. The water next flows through a stainless steel heat exchanger. The water from the heat exchanger is then returned to the reactor pool. A magnetrol water-level control is located in the reactor pool; this unit controls a solenoid valve in the line from the water supply tank to ensure that the prescribed pool water level is maintained. However, this system is manually controlled by the PUR-1 staff to allow markup water to be inventoried. Makeup pool water is provided by the city public water supply.

A detailed description of the reactor can be found in the PUR-1 Safety Analysis Report (SAR) submitted by the applicant with its renewal application.

#### A. Radiological Impacts

##### Environmental Effects of Reactor Operations

During normal operations at the PUR-1 facility, the two primary airborne sources of radiation are argon-41 (Ar-41) and nitrogen-16 (N-16). N-16 is produced when oxygen in the pool water is irradiated in the reactor core, and must then diffuse to the pool surface before it is released to the atmosphere. The applicant estimates that, due to its short half-life (about 7 seconds), any N-16 produced by the reactor at the bounding power level of 18 kW(t) would decay before reaching the surface of the pool. The primary source of Ar-41 at the PUR-1 is from irradiation of air containing argon dissolved in the reactor pool. At the current 1 kW(t) steady-state operation, effluent samples in the reactor room have not contained detectable traces of Ar-41. At the bounding power level of 18 kW(t), the applicant estimates that steady-state operation of the reactor would produce an equilibrium concentration of  $2.08 \times 10^{-7}$   $\mu\text{Ci}/\text{cm}^3$  of Ar-41 in the exhaust air and the reactor room, which is lower than the  $3.0 \times 10^{-6}$   $\mu\text{Ci}/\text{cm}^3$  Derived Air Concentration (DAC) limit for occupational workers found in 10 CFR part 20. Due to the DAC being below regulatory limits, the estimated occupational radioactivity exposure levels will also be below the 10 CFR part 20 limit of 5 reontgen equivalent man (rem). The estimated dose rate to a worker at the bounding power level of 18 kW(t) was calculated by the applicant to be 0.167 milli roentgen equivalent man per hour (mrem/hr) (0.00167 millisievert/hour (mSv/hr)). Using the calculated dose rate, the total effective dose equivalent to a worker in the reactor room for an entire year would be less than 334 mrem (3.34

mSv), assuming a hypothetical 2,000-hour steady state, full power operation, since the reactor license contains no restriction on operating hours. The reactor normally operates for much less than the assumed 8 hours per day and the conservatively calculated dose is still well below the 5,000-mrem (50 mSv) limit established in § 20.1201, "Occupational dose limits for adults." The applicant also calculated, at the bounding 18 kW(t) power level, an environmental public dose rate from normal operations to a person in the unrestricted area due to Ar-41 released from the building ventilation opening. The release point is on the roof vent on the top of the building 15 meters above ground. Assuming a hypothetical continuous steady state, full power operation for a year, the applicant calculated the public dose rate to be  $3.17 \times 10^{-4}$  mrem/hr ( $3.17 \times 10^{-6}$  mSv/hr) or 2.8 mrem/yr (0.28 mSv/yr), which is well below the limit in § 20.1301 of 100 mrem/yr (1 mSv/yr). This calculated public dose rate would also meet the as low as is reasonably achievable (ALARA) dose constraint of 10 mrem/yr (0.1 mSv/yr) found in § 20.1101(d).

Purdue University has a structured radiation safety program. Policies for the program are determined by the University Radiation Safety Committee, which has the mission to ensure the safety of the University and community in the utilization of all radioactive materials and radiation-producing devices at the University by faculty, staff, or students. The program is administered by the Radiation Safety Officer and his staff, as part of Radiological and Environmental Management. The staff is equipped with radiation detection instrumentation to determine, control, and document occupational radiation exposures at the reactor facility under the broad scope byproduct materials license held by Purdue University.

Only very limited contaminated materials are generated by PUR-1. Any contaminated material is disposed of under the Purdue University broad scope license. No wastes have been released to the environment in an uncontrolled manner. During the past 5-year period from 2011 through 2015, the applicant reported no routine releases of liquid radioactive waste by any disposal method. The NRC assumes that any changes due to the requested power increase from 1 kW(t) to 12 kW(t) are expected to be minimal and capable of being handled by the existing systems and procedures.

As described in Chapter 11 of the PUR-1 SAR, personnel exposures are

well within the limits set by § 20.1201, "Occupational dose limits for adults," and the ALARA dose criteria in § 20.1101(b). The University is committed to the principle of ALARA and it makes every effort to keep doses to a minimum. All unanticipated or unusual exposures are investigated. According to annual reports for the past 5 years of operation from 2011 through 2015, there were no radiation exposures greater than 25 percent of limits set forth in § 20.1201. The change in occupational dose from the proposed power uprate from 1 kW(t) to 12 kW(t) is discussed previously in this notice.

The applicant monitors dose to the public by placing thermoluminescent dosimeters (TLD) at the boundaries of the facility. The TLDs are checked for exposure every other month. Doses measured from the TLDs at the current operating power level of 1 kW(t) have been at background levels, therefore, the applicant concludes that the public has not received exposures greater than the limits set forth in § 20.1301, "Dose limits for individual members of the public." As stated previously, this should not change for the proposed power increase of 12 kW(t). Additionally, the potential radiation dose from current operations at 1kW(t) also demonstrates compliance with the ALARA dose constraints specified in § 20.1101(d), "Radiation protection programs." As stated previously, this should not change for the proposed power increase of 12 kW(t).

Over the past 5 years of operation from 2011 through 2015, results from the applicant's survey program indicate that radiation exposures at the current operating power level of 1 kW(t) at the monitoring locations were not significantly higher than those measured at the control locations. This should not change for the proposed power increase of 12 kW(t). Therefore, the NRC concludes that the proposed action would not have a significant radiological impact.

##### Environmental Effects of Accidents

The maximum hypothetical accident (MHA) is an event involving the cladding failure of an irradiated fuel element in air. The MHA is considered the worst-case fuel failure scenario for PUR-1 that would lead to the maximum potential radiation hazard to facility personnel and to members of the public. The results of the MHA are used by the NRC to evaluate the ability of the applicant to respond and mitigate the consequences of this postulated radioactive release.

The applicant conservatively calculated doses to facility personnel

during evacuation and the maximum potential doses to members of the public at various locations around the PUR-1 facility. The license estimated an occupational dose of 317 mrem (3.17 mSv), for a one minute (evacuation) duration, and 47 mrem (0.47 mSv) for the maximum exposed member of the public. The NRC performed independent calculations to verify that the applicant's calculated doses represented conservative estimates for the MHA. The NRC, using conservative assumptions, estimated a dose to a worker of 294 mrem (2.94 mSv) for a one minute duration, and 4 mrem (0.04 mSv) for the maximum exposed member of the public. The details of these calculations are provided in the NRC's SER that will be issued with the renewed license. The occupational radiation doses resulting from the postulated MHA would be well below the 10 CFR 20.1201 limit of 5,000 mrem (50 mSv). The maximum calculated radiation doses for members of the public resulting from the postulated MHA would be below the 10 CFR 20.1301 limit of 100 mrem (1 mSv).

Because the NRC concludes in the SE that the radiological consequences of the MHA are within the NRC's 10 CFR part 20 dose limits, the proposed action will not have a significant impact with respect to the radiological consequences of the MHA.

#### Conclusions—Radiological Impacts

As discussed previously in this notice, the applicant has requested a power increase from 1kW to 12 kW maximum allowed licensed power. In addition, as previously described, while there is a potential increase in routine occupational and public radiation exposure as a result of license renewal at the higher power level, all exposure rates and doses would be within regulatory limits. There would be no changes in the types of effluents that may be released off site, and any potential increase in their quantities would be within regulatory limits. The applicant has systems in place for controlling the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and releases of radioactive effluents, and the systems and radiation protection program are appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. The proposed action will not significantly increase the probability or consequences of accidents. Therefore, license renewal and the proposed power increase would not change the environmental impact of facility operation. The NRC evaluated

information contained in the renewal application and data reported to the NRC by the applicant for the last 5 years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC found that releases of radioactive material and personnel exposures were all well within applicable regulatory limits. Based on this evaluation, the NRC concludes that the proposed action would not have a significant environmental impact.

#### B. Non-Radiological Impacts

The proposed action would not result in any land use changes, visual resource impacts, or increases in noise. No significant changes in air emissions would occur as a result of the proposed license renewal and power increase. Because water is supplied through the city, the proposed action would not affect surface water or groundwater resources. There is no potential for the proposed action to affect aquatic or terrestrial resources. Therefore, the NRC concludes that the proposed action would have no significant non-radiological impacts.

#### Other Applicable Environmental Laws

In addition to the National Environmental Policy Act (NEPA), the NRC has responsibilities that are derived from other environmental laws, which include the Endangered Species Act (ESA), Coastal Zone Management Act, National Historic Preservation Act (NHPA), Fish and Wildlife Coordination Act, and Executive Order 12898 Environmental Justice. Preparing this EA satisfies the agency's obligations under NEPA. The following presents a brief discussion of impacts associated with resources protected by these laws.

#### Endangered Species Act

The NRC staff conducted a search of Federally listed species and critical habitats that have the potential to occur in the vicinity of the PUR-1 using the U.S. Fish and Wildlife Service's (FWS) Environmental Conservation Online System Information for Planning and Conservation (IPaC) system. Five Federally-listed mussels—clubshell (*Pleurobema clava*), fanshell (*Cyprogenia stegaria*), snuffbox (*Epioblasma triquetra*), rabbitsfoot (*Quadrula cylindrical cylindrical*), and sheepnose (*Plethobasus cyphus*)—and the Indiana bat (*Myotis sodalis*) occur in Tippecanoe County. However, none of these species are likely to occur near the PUR-1 because the facility is located on the Purdue University Campus, which has been developed since the 1960s and

does not provide suitable habitat for Federally-listed species. Additionally, operation of PUR-1 has no direct nexus to the natural environment that would affect Federally-listed species. Accordingly, the NRC concludes that the proposed license renewal of the PUR-1 would have no effect on Federally-listed species or critical habitats. Federal agencies are not required to consult with the FWS if they determine that an action will not affect listed species or critical habitats (ADAMS Accession No. ML16120A505). Thus, the ESA does not require consultation for the proposed PUR-1 license renewal and proposed power uprate, and the NRC considers its obligations under ESA section 7 to be fulfilled for the proposed action.

#### Costal Zone Management Act

Tippecanoe County, Indiana does not contain any coastal zones. Because the PUR-1 is not located within or near any managed coastal zones, the proposed action would not affect any coastal zones and Coastal Zone Management Act consistency certification does not apply.

#### National Historic Preservation Act

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. As stated in the Act, historic properties are any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places (NRHP). The NRHP lists several historic districts and properties within 0.5 miles of PUR-1 in the Duncan Annex of the Electrical Engineering Building on the campus of Purdue University. Operation of PUR-1 has not likely had any impact on these districts and properties. Based on this information, the NRC staff finds that the potential impacts of license renewal and the continued operation of PUR-1 would have no adverse effect on historic properties located near PUR-1.

#### Fish and Wildlife Coordination Act

The proposed action does not involve any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage. Therefore, no coordination with FWS pursuant to the Fish and Wildlife Coordination Act is required for the proposed action.



#### Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of PUR-1. Such effects may include human health, biological, cultural, economic, or social impacts.

**Minority Populations in the Vicinity of PUR-1.** According to U.S. Census Bureau's 2010 Census, approximately 21 percent of the total population (approximately 164,000 individuals) residing within a 10-mile radius of PUR-1 identified themselves as minorities. The largest minority population were Hispanic, Latino, or Spanish origin of any race at (approximately 12,800 or 8 percent), followed by Asian (approximately 10,700 persons or 7 percent). According to the 2010 Census, about 20 percent of the Tippecanoe County population identified themselves as minorities, with persons of Hispanic, Latino, or Spanish origin and Asians comprising the largest minority populations (approximately 8 and 7 percent, respectively). According to the U.S. Census Bureau's 2014 American Community Survey 1-year Estimates, the minority population of Tippecanoe County, as a percent of the total population, had increased to about 22 percent.

**Low-income Populations in the Vicinity of PUR-1.** According to the U.S. Census Bureau's 2010–2014 American Community Survey 5-Year Estimates, approximately 36,000 persons and 4,000 families (approximately 22.7 and 11.7 percent, respectively) residing within a 10-mile radius of PUR-1 were identified as living below the Federal poverty threshold. The 2014 Federal poverty threshold was \$24,230 for a family of four.

According to the U.S. Census Bureau's 2014 American Community Survey Census 1-Year Estimates, the median household income for Indiana was \$49,446, while 11 percent of

families and 15.2 percent of the state population were found to be living below the Federal poverty threshold. Tippecanoe County had a lower median household income average (\$45,771) and a higher percent of families and people living below the poverty level (12.2 and 23.6 percent, respectively).

**Impact Analysis.** Potential impacts to minority and low-income populations would mostly consist of radiological effects, however, radiation doses from continued operations associated with the license renewal and the proposed power increase are expected to continue at current levels, and would be well below regulatory limits.

Based on this information and the analysis of human health and environmental impacts presented in this EA, the proposed action would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of PUR-1.

#### Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the NRC considered denying the proposed action (*i.e.*, the “no-action” alternative). If the NRC denied the request for license renewal, reactor operations would cease and decommissioning would be required. The NRC notes that, even with a renewed license, PUR-1 will eventually be decommissioned, at which time the environmental effects of decommissioning would occur. Decommissioning would be conducted in accordance with an NRC-approved decommissioning plan, which would require a separate environmental review under § 51.21. Cessation of reactor operations would reduce or eliminate radioactive effluents. However, as previously discussed in this EA, radioactive effluents from reactor operations constitute a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal, including the proposed power uprate, and the denial of the request for license renewal would be

similar. In addition, denying the request for license renewal would eliminate the benefits of teaching, research, and services provided by the PUR-1 facility.

#### Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of Facility Operating License No. R-87 for the PUR-1 in August 1988, which renewed the Facility Operating License for a period of 20 years.

#### Agencies and Persons Consulted

The NRC did not enter into consultation with any other Federal agencies or with the State of Indiana regarding the environmental impact of the proposed action. However, on October 21, 2016, the NRC notified the Indiana State official, Ms. Laura Dresen, Radiation Programs Director, of the Indiana Department of Homeland Security of the proposed action. The State official had no comments.

### III. Finding of No Significant Impact

The NRC is considering issuance of a renewed Facility Operating License No. R-87, held by Purdue University, which would authorize the continued operation of PUR-1 for an additional 20 years.

On the basis of the EA included in Section II of this notice and incorporated by reference in this finding, the NRC concludes that the proposed action would not have significant effects on the quality of the human environment. Section IV lists the environmental documents related to the proposed action and includes information on the availability of these documents. Based on its findings, the NRC has decided not to prepare an environmental impact statement for the proposed action.

### IV. Availability of Documents

The documents identified in the following tables are available to interested persons as indicated.

Document	ADAMS accession No.
Purdue University, School of Nuclear Engineering. Application for relicense of License Number R-87 with Power Uprate, July 7, 2008 .....	ML083040443
Purdue University Safety Analysis Report, June 30, 2008 [Redacted Version] .....	ML111890201
Purdue University—Request for Additional Information (RAI) Regarding License Renewal, [Decommissioning Funding Statement of Intent], June 3, 2010 .....	ML101620125
Purdue University—Request For Additional Information Regarding the Purdue University Reactor License Renewal (Tac No. Me 1594), Responses to RAIs Dated 24 March 2010, [Responses To ML100820019, financial assurance, statement of intent, signature authority, financial report], June 4, 2010 .....	ML101620184
Response to Request for Additional Information Regarding the Purdue University Reactor License Renewal (TAC ME1594), Response to RAIs Dated 6 July 2011 (ML101460429), November 15, 2011 .....	ML11320A287



Document	ADAMS accession No.
Purdue University—Request for Additional Information Regarding the License Renewal, Responses to RAIs Dated 6 July 2011, [Responses 11, 12, 13, 15, 16, 18, 21, 23, 25, 27, 28, 30, 31, 33, 35, 36, and 37], January 4, 2012 .....	ML12006A193
Purdue University—Responses to the Request for Additional Information Regarding the Purdue University Reactor License Renewal dated July 6, 2011, [Responses 3, 4, 7, 10, 17, 19, 20, 22, 24, 29, 34, and 40], January 30, 2012 .....	ML12031A223
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal (TAC NO. ME 1594), Responses to RAIs (ML103400115 and ML103400250) (Redacted Version), [Responses 45, 55, 62, 65, 66, 67, 68, 70, and 73], January 31, 2012 .....	ML14234A109
Request for Additional Information Regarding the Purdue University Reactor License Renewal (TAC ME1594), Responses to RAIs (ML103400115 and ML103400250), [Responses 43, 51, 56, 60, and 61], June 1, 2012 .....	ML12156A364
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal (TAC No. ME1594), Responses to RAIs (ML103400115 and ML103400250), [Response 46, 47, 52, 57, and 59], June 15, 2012 .....	ML12170B018
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal, Responses to RAIs (ML103400115 and ML103400250), [Response 48, 58, 96, 97 and 98], June 29, 2012 .....	ML12170B018
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal, Response to RAI, [Response 49, 50, 53, 64, and 72], July 13, 2012 .....	ML12201A070
Purdue University—Response to Request for Additional Information Regarding Purdue University Reactor License Renewal (TAC No. ME1594, Responses to RAIs (ML103400115 and ML103400250), [Responses 54, 69, 77, 78, and 92], August 11, 2012 .....	ML12226A400
Purdue University—Response to Request Request for Additional Information Regarding the Purdue University Reactor License Renewal (TAC ME1594), [Responses 54, 69, 77, 78, and 92], April 10, 2013 .....	ML13101A044
U.S. Fish and Wildlife Service, Endangered Species Consultations Frequently Asked Questions, July 15, 2013 .....	ML16120A505
Purdue University Research Reactor, Report on Reactor Operations For the Period January 1, 2011 to December 31, 2011, July 18, 2013 .....	ML13203A081
Purdue University Research Reactor, Report on Reactor Operations For the Period January 1, 2012 to December 31, 2012, July 18, 2013 .....	ML13203A082
Purdue University Research Reactor, Report on Reactor Operations For the Period January 1, 2013 to December 31, 2013, May 22, 2014 .....	ML14154A123
Purdue University Research Reactor, Report on Reactor Operations For the Period January 1, 2014 to December 31, 2014, March 30, 2015 .....	ML15092A160
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221), [RAI cover letter for responses to August 29, 2015 NRC letter], July 24, 2015 .....	ML15210A280
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221), Part 1 of 5, [RAI Responses part 1 of 5: responses (1–29), TS (30–64), d/c cost estimate (65–68), Requal (69–73), SAR Chs. 1–5 (70–162)], July 24, 2015 .....	ML15210A282
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221), Part 2 of 5, [RAI Responses part 2 of 5 (SAR Chs. 6–15)], July 24, 2015 .....	ML15210A283
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221), Part 3 of 5, [RAI Responses Part 3 of 5 (drawings)], July 24, 2015 .....	ML15210A285
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221), Part 4 of 5, [RAI Responses Part 4 of 5 (drawings)], July 24, 2015 .....	ML15210A287
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221), Part 5 of 5, [RAI Responses part 5 of 5 (NATCON, Procedures, Drawings)], July 24, 2015 .....	ML15210A288
Purdue University—Response to NRC Request for Additional Information Regarding Physical Security Plan Review for License Renewal, January 29, 2016 .....	ML16047A382
Purdue University—Re-Submittal Response to NRC Request for Additional Information Regarding Physical Security Plan Review for License Renewal, February 26, 2016 .....	ML16083A219
Purdue Re-Submittal of Response to NRC Request for Additional Information Re: Physical Security Plan Review for License Renewal, March 31, 2016 .....	ML16102A123
Purdue University Research Reactor, Report on Reactor Operations For the Period January 1, 2015 to December 31, 2015, March 31, 2016 .....	ML16102A119
Purdue University—Second Re-Submittal of Response to NRC Request for Additional Information Regarding Physical Security Plan Review for License Renewal, May 9, 2016 .....	ML16134A143
Purdue University School of Nuclear Engineering Notice of ADAMS Document Correction, PUR–1, Docket 50–182, ML16187A371, Technical Specifications, Proposed Amendment 13 Enclosed, [Correction of the TSs, originally submitted under ML16187A371], July 7, 2016 .....	ML16193A681
Purdue University Responses to Request for Additional Information re PUR–1 License Renewal and Power Uprate, [Responses to RAIs ML15328A314], July 19, 2016 .....	ML16207A426
Purdue University—Response to Request for Additional Information Regarding the Reactor License Renewal Application, Responses to Letter dated July 25, 2016, September 19, 2016 .....	ML16267A465
Purdue University—Explanation of Technical Specification Changes and Emergency Operator Action, September 29, 2016 .....	ML16277A165

Dated at Rockville, Maryland, this 21st day October, 2016.

For the Nuclear Regulatory Commission.

**Alexander Adams, Jr.,**

*Chief, Research and Test Reactors Branch,  
Division of Policy and Rulemaking, Office  
of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-373 and 50-374; NRC-2014-0268]

### Exelon Generation Company, LLC.; LaSalle County Station, Units 1 and 2; License Renewal

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License renewal and record of decision; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has issued renewed facility operating license Nos. NPF-11 and NPF-18 to Exelon Generation Company, LLC (Exelon or the licensee), the operator of LaSalle County Station, Units 1 and 2. Renewed facility operating license Nos. NPF-11 and NPF-18 authorize the operation of LaSalle County Station, Units 1 and 2 by the licensee at reactor core power levels not in excess of 3546 megawatts thermal in accordance with the provisions of the renewed licenses and technical specifications until April 17, 2042 and December 16, 2043, respectively. The NRC prepared a safety evaluation report, a final supplemental environmental impact statement (FSEIS), and a record of decision (ROD) that support its decision to issue renewed facility operating license Nos. NPF-11 and NPF-18.

**DATES:** Renewed facility operating license Nos. NPF-11 and NPF-18 were issued and effective on October 19, 2016.

**ADDRESSES:** Please refer to Docket ID NRC-2014-0268 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0268. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Mitchell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3019; email: [Jeffrey.Mitchell2@nrc.gov](mailto:Jeffrey.Mitchell2@nrc.gov).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the NRC has issued renewed facility operating license Nos. NPF-11 and NPF-18 to Exelon Generation Company, LLC, the operator of LaSalle County Station, Units 1 and 2. Renewed facility operating license Nos. NPF-11 and NPF-18 authorize the operation of LaSalle County Station, Units 1 and 2 by the licensee at reactor core power levels not in excess of 3546 megawatts thermal in accordance with the provisions of the renewed licenses and technical specifications until April 17, 2042 and December 16, 2043, respectively.

LaSalle County Station, Units 1 and 2, are boiling-water reactors located in Brookfield Township, LaSalle County, Illinois. The NRC determined that the application for the renewed licenses, "License Renewal Application, LaSalle County Station, Units 1 and 2, Facility Operating License Nos. NPF-11 and NPF-18," dated December 9, 2014 (ADAMS Accession No. ML14343A849), as supplemented by letters dated through June 8, 2016, complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations set forth in Chapter I of title 10 of the *Code of Federal Regulations* (10 CFR). As required by the Act and the NRC's regulations, the NRC has made the appropriate findings, which are set forth in the renewed licenses. A public notice of the proposed issuance of the renewed licenses and an opportunity to request

a hearing was published in the **Federal Register** on February 3, 2015 (80 FR 5822).

The NRC's FSEIS, NUREG-1437, Supplement 57, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding LaSalle County Station, Units 1 and 2," and ROD that support the NRC's issuance of renewed facility operating license Nos. NPF-11 and NPF-18 are available in ADAMS under Accession Nos. ML16264A222 and ML16238A029, respectively. As discussed in the FSEIS and ROD, the NRC considered a range of reasonable alternatives to the issuance of the renewed licenses that included new nuclear power generation, coal-integrated gasification combined-cycle, natural gas combined-cycle (NGCC), a combination of wind, solar, and NGCC, purchased power, and the no-action alternative. The FSEIS and ROD document the NRC's decision with respect to its environmental review that the adverse environmental impacts of issuing the renewed licenses are not so great that preserving the option of license renewal for energy-planning decisionmakers would be unreasonable.

For further details with respect to this action, see: (1) The Exelon Generation Company, LLC license renewal application for LaSalle County Station, Units 1 and 2, dated December 9, 2014, as supplemented by letters dated through June 8, 2016; (2) the NRC safety evaluation report dated September 2016 (ADAMS Accession No. ML16271A039); (3) the NRC FSEIS dated August 2016; and (4) the NRC ROD dated October 2016.

Dated at Rockville, Maryland, this 19th day of October, 2016.

For the Nuclear Regulatory Commission.

**Jane E. Marshall,**

*Acting Director, Division of License Renewal,  
Office of Nuclear Reactor Regulation.*

[FR Doc. 2016-25988 Filed 10-26-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79133; File No. SR-CBOE-2016-071]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Opening and Closing Rotations Under the HOSS System

October 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on October 7, 2016, Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 its rules related to the opening of series for trading on the Exchange. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### **A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

CBOE proposes to amend its rules related to the opening of series for trading on the Exchange. Rule 6.2B describes the process the Exchange’s Hybrid Trading System (the “System”) uses to open series on the Exchange each trading day (referred to as “HOSS”). The Exchange may also use this same process for closing series or opening series after a trading halt. The Exchange proposes to make various changes to this rule to reorganize and simplify the rule as well as make other changes to the opening procedures in order to reflect current System functionality.

#### **Opening (and Sometimes Closing) Procedures**

The Exchange proposes to amend Rule 6.2B by reorganizing the provisions of the rule to describe the HOSS procedures in a more sequential manner, clarifying the timing of each stage of the process and enhancing or modifying the description of certain provisions within the rule. HOSS generally processes the opening of each series as follows:

(1) *Pre-Opening Period*: During the pre-opening period, the System will accept orders and quotes and disseminate messages that contain information based on resting orders and quotes in the book, which may include the expected opening price (“EOP”), expected opening size (“EOS”), any reason why a series may not open and imbalance information, including the size and side of an imbalance (“expected opening information” or “EOIs”).

(2) *Initiation of the Opening Rotation*: At this time, the System initiates the opening rotation procedure and distributes a rotation notice to market participants.

(3) *Opening Rotation Period*: During the opening rotation period, the System matches and executes orders and quotes against each other in order to establish an opening Exchange best bid and offer (“BBO”) and trade price for each series while continuing to disseminate expected opening information.

(4) *Opening of Trading*: At this time, the System opens series for trading, subject to the satisfaction of certain conditions.

The proposed rule change more clearly organizes the provisions of Rule 6.2B in this order and makes the additional following changes.

#### **Pre-Opening Period**

Rule 6.2B(a) currently provides that, for regular trading hours, for a period of time before the opening of trading in the underlying security or, in the case of index options, prior to 8:30 a.m.,<sup>3</sup> and for extended trading hours, for a period of time prior to 2:00 a.m. (as determined by the Exchange on a class-by-class basis), the System will accept orders and quotes (the System will not accept certain orders during the pre-opening period, as discussed below). The times specified in the current rule are not the times at which series open for trading, but rather the times at which the System initiates opening rotations, which is described later in the rule (see description of proposed paragraph (b)(i)

below). The Exchange proposes to amend Rule 6.2B(a) to provide the pre-opening period begins for each trading session no later than 15 minutes prior to the expected initiation of an opening rotation (the Exchange determines the specific time at which the pre-opening period will begin).<sup>4</sup> The Exchange believes it is repetitive to include a description of the time at which series open in this paragraph. The proposed rule change adds the pre-opening period will begin no earlier than 2:00 a.m. for regular trading hours and no earlier than 4:00 p.m. on the previous day for extended trading hours to provide additional information regarding when the Exchange may begin the pre-opening period. The Exchange believes it is appropriate to have pre-opening periods of different lengths for the different trading sessions in order to accommodate extended trading hours Trading Permit Holders who may want to submit orders for that trading session, for example, after regular trading hours close but prior to the end of the day rather than in the middle of the night. Additionally, the System begins the pre-opening period at the same time for each class within each type of option (equity, index and exchange-traded products (“ETP”)), so the proposed rule change deletes the provision of the rule that says the Exchange will determine the time on a class-by-class basis. The Exchange believes indicating a minimum and maximum time for the pre-opening period provides Trading Permit Holders with more specific information regarding the timeframe of the pre-opening period.

The proposed rule change amends Rule 6.2B(a)(i) by deleting the provision that indicates the Exchange will designate eligible order size, order type and order origin code as order terms for which the Exchange may designate eligibility for submission during the pre-opening period on a class-by-class basis. The Exchange currently does not, and does not intend to, restrict the size or origin code of orders that may be submitted during the pre-opening period, so this provision is no longer necessary. Additionally, the System currently accepts all quotes and all order types during the pre-opening period except for immediate-or-cancel, fill-or-fill, intermarket sweep orders, and Market-Maker trade prevention orders, as acceptance of those order types during the pre-opening period

<sup>4</sup> Currently, the pre-opening period begins at approximately 6:30 a.m. for regular trading hours and approximately 4:00 p.m. on the previous day for extended trading hours.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> All times are central time.

would be inconsistent with their terms.<sup>5</sup> The proposed rule change lists these few exceptions in the rule. The proposed rule change also adds if an order entered during the pre-opening period for regular trading hours is not eligible for book entry (including minimum volume, not held and market-if-touched orders), the System routes the order via the order handling system pursuant to Rule 6.12.<sup>6</sup> As discussed below, not all of these orders may participate in the opening rotation.

The proposed rule change proposes to amend Rule 6.2B(a)(ii) in several ways. First, the proposed rule change amends the description of when the System begins disseminating expected opening information. Currently, the rule states, at specified intervals of time determined by the Exchange, the System will disseminate information about resting orders in the book that remain from the prior business day and orders and quote submitted before the opening, which may include the EOP and EOS. The Exchange proposes to revise this provision to state beginning at a time (determined by the Exchange) no earlier than three hours prior to the expected initiation of an opening rotation for a series, the System disseminates EOIs to all market participants that have elected to receive them at regular intervals of time (the length of which is determined by the Exchange) or less frequently if there are no updates to the opening information since the previously disseminated EOI. This revised rule text clarifies the time at which the System will begin disseminating expected opening information, which may be different (and generally later) than the beginning of the pre-opening period, as the Exchange believes recipients generally want to receive EOIs closer to the opening of trading.<sup>7</sup> Additionally,

this proposed rule change indicates EOIs are generally sent out regularly, but if there have been no changes (for example, the EOS and EOP have not changed because there are no new orders or quotes), then the System does not disseminate a duplicate message to users at the next regular interval time.

Second, the proposed rule change also amends Rule 6.2B(a)(ii) to more specifically describe the information regarding the expected opening of a series that the System disseminates. Currently, subparagraph (a)(ii) provides that the System will disseminate information about resting orders in the book that remain from the prior business day and any orders and quotes submitted before the opening, including the expected opening price and size. The Exchange proposes to simplify this provision by stating that the expected opening information will be based on resting orders in the book (which includes orders remaining from the prior trading day and orders entered during the pre-opening period) and quotes submitted prior to the opening of trading. Additionally, in addition to the EOP and EOS, these messages may include additional information based on the circumstances, such as a description of the reason why a series may not or did not open (e.g., no quote or opening trade) and imbalance information, including the size and side of the imbalance (see discussion below regarding opening conditions), which reasons are described in current Rule 6.2B(e) and proposed Rule 6.2B(d). The Exchange proposes to add a definition of EOIs, which may include not only the EOP and EOS but also these other types of information. The Exchange proposes to incorporate this definition in other parts of the rule (as further discussed below).

Third, the proposed rule change amends the provision about what the EOP is and when it is calculated. Currently, Rule 6.2B(a)(ii) states that the EOP is the price at which the greatest number of orders and quotes in the book are expected to trade and that an EOP may only be calculated if (a) there are market orders in the book, or the book is crossed or locked and (b) at least one quote is present. The proposed rule change revises this language to state the EOP is the price at which any opening trade is expected to execute. The EOS is

the size of any expected opening trade. As further discussed below, the definition of opening price is included in current paragraph (c), so the proposed rule change deletes that definition from paragraph (a)(ii) and only includes the definition in proposed paragraph (c), as the Exchange believes it is less confusing to include the opening price definition in the rules only one time. Additionally, the proposed rule change deletes the language the EOP may only be calculated if there are market orders in the book or the book is crossed. Because the EOP is a price of an expected opening trade, it is only possible to have a trade if there are market orders or a locked or crossed market, so the Exchange believes this language is unnecessary. Further, the proposed rule change states the System will only disseminate EOP and EOS messages: (a) If the width between the highest quote bid and lowest quote offer on the Exchange is no wider than the OEPW range (as defined below), in classes in which the Hybrid Agency Liaison ("HAL")<sup>8</sup> is not activated for openings; or (b) if the width between the highest quote bid and lowest quote offer on the Exchange or disseminated by other exchanges is no wider than the OEPW range, in classes in which HAL is activated for openings ("HALO").<sup>9</sup> As discussed below, the Exchange's opening quote width must be no wider than OEPW range for a series to open, and this revised language is consistent with that opening condition.

#### Opening Rotation Initiation and Notice

Rule 6.2B(b) currently provides, unless unusual circumstances exist, at a randomly selected time within a number of seconds after the opening trade and/or the opening quote is disseminated in the market for the underlying security<sup>10</sup> (or after 8:30 a.m.

<sup>5</sup> See Rule 6.53 for definitions of these order types. For example, an immediate-or-cancel order is intended to execute immediately once represented on the Exchange or be cancelled. As there is no trading during the pre-opening period, an immediate-or-cancel order submitted during the pre-opening period would never execute and always be cancelled; thus, the Exchange determined to not permit this order type during the pre-opening period. Rule 6.53(l) defines opening rotation orders, and the proposed rule change amends this definition to include limit orders. The Exchange does not believe it is necessary to restrict limit orders from being entered to participate in the opening rotation, as they will execute during the opening rotation pursuant to the opening procedures in the same manner as market orders.

<sup>6</sup> Orders not eligible for book entry may only be traded open outcry on the Exchange floor. Because trading during extended trading hours is electronic only, the System does not accept these order [sic] during that trading session and, thus, this proposed provision is not applicable during that trading session.

<sup>7</sup> Currently, the System begins disseminating EOIs at approximately 7:30 a.m. for SPX and EEM

options and approximately 8:00 a.m. for all other options. The System disseminates EOIs at 30-second intervals during the pre-open period and 1-second intervals during the opening rotation period (see discussion below for additional information regarding the dissemination of EOIs during the opening rotation). See Regulatory Circular RG13-061.

<sup>8</sup> HAL provides automated order handling in designated Hybrid classes for electronic orders that are not automatically executed by the System. HAL exposes these orders at the national best bid or offer, and Trading Permit Holders may submit responses to trade with the orders. See Rule 6.14A.

<sup>9</sup> Because this proposed language implies there must be a quote, the proposed rule change also deletes the language that the EOP may only be calculated if at least one quote is present, as it would be duplicative.

<sup>10</sup> The "market for the underlying security" is currently the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months) or the first market to open the underlying security. The Exchange does not designate the primary volume market as the market for the underlying security for any class, and thus the proposed rule change deletes that option. The proposed rule change also changes the term "market" to "exchange," as the primary listing market or first market to open is a national

for index options) with respect to regular trading hours, or after 2:00 a.m. with respect to extended trading hours, the System initiates the opening rotation procedure and sends a notice ("Rotation Notice") to market participants. It further provides the Rotation Notice will be sent following the opening trade or opening quote or which occurs first (as determined by the Exchange on a class-by-class basis). The Exchange proposes to amend Rule 6.2B(b) to provide in proposed subparagraph (i) that the System initiates the opening rotation procedure on a class-by-class basis:<sup>11</sup>

- For regular trading hours:
  - With respect to equity and ETP options, after the opening trade or the opening quote is disseminated in the market for the underlying security, or at 8:30 for classes determined by the Exchange (including over-the-counter equity classes); or
  - with respect to index options, at 8:30 a.m., or at the later of 8:30 a.m. and the time the Exchange receives a disseminated index value for classes determined by the Exchange; and
- for extended trading hours, at 2:00 a.m.

The proposed rule change also deletes the phrase regarding the initiation of the opening rotation procedure at a randomly selected time within a number of seconds after the triggering event.

The Exchange believes this proposed change more accurately describes the timing at which the System initiates the opening rotation procedure for each type of option, which generally occurs immediately after the triggering event rather than a randomly selected number of seconds after the event. The proposed rule change provides, while the dissemination of the opening trade or quote in the market for the underlying security is generally the trigger to initiate the opening rotation for an equity or ETP class, the Exchange may determine to open certain equity and ETP classes at 8:30 a.m. instead if it does not have access to underlying information for those classes. The Exchange does not receive underlying information regarding the opening of certain equities.<sup>12</sup> The proposed rule

change provides the Exchange with the necessary flexibility to ensure it can open trading in options overlying these equities in such circumstances. Similarly, the proposed rule change provides the Exchange with flexibility to open certain index options at the later of 8:30 a.m. and the time the Exchange receives a disseminated index value, in addition to at 8:30 a.m., to address circumstances in which this may be a more useful opening trigger.

In addition, the Exchange proposes to amend current Rule 6.2B(b)(i), which is proposed Rule 6.2B(b)(ii), to state the System notifies market participants of the opening rotation initiation upon initiating the opening rotation procedure (defined as the "Rotation Notice") rather than following the opening trade or quote. The initiation of the opening rotation for a series triggers the dissemination of the notice, so the Exchange believes this proposed change more accurately and simply describes when market participants will receive the rotation notice.

#### Opening Rotation Period

Current Rule 6.2B(c) provides after the rotation notice is sent, the System will enter into a rotation period, during which the opening price will be established for each series. During the rotation period, the System will continue to calculate and provide the EOP and EOS given the current resting orders and quotes. The System will process the series of a class in a random order, and the series will begin opening after a period following the rotation notice, which period will not exceed 60 seconds and will be established on a class-by-class basis.

The proposed rule change reorganizes paragraph (c) to describe when the opening rotation period begins (which is after the System initiates the opening rotation procedure and sends the rotation notice) (proposed subparagraph (c)), what happens during the period (proposed subparagraph (c)(i)), the handling of EOIs during the period (proposed subparagraph (c)(ii)), and when the period ends (proposed subparagraph (c)(iii)). The Exchange believes this will more clearly describe for investors the opening rotation process.

The proposed rule change adds detail regarding what occurs during the opening rotation period. Specifically, while the rules currently state the System establishes the opening trade

("OTC") and believes it is in the interest of a fair and orderly market to initiate the opening rotation at 8:30 for those stocks rather than take additional time to confirm the OTC market for those stocks opened.

price for a series during the opening rotation period, the proposed rule change adds proposed subparagraph (c)(i), which states the System does this (as well as establish the opening BBO) by matching and executing resting orders and quotes against each other. The proposed rule change moves the definition of opening trade price to proposed subparagraph (c)(i)(A) from current subparagraph (c)(iv) so the rules include discussions of the opening trade price in a single location within the rules. The proposed rule change amends the definition of the opening trade price of a series to be the "market-clearing" price, which is the single price at which the largest number of contracts in the book can execute, leaving bids and offers that cannot trade with each other. The Exchange believes it is more appropriate to clear the largest size from the book at the open, even if that size is comprised of a smaller number of orders and quotes (as stated in Rule 6.2B(a)(ii)). The EOS is the size of any expected opening trade. This is consistent with the change to the definition of EOP, as discussed above. The proposed rule change adds if there are multiple prices at which the same number of contracts would clear, the System uses (a) the price at or nearest to the midpoint of the opening BBO, or the widest offer (bid) point of the OEPW range if the midpoint is higher (lower) than that price point, in classes in which the Exchange has not activated HALO; or (b) the price at or nearest to the midpoint of the range consisting of the higher of the opening NBB and widest bid point of the OEPW range, and the lower of the opening NBO and widest offer point of the OEPW range, in classes in which the Exchange has activated HALO.

The proposed rule change also adds proposed paragraph (c)(i)(B), which states all orders (except complex orders and, in classes in which the Exchange has not activated HALO, all-or-none orders and orders with a stop contingency) and quotes in a series in the book prior to the opening rotation period participate in the opening rotation for a series. Contingency orders that participate in the opening rotation may execute during the opening rotation period only if their contingencies are triggered. The proposed rule change also notes complex orders do not participate in the opening rotation. While the System accepts those orders prior to the open, the Exchange believes it would complicate the opening rotation if they participated in the opening rotation and attempted to execute against the leg markets. Similarly, the Exchange

securities exchange. The proposed rule change clarifies that the Exchange determines on a class-by-class basis which market is the market for the underlying security.

<sup>11</sup> See discussion below regarding the proposed rule change to amend various provisions of Rule 6.2B to allow the Exchange to make determinations on a series-by-series basis rather than class-by-class basis.

<sup>12</sup> For example, with respect to pink sheet stocks, the Exchange does not receive underlying information from the over-the-counter market

determined to not have all-or-none orders and orders with a stop contingency participate in the opening rotation in classes in which the Exchange has not activated HALO, so the proposed rule change codifies this in the Rules. Because proposed subparagraph (c)(i)(B) describes the matching process that occurs during the opening rotation period, the proposed rule change moves the rule provision regarding the priority order of orders and quotes during this matching process from current subparagraph (c)(iv) to proposed subparagraph (c)(i)(C).<sup>13</sup>

The proposed rule change also revises the language regarding the messages disseminated during the opening rotation period to provide the System will continue to disseminate EOIs (not just the EOP and EOS). This proposed revision is consistent with the proposed language described above regarding dissemination of EOIs during the pre-opening period (and incorporates the proposed definition of EOIs). The proposed rule change provides the Exchange with the authority to determine a shorter interval length for the dissemination of EOIs during the opening rotation period than during the pre-opening period, as the Exchange believes market participants may want to receive these messages more frequently closer to the opening. This flexibility is intended to ensure the Exchange may disseminate these messages to market participants as frequently as it deems necessary to ensure a fair and orderly opening.

Proposed subparagraph (c)(iii) updates the description of the length of the opening rotation period and how the System processes series to open following the opening rotation period. Current subparagraph (c)(ii) states the System will process the series of a class in a random order and the series will begin opening after a period following the Rotation Notice, which period may not exceed sixty seconds and will be established on a class-by-class basis by the Exchange. Proposed subparagraph (c)(iii) states after a period of time determined by the Exchange for all classes, the System opens series of a class in a random order, staggered over regular intervals of time (the Exchange determines the length and number of these intervals for all classes).<sup>14</sup> Subject

to satisfaction of opening conditions described below (in proposed paragraph (d)), the opening rotation period (including these intervals) may not exceed 60 seconds. The Exchange believes this change more clearly and accurately describes how the System opens series for trading, which it does randomly as set forth in the current rule but in a staggered manner over regular intervals. These intervals are intended to manage the number of series that will open during a short time period to ensure a fair and orderly opening.

The proposed rule change also deletes current subparagraph (c)(iii), which states prior the expiration of the opening rotation period, the System will not open a series unless opening quotes that comply with the bid/ask differential requirements have been entered by at least one Market-Maker. Current paragraph (e) (and proposed paragraph (d)) describes conditions that must be satisfied for a series to open, including the required quotes, so the Exchange believes this provision is duplicative.<sup>15</sup>

#### Opening Quote and Trade Price

The proposed rule change deletes the language in current paragraph (d) stating as the opening price is determined by series, the System will disseminate through OPRA the opening quote and the opening trade price, if any. The System disseminates all quote and trade price information to OPRA once a series opens pursuant to the OPRA plan, including opening quote and trade price information, so the Exchange believes it is unnecessary to include this provision specifically in the opening rule.

#### Opening Conditions

Current Rule 6.2(e) provides that the System will not open a series if one of the following conditions is met:

(1) There is no quote present in the series that complies with the bid/ask differential requirements (as determined by the Exchange on a class-by-class

processing series to open at two seconds, and the Exchange has set the number of intervals to two and the length of the intervals to one second. As a result, the opening rotation period currently lasts two to four seconds (the proposed rule change clarifies that the various time periods and intervals combine to form the opening rotation period). See Regulatory Circular RG11-072. In other words, after two seconds, the System randomly selects a group of series to open; after the first one-second interval passes, the System randomly selects another group of series to open; and after the second one-second interval, the System opens the remaining group of series.

<sup>15</sup> As further discussed below, while Market-Makers' quotes (including opening quotes) must all be within Exchange-set bid/ask differentials pursuant to Rule 8.7, whether a series opens is based on whether the opening quote width is no wider than the OEPW range and not bid/ask differentials.

basis) that has been entered by at least one Market-Maker appointed to the class (or by the DPM or LMM, as determined by the Exchange on a class-by-class basis);

(2) the opening price is not within an acceptable range (as determined by the Exchange) compared to the lowest quote offer and the highest quote bid; or

(3) the opening trade would leave a market order imbalance (*i.e.* there are more market orders to buy or to sell for the particular series than can be satisfied by the limit order, quotes and market orders on the opposite side); however, in series that will open at a minimum price increment, the System will open the series even if a sell market order imbalance exists.

The proposed rule change amends these conditions to provide that, notwithstanding proposed paragraph (c),<sup>16</sup> in classes in which the Exchange has not activated HALO:

(1) If there are no quotes in the series on the Exchange, the System does not open the series. There are no exceptions to this opening condition. The Exchange generally requires an opening quote to ensure there will be liquidity in a series when it opens;

(2) if the width between the Exchange's best quote bid and best quote offer (for purposes of subparagraph (d)(i), the "opening quote")<sup>17</sup> is wider than an acceptable opening price range (as determined by the Exchange on a class-by-class and premium basis) (the "Opening Exchange Prescribed Width range" or "OEPW range")<sup>18</sup> and there are orders or quotes

<sup>16</sup> The final provision of current paragraph (e) provides the following: If the first or second condition is present, the senior official in the Control Room may authorize the opening of the affected series where necessary to ensure a fair and orderly market; if the second condition is present, the System will not open the series but will send a notification to market participants indicating the reason; if the third condition is present, a notification will be sent to market participants indicating the size and direction of the market order imbalance. It further provides that the System will not open the series until the condition causing the delay is satisfied, and the System will repeat this process until the series is open. The proposed rule change combines the exceptions in current paragraph (e) with the applicable opening conditions in current subparagraphs (e)(i) through (iii) into proposed paragraph (d)(i) for ease of review.

<sup>17</sup> The term opening quote is used throughout the subparagraph, so the Exchange believes it is beneficial to clarify in the rules what this term means in the various places it is used. Additionally, as discussed below, the term opening quote has a different meaning for classes in which classes in which the Exchange has not activated HALO and classes in which it has activated HALO, so this proposed change reflects this distinction.

<sup>18</sup> Current OEPW settings are set forth in Regulatory Circular RG 13-025. The acceptable price range is determined by taking the midpoint of the highest quote bid and lowest quote offer plus/

<sup>13</sup> The System prioritizes orders in the following order: (1) Market orders, (2) limit orders and quotes whose prices are better than the opening price, and (3) resting orders and quotes at the opening price. The proposed rule change also notes contingency orders are prioritized as set forth in Rules 6.45A and 6.45B.

<sup>14</sup> Currently, the Exchange has set the period of time that must pass before the System begins

marketable against each other, the System does not open the series. However, if the opening quote width is no wider than the intraday acceptable price range for the series ("IEPW range")<sup>19</sup> and there are no orders or quotes marketable against each other, the System opens the series. If the opening quote width is wider than the IEPW range, the System does not open the series. The Exchange uses the OEPW range as a price protection measure to prevent orders from executing at extreme prices on the open. However, if there are no marketable orders, but the quote width would satisfy the price check parameter the Exchange uses for intraday trading, then there is no risk that an order will execute at an extreme price on the open. Because the risk that the OEPW range is intended to address is not present in that situation, the Exchange believes it is appropriate to open a series in that situation. If the opening quote width is wider than IEPW, then the System does not open the series, as executions at prices outside that range are not permitted by the above-referenced rule. The proposed rule change deletes the language regarding the ability of the senior official in the control room to authorize the opening of the affected series where necessary to ensure a fair and orderly market, as this is duplicative of current and proposed paragraph (e) (as discussed below). Proposed paragraph (e) provides the Exchange with the authority to open an affected series that does not open for any reason, not just due to lack of a quote, to ensure a fair and orderly market. Additionally, all quotes entered by Market-Makers (including quotes entered during the pre-opening period and opening rotation period) must satisfy bid/ask differentials,<sup>20</sup> so the Exchange does not believe Rule 6.2B needs to include this requirement as well and thus deletes it

minus half of the designated OEPW. The rules currently permit CBOE to set the OEPW on a class-by-class basis. The proposed rule change also clarifies that the Exchange may set the OEPW on a premium basis; as options with higher premiums may have wider spreads, the Exchange believes it is appropriate to have OEPW settings to reflect that. This is consistent with the Exchange's authority to set the IEPW pursuant to Rule 6.13(b)(v).

<sup>19</sup> See Rule 6.13(b)(v).

<sup>20</sup> See Rule 8.7(d). The Exchange may set different bid/ask differential requirements for a Market-Maker's opening quotes than for its intraday quotes (which it currently does). The proposed rule change specifies this in Interpretation and Policy .02 regarding Market-Maker quotes, which currently provides that the Exchange may also set a different minimum number of contracts for a Market-Maker's opening quotes. Because trading conditions at the open are generally different than intraday, the Exchange believes it is appropriate to have the flexibility to set different quoting restrictions for the opening to address these trading conditions.

from current subparagraph (c)(iii) (as discussed above). With respect to openings, the System looks to determine whether the opening quote width (whether the opening quote consists of a bid and offer from one Market-Maker or multiple Market-Makers<sup>21</sup>) is within the OEPW range (or IEPW range if there are no orders against each other), which the Exchange uses as a price protection measure, rather than within the bid/ask differentials.<sup>22</sup> The Exchange generally requires an opening quote to ensure there will be liquidity in a series when it opens;

(3) if the opening trade price would be outside of the OEPW range, the System does not open the series. As discussed above, the Exchange believes using the term OEPW range with respect to the acceptable range for opening price in the rules is a more accurate description of the appropriate range for opening prices (as this is the term used in circulars and among Trading Permit Holders). As indicated in the previous paragraph, the OEPW range is used as a price protection measure. There are no exceptions to this opening condition in order to prevent executions at extreme prices on the open. Additionally, the proposed rule change clarifies that a series will open if the opening trade price is at the widest part of OEPW range (it will only not open if it is outside OEPW range); or

(4) if the opening trade would leave a market order imbalance, which means there are more market orders to buy or to sell for the particular series than can be satisfied by the orders and quotes on the opposite side, the System does not open the series. However, if a sell market order imbalance exists, there is no bid in the series and the best offer is \$0.50 or less, the System opens the series; if there is no bid in the series and the best offer is greater than \$0.50, the System does not open the series. The proposed rule change deletes the language regarding the exception for series that will open at a minimum increment and revises this exception to use language consistent with the existing rule regarding the treatment of

<sup>21</sup> The term Market-Maker includes Designated Primary Market-Maker ("DPM") or Lead Market-Maker ("LMM"), as applicable appointed to the class, and thus the proposed rule change only uses the term Market-Maker when referring to all types of Market-Makers. The proposed rule change deletes this language from Interpretation and Policy .02, as it is unnecessary.

<sup>22</sup> Regulatory Circular RG13-025 sets forth the current OEPW range and how to calculate the range. This is the term with which Trading Permit Holders are familiar for the acceptable opening price range, as it is the term regularly used in circulars, and the Exchange believes it will be beneficial for investors if the rules refer to the same term.

no-bid series. Pursuant to Rule 6.13(b)(vi), in the situation in which there is no bid in the series and the best offer is \$0.50 or less, the System considers these market orders to be limit orders for the minimum increment applicable to the series and enter these orders in the book (behind limit orders to sell at the minimum increment already resting in the book). Essentially, this creates a situation in which a series opens at a minimum price increment (*i.e.* \$0.00–\$0.05). In the situation in which there is no bid in the series and the best offer is greater than \$0.50, if the no-bid series were to open while the best offer is greater than \$0.50, under the rules, a market order to sell will be handled via the order handling system pursuant to Rule 6.12 rather than route to the book. The Exchange believes it is appropriate to delay opening the series until the best offer is less than or equal to \$0.50 so that the market order can be placed in the book and more likely to get an execution. The proposed rule change deletes the language from the current provision regarding sending a notification when this condition as present, as notifications go out when a series does not open for any reason, as discussed below. This concept is included in proposed subparagraph (d)(iii).

Current Interpretation and Policy .03 describes opening conditions that apply to classes in which the Exchange has activated HALO. To keep the description of opening conditions for all classes in a single location within the rules, the proposed rule change moves these opening conditions to proposed subparagraph (d)(ii). Current Interpretation and Policy .03(a) provides that the System will not open a series if one of the following conditions is met:

(1) There is no quote present in the series that complies with the bid/ask differential requirements (as determined by the Exchange on a class-by-class basis) have been entered by at least one Market-Maker appointed to the class (or by the DPM or LMM, as determined by the Exchange on a class-by-class basis);

(2) the opening price is not within an acceptable range (as determined by the Exchange) compared to the lowest quote offer and the highest quote bid;

(3) the opening trade would be at a price that is not the national best bid or offer; or

(4) the opening trade would leave a market order imbalance (*i.e.*, there are more market orders to buy or to sell for the particular series than can be satisfied by the limit order, quotes and market orders on the opposite side).



Paragraph (b) describes what happens when each of these conditions is present:

(1) If the condition in paragraph (a)(i) is present (*i.e.*, there is no quote), the System will check to see if there is an NBBO quote on another market that falls within the acceptable opening range. If such an NBBO quote is present, the series will open and expose the marketable order(s) at the NBBO price. If such an NBBO quote is not present, the System will not open the series and will send a notification to market participants indicating the reason.

(2) If the condition in paragraph (a)(ii) is present (*i.e.*, the opening price is not within an acceptable range), the System will match orders and quotes to the extent possible and report the opening trade, if any, at a single clearing price within the acceptable range, then expose the remaining marketable order(s) at the widest price point within the acceptable opening range or the NBBO price, whichever is better.

(3) If the condition in paragraph (a)(iii) is present (*i.e.*, the opening trade would not be at the NBBO), the System will match orders and quotes to the extent possible and report the opening trade, if any, at a single clearing price within the acceptable opening range or the NBBO price, whichever is better, then expose the remaining marketable order(s) at the NBBO price.

(4) If the condition in paragraph (a)(iv) is present (*i.e.*, the opening trade would leave market order imbalance), the System will match orders and quotes to the extent possible and report the opening trade, if any, at a single clearing price, then expose the remaining marketable order(s) at the widest price point within the acceptable opening range or the NBBO price, whichever is better.

The proposed rule change amends the opening conditions to provide in proposed paragraph (d)(ii) as follows:<sup>23</sup>

(1) If there are no quotes on the Exchange or disseminated from at least one away exchange present in the series, the System does not open the series. There are no exceptions to this opening condition. The Exchange generally requires an opening quote to ensure there will be liquidity in a series when it opens;

(2) If the width between the best quote bid and best quote offer, which may consist of Market-Makers quotes or bids and offers disseminated from an away

exchange (for purposes of proposed subparagraph (d)(ii), the “opening quote”), is wider than the OEPW range and there are orders or quotes marketable against each other or that lock or cross the OEPW range, the System does not open the series. However, if the opening quote width is no wider than the IEPW range and there are no orders or quotes marketable against each other or that lock or cross the OEPW range, the System opens the series. If the opening quote width is wider than the IEPW range, the System does not open the series. If the opening quote for a series consists solely of bids and offers disseminated from an away exchange(s), the System opens the series by matching orders and quotes to the extent they can trade and reports the opening trade, if any, at the opening trade price. The System then exposes any remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is lower (higher). The proposed rule change only makes nonsubstantive, simplifying changes to the exception to this opening condition. Because the proposed definition of opening quote width includes bids and offers from away exchanges, opening quote width incorporates those bids and offers. If there are no Market-Maker quotes on CBOE but other exchanges have disseminated bids and offers in a series, those away quotes constitute the NBBO for the series. Thus, the proposed rule change clarifies that the System will open a series if the opening quote width, which is comprised of the best quotes on CBOE and other exchanges (essentially, the NBBO) is no wider than the OEPW range. As discussed above, the OEPW range is a price protection measure intended to prevent orders from executing at extreme prices on the open. If that market is no wider than the OEPW range, the Exchange believes it is appropriate to open a series under these circumstances and provide marketable orders on the Exchange with the opportunity to execute at the NBBO. If the opening quote width is no wider than the OEPW range, then the Exchange believes the risk of execution at an extreme price is not present. With respect to the exception to this opening condition, similar to the exception in proposed Rule 6.2B(d)(i)(B), if the best market (whether the Exchange or national market) would satisfy the price check parameter the Exchange uses for intraday trading, and there are no orders that can execute on the open, then there is no risk that an order will execute at an extreme price on the open. Because the risk that the OEPW range is

intended to address is not present in this situation, the Exchange believes it is appropriate to open a series given these conditions. Other proposed changes make the language (*e.g.*, language regarding matching orders and quotes and reporting the opening trade, and regarding the opening price being that which clears the largest number of contracts) in this paragraph consistent with language used in the other opening conditions and exceptions in proposed subparagraphs (d)(i) and (ii). Additionally, as discussed above, all quotes entered by Market-Makers (including quotes entered during the pre-opening period and opening rotation period) must satisfy bid/ask differentials,<sup>24</sup> so the Exchange does not believe the Rule 6.2B needs to include this requirement as well. With respect to openings, the System looks to determine whether the opening quote width (whether the opening quote consists of a bid and offer from one Market-Maker, multiple Market-Makers or quotes disseminated from away exchanges) is within the OEPW range, which the Exchange uses as a price protection measure, rather than within the bid/ask differentials.<sup>25</sup>

(3) if the opening trade price would be outside the OEPW range or the NBBO, the System opens the series by matching orders and quotes to the extent they can trade and reports the opening trade, if any, at an opening trade price not outside either the OEPW range or NBBO. The System then exposes any remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is lower (higher). As discussed above, the Exchange believes using the term OEPW range with respect to the acceptable range for opening price in the rules is a more accurate description of the appropriate range for opening prices (as this is the term used in circulars and among Trading Permit Holders). The OEPW range is used as a price protection measure. Additionally, the proposed rule change clarifies that a series will open if the opening trade price is at the widest part of the OEPW

<sup>24</sup> See Rule 8.7(d). The Exchange may set different bid/ask differential requirements for a Market-Maker's opening quotes than for its intraday quotes (which it currently does). The proposed rule change specifies this in Interpretation and Policy .02 regarding Market-Maker quotes, which currently provides the Exchange may also set a different minimum number of contracts for a Market-Maker's opening quotes.

<sup>25</sup> Regulatory Circular RG13-025 sets forth the current OEPW range. This is the term with which Trading Permit Holders are familiar for the acceptable opening, and the Exchange believes it will be beneficial for investors if the rules refer to the same term.

<sup>23</sup> Similar to proposed paragraph (d)(i) above, the proposed rule change combines the exceptions in current Interpretation and Policy .03(b) with the applicable opening conditions in current Interpretation and Policy .03(a) into single proposed subparagraph (d)(ii) for ease of review.



range (it will expose orders if it is outside the OEPW range). The proposed rule change makes nonsubstantive, simplifying changes to this opening condition and clarifies that the opening trade price must be something not outside the OEPW range or the NBBO (including the ends of the applicable range). Other proposed changes make the language in this paragraph consistent with language used in the other conditions in proposed subparagraphs (d)(i) and (ii);

(4) if the opening trade would leave a market order imbalance, which means there are more market orders to buy or to sell for the particular series than can be satisfied by the orders and quotes on the opposite side, the System opens the series by matching orders and quotes to the extent they can trade and reports the opening trade, if any, at the opening trade price. The System then exposes any remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is lower (higher). The proposed rule change makes nonsubstantive, simplifying changes to this provision. Other proposed changes make the language in this paragraph consistent with language used in the other conditions in proposed subparagraphs (d)(i) and (ii); or

(5) if the opening quote bid (offer) or the NBB (NBO) crosses the opening quote offer (bid) or the NBO (NBB) by more than an amount determined by the Exchange on a class-by-class and premium basis, the System does not open the series.<sup>26</sup> The System currently does not open a series if this condition exists to prevent executions at extreme prices, and the Exchange proposes to codify this condition in the rules so that market participants are aware of all circumstances under which a series may not open. There are no exceptions to this opening condition. If the opening quote bid (offer) or NBO (NBO) crosses the opening quote offer (bid) or NBO (NBB) by no more than the specified amount, the System will open the series by matching orders and quotes to the extent they can trade and report the opening trade, if any, at the opening trade price. The System then exposes any remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is lower (higher). If the best away market bid and offer are inverted by no more than the specified amount, there is a marketable order on each side of the series, and the System opens the

series, the System will expose the order on the side with the larger size and route for execution the order on the side with the smaller size to an away exchange that is at the NBBO. Only one order in a series may be exposed in a HAL auction, so this provision is consistent with this limitation and is intended to address the situation in which there may be a marketable order on each side of the market so that both orders have a possibility for execution. This exception is consistent with the other exceptions in proposed paragraph (b) as well as with current System functionality.

Generally, the purpose of these opening conditions and exceptions is to ensure that series open in a fair and orderly manner and at prices consistent with the current market conditions for the series and not at extreme prices, while taking into consideration the markets of other exchanges that may be better than the Exchange's at the open. With respect to classes in which the Exchange has activated HAL for openings, the exceptions provide the opportunity for orders to execute through a HAL auction or at an away exchange when that is the case.

Current Interpretation and Policy .03 states for classes for which HALO is activated, the procedures in Interpretation and Policy .03 will apply in lieu of current paragraph (e) (and proposed subparagraph (d)(i)) regarding opening conditions (see above discussion). The proposed rule change adds subparagraph (d)(ii) to specify the opening conditions in that subparagraph apply to those classes. The proposed rule change deletes the provision regarding the allocation period of the HAL openings. The Exchange no longer uses an allocation period and just uses the exposure period, which may not exceed 1.5 seconds. There is no allocation period for the HAL exposure process described in Rule 6.14A, and the Exchange does not believe it is necessary to include one for HAL on the openings. As provided in current Interpretation and Policy .03(c)(ii) and proposed subparagraph (d)(ii), the exposure process will be conducted via HAL pursuant to Rule 6.14A for an exposure period designated by the Exchange for a class (which period of time will not exceed 1.5 seconds),<sup>27</sup> so

<sup>27</sup> The proposed rule change adds to this provision any remaining balances of orders not executed after the exposure period will enter the book at their limit prices (to the extent consistent with Rule 6.53) or route via the order handling system pursuant to Rule 6.12 in accordance with their routing instructions. The Exchange believes this is implied by the routing parameters and handling instructions of orders and is merely

the Exchange believes the process for HAL on the openings should be consistent with the standard HAL process. The proposed rule change deletes Interpretation and Policy .03(c)(i) regarding the priority of orders and quotes during the open for classes in which the Exchange has activated HAL for openings, as it is the same as the priority in proposed subparagraph (c)(i)(C).

The Exchange also proposes to add subparagraph (d)(iii), which provides if the System does not open a series pursuant subparagraphs (i) or (ii), notwithstanding proposed paragraph (c) (which states the opening rotation period may not last more than 60 seconds), the opening rotation period continues (including the dissemination of EOIs, which is consistent with language the Exchange proposes to delete regarding the notifications sent to market participants if one of the opening conditions is present) until the condition causing the delay is satisfied or the Exchange otherwise determines it is necessary to open a series in accordance with proposed paragraph (e). This is currently how the System operates, and the Exchange believes it will benefit investors to explicitly state this in the rules, particularly because, under these circumstances, the opening rotation period will last longer than the standard length of time determined by the Exchange. The Exchange believes it is important for market participants to continue to receive EOIs, particularly those describing why a series is not open, so they have close to real-time information regarding the potential opening of a series.<sup>28</sup>

#### Hybrid 3.0 Classes

The proposed rule change moves Rule 6.2B, Interpretation and Policy .01(a), which contains provisions related to the opening applicable to classes that trade on the Hybrid 3.0 platform, to proposed paragraph (h) of Rule 6.2B. Interpretation and Policy .01 generally

adding detail to the rules, which current Interpretation and Policy .03(c)(ii) and proposed subparagraph (d)(ii) only specify what happens to orders that are priced or would be executed "too far" from the initial HAL price.

<sup>28</sup> Current Rule 6.2B(h) and proposed Rule 6.2B(g) provides the opening procedures described in the rule may also be used after the close of a trading session for series that open pursuant to HOSS. The proposed rule change makes nonsubstantive changes to proposed paragraph (g) to more clearly and simply state the potential applicability of the opening procedures to a closing rotation for series that open pursuant to HOSS and to include additional detail regarding the notification to Trading Permit Holders regarding the decision to conduct a closing rotation. The proposed rule change also amends the name of Rule 6.2B to indicate that the procedures may also be used for closing rotations.

<sup>26</sup> Currently, this amount is \$0.25 for options with prices less than \$3.00 and \$0.50 for options with prices of \$3.00 or more.

describes the modified opening procedures for Hybrid 3.0 series that are used to calculate volatility indexes. Current paragraph (a), however, applies to Hybrid 3.0 classes on all trading days, not just the days on which the Exchange uses the modified opening procedures. The proposed rule change moves this provision to proposed paragraph (h) within the body of the rule, rather than the Interpretation and Policy, to clarify this point.

The introduction to proposed paragraph (h) explicitly states all the provisions set forth in Rule 6.2B apply to the opening of Hybrid 3.0 series except as set forth in proposed paragraph (i).<sup>29</sup> The primary difference between the opening procedures for Hybrid series and the opening procedures for Hybrid 3.0 series is in Hybrid classes, all Market-Makers with appointments may submit quotes prior to the open in, while in Hybrid 3.0 classes, only DPMs or LMMs with appointments may submit quotes prior to the open. Proposed paragraph (h)(i) provides, notwithstanding proposed subparagraph (a)(i) (which provides the System accepts all orders during the pre-opening period), only the LMM or DPM with an appointment or allocation, respectively, to the class or series may enter quotes prior to the opening of trading, subject to the obligation set forth in Rule 8.15 or 8.85, respectively.<sup>30</sup> This more clearly states which participants are permitted to submit opening quotes in Hybrid 3.0 classes (Market-Makers other than LMMs and DPMs are not). Proposed paragraph (h)(ii) merely states all market participants may enter orders into the book prior to the opening (consistent with current paragraph (a) in Interpretation and Policy .01). However, the proposed rule change adds, consistent with the current practice in Hybrid 3.0 classes that only public customer orders may rest in the book,<sup>31</sup> the System only accepts opening rotation orders from non-public

customers during the pre-opening period. The System accepts all order types designated as eligible for entry during the pre-opening rotation as set forth in proposed paragraph (a)(i) (as discussed above) from public customers during the pre-opening rotation.

#### Modified Opening Procedures on Volatility Index Settlement Dates

The proposed rule change amends the modified opening procedures for classes and series used to calculate volatility indexes on the exercise and final settlement dates for those indexes. Current Interpretation and Policy .01(b) requires the DPM or LMM to enter opening quotes in all series in a Hybrid 3.0 class on during a modified opening procedure (as it does not specify any subset of series to which the obligation applies). The proposed rule change deletes this obligation. As a result, the opening quoting obligations in Rules 8.15 and 8.85, as applicable, would apply to LMMs and DPMs, respectively, in Hybrid 3.0 classes on volatility settlement days.<sup>32</sup> While this is a slight reduction in the quoting obligation of LMMs and DPMs on volatility settlement days, the purpose of the obligation relates to liquidity in the series for purposes of calculating the exercise/final settlement value of the volatility index for expiring options and (security) futures contracts ("constituent series"). The Exchange believes the standard opening quoting obligation, in addition to other general obligations applicable to LMMs and DPMs,<sup>33</sup> provides sufficient liquidity in these series on the volatility settlement days and thus does not believe it is necessary to impose additional opening quoting obligations on LMMs and DPMs on those days.

Current Rule 6.2B, Interpretation and Policy .01(c) describes a modified opening procedure that applies to series in Hybrid 3.0 classes that are used to calculate a volatility index on expiration and final settlement dates for those indexes.<sup>34</sup> The introductory paragraph

of current paragraph (c) states to facilitate the calculation of exercise or final settlement values for options or futures contracts on volatility indexes, the Exchange will utilize a modified HOSS opening procedure for any Hybrid 3.0 series with respect to which a volatility index is calculated. This modified opening procedure will be utilized only on the expiration and final settlement dates of the options or futures contracts on the applicable volatility index for each expiration. The proposed introductory paragraph to Interpretation and Policy .01 simplifies these two sentences, which are redundant, and states on the dates on which the exercise and final settlement values are calculated for options<sup>35</sup> or (security) futures contracts on a volatility index (*i.e.*, expiration and final settlement dates), the Exchange will utilize the modified opening procedure described in that Interpretation and Policy for all series used to calculate the exercise/final settlement value of the volatility index for expiring options and (security) futures contracts (*i.e.*, constituent options).

The introduction to current paragraph (c) continues to state on settlement dates, public customers, broker-dealers, Exchange Market-Makers, away market-makers and specialists may enter orders in any index options series used to calculate the exercise settlement or final settlement value of that volatility index. As discussed above, proposed Rule 6.2B(a) provides market participants may submit orders prior to the open. The group of market participants listed in current Interpretation and Policy .01(c) generally covers all market participants, so it is unnecessary to list them out. Additionally, proposed Rule 6.2B(a) applies to expiration and final settlement dates unless otherwise set forth in Interpretation and Policy .01; however, the current provision about entering orders on settlement dates is consistent with proposed Rule 6.2B(a). Therefore, the proposed rule change deletes that provision, as it is duplicative and unnecessary.

Current Interpretation and Policy .01(c)(i) states all orders (including public customer, broker-dealer, Market-

and applies Interpretation and Policy .01 to all classes. All proposed changes to Interpretation and Policy .01 described in this section of the rule filing will thus apply to the modified opening procedure for both Hybrid and Hybrid 3.0 classes.

<sup>35</sup> The proposed rule references Rules 24.9(a)(5) and (6) (which references are included in current Rule 6.2B, Interpretation and Policy .08), which describe the method of determining the day on which the exercise settlement value will be calculated for volatility indexes with a 30-day volatility period and VXST, respectively.

<sup>29</sup> Interpretation and Policy .01 currently provides the provisions in that Interpretation and Policy apply for purposes of Hybrid 3.0 classes, notwithstanding Rule 6.2B(a). The intent of this language is the same as the revised rule language; however, the Exchange believes the rule as revised more directly states this intent.

<sup>30</sup> Currently, LMMs and DPMs must enter opening quotes within one minute of the initiation of an opening rotation in any series that is not open due to the lack of a quote.

<sup>31</sup> Pursuant to Rule 7.4(a), public customer orders are eligible for entry into the electronic book. While non-public customers may submit orders in Hybrid classes for entry into the book, the Exchange may determine on a class-by-class basis that non-public customers may also submit orders in Hybrid 3.0 classes for entry into the book; currently, the Exchange has determined not to permit this.

<sup>32</sup> See *supra* note 30.

<sup>33</sup> See Rules 8.15 and 8.85. For example, LMMs and DPMs must make competitive markets, and LMMs in Hybrid 3.0 classes (currently, only LMMs are appointed in the only class authorized to trade on the Hybrid 3.0 platform, and thus only those LMMs are subject to the obligation proposed to be deleted), must facilitate order imbalances. Additionally, all Market-Makers (including LMMs and DPMs) must submit a quote if called upon by an Exchange official if necessary in the interest of maintaining a fair and orderly market. See Rule 8.7(d)(iv).

<sup>34</sup> Interpretation and Policy .08 has a substantially similar procedure for series in Hybrid classes that are used to calculate volatility indexes on settlement dates. As discussed below, the proposed rule change deletes Interpretation and Policy .08

Maker, away market-maker and specialist orders), other than spread or contingency orders, will be eligible to be placed on the electronic book for those option contract expirations whose prices are used to derive the volatility indexes on which options and futures are traded, for the purpose of permitting those orders to participate in the opening price calculation for the applicable series. The Exchange permits the same order types during the modified opening procedure as it does during the standard procedure (as set forth in proposed paragraph (a)(i) and, with respect to Hybrid 3.0 classes, proposed paragraph (h)(ii)). Therefore, the proposed rule change deletes this paragraph.

Current subparagraph (c)(ii) provides, in addition to the LMM quoting requirement, all LMMs in Hybrid 3.0 classes, if applicable, must enter opening orders during the modified opening procedures on settlement dates. The Exchange does not require LMMs (or any Market-Makers) to enter orders on settlement dates (or any trading days), and instead imposes a quoting obligation. Thus, the Exchange proposes to delete the requirement for LMMs to submit orders on exercise and final settlement dates. Market-Makers are permitted, but not required, to enter orders in addition to quotes. The Exchange requires, and will continue to require, LMMs (or DPMs) in Hybrid 3.0 classes to enter opening quotes in series that may be used to calculate the exercise and final settlement values of options or futures on the volatility index on expiration and final settlement dates. Additionally, LMMs and DPMs must enter quotes within a certain timeframe as necessary on all trading days.<sup>36</sup> The Exchange believes that opening quoting obligation will ensure LMMs and DPMs will continue to enter opening quotes and provide sufficient liquidity at the open in all necessary series on settlement dates.

The proposed rule change also makes nonsubstantive changes to Interpretation and Policy .01, including changes to delete unnecessary language, update cross-references and paragraph numbering and lettering, and incorporate defined terms.

#### Obsolete and Duplicate Language

The proposed rule change deletes obsolete and duplicate language in Rule 6.2B as follows:

- Current Rule 6.2B(b)(ii) describes how a DPM or LMM, as applicable takes part in determining the cause of a delay in the opening of an underlying

security, and the Exchange may consider such information when deciding whether to open a series despite the delay in the opening of the underlying. Exchanges continue to increase connectivity communication among each other, and thus the Exchange Help Desk generally is aware of any delayed openings in the underlying securities, making this provision obsolete. While DPMs and LMMs may still communicate any issues related to an opening to the Exchange, given that CBOE generally knows of these issues prior to them being reported by DPMs and LMMs, the Exchange does not believe the rules should impose this reporting requirement on DPMs and LMMs. Given the increased importance of speed within the marketplace, the Exchange believes it is necessary to have the ability to react to any issues it is aware of, even though it may not have yet received information from DPMs or LMMs. Additionally, pursuant to proposed paragraph (f) (as discussed below), the Exchange's Help Desk may compel the opening of a series for the reasons set forth in that paragraph. Therefore, the Exchange proposes to delete this provision.

- Current Rule 6.2B provides in various places Exchange Floor Officials, including paragraphs (b)(ii), (e) and (f) and Interpretations and Policies .01 and .08. The Exchange believes it is simpler to have one single rule provision within Rule 6.2B that applies to the entire rule stating designated Exchange personnel may determine whether to modify the opening procedures when they deem necessary. The Exchange proposes to delete these references and combine them into current paragraph (f) and proposed paragraph (e). Additionally, the Exchange proposes to amend proposed paragraph (e) to state senior Help Desk personnel make these determinations. This is consistent with the current language that states Floor Officials make these determinations. However, the Exchange proposes to clarify in the rules the Floor Officials that do make these determinations are located in the Help Desk, as this terminology is more familiar to market participants.<sup>37</sup> The proposed rule change lists examples of actions Senior Help Desk personnel have flexibility to take when necessary in the interests of commencing or maintaining a fair and orderly market (some of which are listed

throughout current Rule 6.2B), in the event of unusual market conditions or in the public interest, including delaying or compelling the opening of any series in any options class, modifying timers or settings described in Rule 6.2B, and not using the modified opening procedure set forth in proposed Interpretation and Policy .01. The proposed rule change adds the Exchange will make and maintain records to document all determinations to deviate from the standard manner of the opening procedure, and periodically review these determinations for consistency with the interests of a fair and orderly market.

- Rule 6.2B, Interpretation and Policy .01(b) states the DPM or LMM must enter opening quotes that comply with the bid/ask differential requirements determined by the Exchange on a class-by-class basis and that if there is not a quote present in a series that complies with the bid/ask differential requirements established by the Exchange, then that series will not open. As discussed above, bid/ask differential requirements apply to all Market-Maker quotes, and whether the System opens a series depends on whether the opening quote satisfies the OEPW range (not bid/ask differentials) for the series. Thus, the Exchange believes including language that DPMs and LMM must comply with bid/ask differential requirements in the opening procedures rules is duplicative of rules regarding Market-Maker obligations related to bid/ask differential requirements (including Rules 8.7, 8.15, 8.15A and 8.85). Additionally, because the proposed rule change explicitly states all provisions of Rule 6.2B apply to Hybrid 3.0 classes except as provided in proposed paragraph (i), the Exchange does not believe it is necessary to repeat in subparagraph (a) the opening quote must satisfy the OEPW range.

- The Exchange also proposes to delete current Interpretation and Policy .01(c)(v), which states the HOSS system will automatically generate cancels immediately prior to the opening of the applicable index option series for broker-dealer, Market-Maker, away market-maker, and specialist (*i.e.*, non-public customer) orders that remain on the book following the modified HOSS opening procedures. This provision applies to Hybrid 3.0 classes (a similar provision is not in current Interpretation and Policy .08 regarding the modified opening procedure for Hybrid classes). As discussed above, proposed Rule 6.2B(h)(ii) states non-public customers may only enter opening rotation orders in Hybrid 3.0 classes. By definition, the System will cancel opening rotation

<sup>37</sup> Current paragraph (b)(ii) references the Exchange Control Room. The Control Room is now referred to as the Help Desk, so the Exchange proposes to delete the references to the Control Room.

<sup>36</sup> See *supra* note 30.

orders that do not execute during the opening rotation of a series, making this provision is redundant. Further, the Exchange proposes to delete current Interpretation and Policy .01(c)(vi) regarding publication of an imbalance of contracts, as this is covered by proposed Rule 6.2B(d)(iii) regarding dissemination of expected opening messages if a series does not open.

- The proposed rule change deletes Interpretation and Policy .08. The modified opening procedures described in Interpretations and Policies .01 and .08 are nearly identical for Hybrid and Hybrid 3.0 classes. Therefore, the proposed rule change amends Interpretation and Policy .01 (as amended by this proposed rule change) to apply to all classes. Proposed Interpretation and Policy .01 does not distinguish between 30-day volatility indexes and short-term volatility indexes, as the modified opening procedure operates in the same manner for all volatility indexes on settlement dates.<sup>38</sup>

#### Exchange Determinations

There are various provisions throughout Rule 6.2B that allow the Exchange to make certain determinations on a class-by-class basis. However, pursuant to Rule 8.14, Interpretation and Policy .01,<sup>39</sup> the Exchange may authorize groups of series of a class to trade on different trading platforms, and thus, the Exchange would make determinations for each group rather than the class as a whole. Proposed Interpretation and Policy .05 provides, for these groups, the Exchange may make determinations pursuant to Rule 6.2B and the Interpretations and Policies thereunder on a group-by-group basis that would otherwise be made on a class-by-class basis. The proposed rule change also adds to proposed Interpretation and Policy .05 it will announce via Regulatory Circular with appropriate advanced notice any determinations it makes under Rule 6.2B to ensure Trading Permit Holders are aware of these determinations and have sufficient time to make any

necessary changes in response to the determinations.

#### Nonsubstantive Changes

The proposed rule change makes numerous nonsubstantive and clerical changes throughout Rule 6.2B and in Rule 6.53(l), including adding or amending headings and defined terms, updating cross-references, adding introductory and clarifying language, using consistent language and punctuation, replacing terms such as “option series” with series (all series listed for trading on the Exchange are for options, making it unnecessary to include “option”), and using more plain English. The proposed rule change also amends current Rule 6.2B(g) and proposed Rule 6.2B(f) to indicate the procedure described in Rule 6.2B may be used to reopen a series, in addition to a class, after a trading halt. This proposed change addresses a potential situation in which only certain series are subjected to halt. As series open on an individual basis, the Exchange does not believe this to be a significant change. The proposed rule change also adds detail regarding notice of use of this opening procedure following a trading halt and clarifies the procedure would be the same, however, based on then-existing facts and circumstances, there may be no pre-opening period or a shorter pre-opening period than the regular pre-opening period. Specifically, proposed paragraph (f) states the Exchange will announce the reopening of a class or series after a trading halt as soon as practicable via verbal message to the trading floor and electronic message to Trading Permit Holders that request to receive such messages.<sup>40</sup> CBOE believes it is in investors’ best interests to reopen a class or series as soon as possible after a trading halt, which may make advance notice in certain situations impractical. The proposed rule change provides the Exchange with the ability to re-open as quickly as possible following a halt.

The Exchange also proposes to amend Interpretation and Policy .04, which states the Exchange may determine on a class-by-class basis which electronic algorithm from Rule 6.45A or 6.45B, as applicable, applies to the class during rotations. The proposed rule change makes the electronic algorithm that applies to a class intraday the algorithm that applies to a class during rotations, but still leaves the Exchange with the same flexibility to apply a different

algorithm to a class during rotations if it deems necessary or appropriate. This proposed change merely makes the intraday algorithm the default opening algorithm for a class. The Exchange believes it is important to maintain this flexibility so that it can facilitate a robust opening with sufficient liquidity in all classes.

The Exchange also proposes to amend Rules 6.1A(e)(iii)(C), 8.15(b)(v), 8.85(a)(xi), and 17.50(g)(14) to update cross-references related to proposed changes described above.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>41</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>42</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>43</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change enhances the description of the opening procedures in the rules to reflect how the System opens series, which perfects the mechanism of a free and open market and ultimately protects investors. The Exchange believes the proposed rule changes to reorganize and enhance the description of the opening (and sometimes) closing procedures (for Hybrid and Hybrid 3.0 classes) will benefit investors, because the rule as amended more accurately and clearly describes how the System opens series on the Exchange. Thus, investors will have a better understanding of how their quotes and orders will be handled during opening rotations if they elect to submit quotes and orders during the pre-opening period or if they have orders resting on the book from the prior

<sup>38</sup> The proposed rule change deletes references to VXST, the CBOE Short-Term Volatility Index, in Interpretation and Policy .01, as VXST is a type of volatility index and does not need to be specified.

<sup>39</sup> Rule 8.14, Interpretation and Policy .01 provides the Exchange may determine to authorize a group of series of a Hybrid 3.0 class to trade on the Hybrid system, in which case the Exchange would establish trading parameters on a group basis to the extent rules otherwise provide for such parameters to be established on a class basis. Thus, this proposed change is consistent with current rules.

<sup>40</sup> The proposed rule change also notes the Exchange may reopen a class after a trading halt as otherwise set forth in the Rules, including Rules 6.3, 6.3B, and 6.3C.

<sup>41</sup> 15 U.S.C. 78f(b).

<sup>42</sup> 15 U.S.C. 78f(b)(5).

<sup>43</sup> *Id.*

trading day. Similarly, the Exchange believes the deletion of obsolete and duplicative provisions from Rule 6.2B will benefit investors by eliminating potential confusion about the applicability of those provisions. The nonsubstantive and clerical changes will create more consistency and clarity throughout and otherwise simplify the rule. Additionally, explicitly stating the few differences between the opening procedure for Hybrid classes and Hybrid 3.0 classes will further eliminate potential confusion from the rules and ultimately benefit investors. Further, the Exchange believes the additional information regarding notification of the use of the opening procedure following a trading halt will clarify for Trading Permit Holders when and how they will know from the Exchange such use is occurring.

The Exchange also believes the proposed changes to the modified opening procedures on settlement dates more clearly state the standard opening procedures apply in those situations except as specifically set forth in the Interpretation and Policy, which will also eliminate potential investor confusion. While the proposed rule change deletes the obligation for LMMs in Hybrid 3.0 classes to enter opening orders and quotes (in addition to the standard opening quoting obligation) on volatility settlement dates, the Exchange does not believe this impacts the balance of LMM obligations and benefits, as this obligation applies only to a brief period of time on certain days. Market-Maker obligations generally do not require the entry of orders in addition to quotes. Additionally, LMMs in Hybrid 3.0 must enter opening quotes in accordance with the obligation in Rule 8.15, including in series of classes that may be used to calculate the exercise and final settlement values of options or futures on the volatility index on settlement dates. The Exchange believes the standard opening quoting obligation, in addition to other general obligations applicable to LMMs, provides sufficient liquidity in these series on the volatility settlement days and thus does not believe it is necessary to impose additional opening quoting obligations on LMMs on those days. Additionally, the Exchange believes imposing the same opening quoting obligation on LMMs every day will promote compliance with the obligation.

The revised opening conditions (for both the standard opening procedures and HAL opening procedures) are intended promote just and equitable principles of trade, as they ensure that series open in a fair and orderly market

with sufficient liquidity in the series and opportunities for execution at prices that are consistent with then-current market conditions rather than potentially extreme prices. These proposed changes ensure that market participants are aware of all circumstances under which the System may not open a series.

The proposed rule change to allow the Exchange to make determinations in Rule 6.2B for groups of series on different trading platforms provides the Exchange with the appropriate flexibility to make these determinations in a manner consistent with how the System's opening (and closing) process, which it performs by series, not class. It is also consistent with Exchange rules that permit the Exchange to authorize a group of series of a class for trading on different platforms. The Exchange believes this consistency removes impediments to and perfects the mechanism of a free and open market and promotes just and equitable principles of trade.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The opening procedures as revised by the proposed rule change will still apply to all market participants in the same manner as they do today. The proposed rule change more accurately describes the opening procedures that are currently in place on the Exchange, which procedures are designed to open series on the Exchange in a fair and orderly manner. These changes have no impact on competition. The purposes of the opening conditions are to ensure there is sufficient liquidity in a series when it opens and the series opens at prices consistent with the current market conditions (at the Exchange and other exchanges) rather than extreme prices that could result in unfavorable executions to market participants. The nonsubstantive changes as well as the deletion of obsolete and duplicative language have no impact on competition, as they are intended to eliminate confusion within and simplify the rules.

While the proposed rule change deletes the obligation for LMMs in Hybrid 3.0 classes to enter opening orders and quotes (in addition to the standard opening quoting obligation) on volatility settlement dates, the Exchange does not believe this impacts the balance of LMM obligations and benefits, as this obligation applies only to a brief period of time on certain days.

Market-Maker obligations generally do not require the entry of orders in addition to quotes. Additionally, LMMs in Hybrid 3.0 must enter opening quotes in accordance with the obligation in Rule 8.15, including in series of classes that may be used to calculate the exercise and final settlement values of options or futures on the volatility index on settlement dates. The Exchange believes the standard opening quoting obligation, in addition to other general obligations applicable to LMMs, provides sufficient liquidity in these series on the volatility settlement days and thus does not believe it is necessary to impose additional opening quoting obligations on LMMs on those days. Additionally, the Exchange believes imposing the same opening quoting obligation on LMMs every day will promote compliance with the obligation.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Exchange 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2016-071 on the subject line.

### Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2016-071. 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-CBOE-2016-071, and should be submitted on or before November 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016-25940 Filed 10-26-16; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79131; File No. SR-NYSEArca-2016-97]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to the Listing and Trading of Shares of PowerShares Government Collateral Pledge Portfolio Under NYSE Arca Equities Rule 8.600

October 21, 2016.

#### I. Introduction

On July 6, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the PowerShares Government Collateral Pledge Portfolio ("Fund"). The proposed rule change was published for comment in the **Federal Register** on July 26, 2016.<sup>3</sup> On September 1, 2016, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> The Commission has received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Fund is a series of the PowerShares Actively Managed Exchange Traded Trust ("Trust").<sup>7</sup> Invesco PowerShares Capital

Management LLC is the investment adviser for the Fund ("Adviser"), and Invesco Advisers, Inc. is the sub-adviser for the Fund ("Sub-Adviser"). The Bank of New York Mellon ("BNYM") will be the administrator, custodian, and transfer agent for the Fund. Invesco Distributors, Inc. will be the Fund's distributor ("Distributor"). The Exchange represents that, while neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, the Adviser and Sub-Adviser are each affiliated with a broker-dealer. The Adviser and Sub-Adviser each has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition of, and changes to, the Fund's portfolio.<sup>8</sup> In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio, and

an amendment to its registration statement on Form N-1A under the Securities Act of 1933 and the 1940 Act relating to the Fund (File Nos. 333-147622 and 811-22148) ("Registration Statement"). In addition, the Exchange states that the Trust and the Adviser (as defined herein) have obtained certain exemptive relief from the Commission under the 1940 Act. See Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812-13386) ("Exemptive Order"). The Exchange represents that the Fund will be offered in reliance upon the Exemptive Order issued to the Trust and the Adviser.

<sup>8</sup> The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. The Exchange represents that the Adviser and its related personnel are subject to Advisers Act Rule 204A-1. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 78373 (July 20, 2016), 81 FR 48869 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 78750, 81 FR 62233 (September 8, 2016). The Commission designated October 24, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> The Exchange represents that the Trust is registered under the Investment Company Act of 1940 ("1940 Act"). According to the Exchange, on May 20, 2016, the Trust filed with the Commission

<sup>44</sup> 17 CFR 200.30-3(a)(12).

will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including the Fund's portfolio holdings and investment restrictions.<sup>9</sup>

#### *A. Exchange's Description of the Fund's Principal Investments*

According to the Exchange, the Fund's investment objective will be to seek to provide as high a level of current income as is consistent with liquidity and minimum volatility of principal. The Fund will seek to achieve its investment objective by investing, under normal market conditions,<sup>10</sup> at least 80% of its net assets in a portfolio of registered U.S. government money market mutual funds ("Underlying Funds")<sup>11</sup> and in U.S. dollar-

denominated government securities and other money market securities eligible for investment by U.S. government money market funds (including indirect investments in those securities through the Underlying Funds).

Under normal market conditions, the Fund intends to invest a substantial portion of its assets in the following Underlying Funds: (a) Treasury Portfolio; (b) Government Tax Advantage Portfolio; (c) Government & Agency Portfolio; and (d) Premier US Government Money Portfolio, each of which is advised by an affiliate of the Adviser. The Sub-Adviser may add, eliminate, or replace any or all Underlying Funds at any time. Any additions to or replacements of the Underlying Funds in the Fund's portfolio also will be registered U.S. government money market funds with investment characteristics that are substantially similar to those of the Underlying Funds. The Adviser, the Sub-Adviser, or their affiliates may advise some or all the Underlying Funds. In constructing the Fund's portfolio, the Sub-Adviser generally will allocate and re-allocate the Fund's assets among the Underlying Funds on a monthly basis on an approximate *pro rata* basis that is based on the amount of net assets of each Underlying Fund. However, the Sub-Adviser is not required to invest the Fund's assets in any particular Underlying Fund or allocate any particular percentage of the Fund's assets to any particular Underlying Fund.

#### *B. Exchange's Description of the Fund's Other Investments*

While the Fund, under normal circumstances, will invest at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund (and the Underlying Funds) may invest in certain U.S. government obligations other than those referenced above, namely Treasury receipts where the principal and interest components are traded separately under the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program. The Fund also may invest directly in repurchase agreements and reverse repurchase agreements.

comply with the quality and eligibility requirements of Rule 2a-7. The Fund and the Underlying Funds may invest in variable and floating rate instruments that are permitted under the requirements of Rule 2a-7, and may transact in securities on a when-issued, delayed delivery, or forward commitment basis.

#### *C. Exchange's Description of the Fund's Investment Restrictions*

According to the Exchange, the Fund will be classified as "non-diversified."

The Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a regulated investment company for purposes of the U.S. Internal Revenue Code of 1986, as amended.

The Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund will not invest in futures, options, swaps, or forward contracts.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

### **III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2016-97 and Grounds for Disapproval Under Consideration**

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>12</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>9</sup> The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, net asset value ("NAV") calculation, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, *supra* notes 3 and 7, respectively.

<sup>10</sup> The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

<sup>11</sup> According to the Exchange, each Underlying Fund is a "government money market fund," as that term is defined under Rule 2a-7 of the 1940 Act ("Rule 2a-7"), and seeks to maintain a stable \$1.00 NAV. Each Underlying Fund has an investment objective of seeking to provide current income consistent with preservation of capital and liquidity. The securities held by the Underlying Funds will comply with all requirements of Rule 2a-7 and other Commission rules applicable to money market funds seeking a stable NAV. Each Underlying Fund invests at least 99.5% of its total assets in cash, government securities, and/or repurchase agreements collateralized by cash or government securities. In addition, each Underlying Fund invests only in U.S. dollar-denominated securities maturing within 397 days of the date of purchase, with certain exceptions permitted by applicable regulations, and maintains a dollar-weighted average portfolio maturity of no more than 60 days, and a dollar-weighted average portfolio maturity (as determined without exceptions regarding certain interest rate adjustments under Rule 2a-7) of no more than 120 days. The Exchange represents that, unlike the Underlying Funds, the Fund will not be a money market fund, meaning that the Fund will not seek to maintain a stable NAV of \$1.00, nor will it be subject to other requirements of Rule 2a-7. However, the Fund will only purchase securities issued by registered government money market funds, or securities that



provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>13</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."<sup>14</sup>

Under the proposal, BNYM will calculate the Fund's NAV at 12:00 p.m., Eastern time, every day the New York Stock Exchange is open. In addition, to initiate an order for a creation unit, the Distributor or its agent must receive an irrevocable order from an authorized participant, in proper form, no later than 12:00 p.m., Eastern time, in each case on the date such order is placed in order to receive that day's NAV. Likewise, with respect to redemptions, an authorized participant must submit an irrevocable request to redeem shares of the Fund generally before 12:00 p.m., Eastern time on any business day in order to receive that day's NAV. The Commission notes the proposal does not provide any explanation for the early NAV calculation time and creation and redemption cut-off time. The proposal also does not explain whether the early NAV calculation time and creation and redemption cut-off time would have any impact on the trading of the Shares, including any impact on arbitrage. Accordingly, the Commission seeks commenters' views on the 12:00 p.m. NAV calculation time and creation and redemption cut-off time, and on whether the Exchange's statements relating to the NAV calculation and the creation and redemption process support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and

arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>15</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by November 17, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 1, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>16</sup> in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-97 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-NYSEArca-2016-97. 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

<sup>13</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>16</sup> See *supra* note 3.

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-97 and should be submitted on or before November 17, 2016. Rebuttal comments should be submitted by December 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-25938 Filed 10-26-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79135; File No. SR-NYSEMKT-2016-45]

### Self-Regulatory Organizations; NYSE MKT LLC; Order Disapproving a Proposed Rule Change To Modify the NYSE Amex Options Fee Schedule With Respect to Fees, Rebates, and Credits for Transactions in the Customer Best Execution Auction

October 21, 2016.

#### I. Introduction

On April 11, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (File No. SR-NYSEMKT-2016-45) to modify the

<sup>17</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>13</sup> *Id.*

<sup>14</sup> 15 U.S.C. 78f(b)(5).



NYSE Amex Options Fee Schedule with respect to fees, rebates, and credits relating to the Exchange's Customer Best Execution Auction ("CUBE Auction"),<sup>3</sup> and to increase credits available under the Exchange's Amex Customer Engagement Program ("ACE Program").<sup>4</sup> The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>5</sup> Notice of filing of the proposed rule change was published in the **Federal Register** on April 26, 2016.<sup>6</sup> On June 9, 2016, the Commission temporarily suspended the Exchange's proposal and simultaneously instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> The Commission thereafter received ten comment letters on the proposal, one of which was from the Exchange.<sup>8</sup> This

order disapproves the proposed rule change.

## II. Description of the Proposed Rule Change

The Exchange's proposal amended certain fees, rebates, and credits relating to executions through its CUBE Auction. First, the proposal increased the fees assessed by the Exchange for RFR Responses (*i.e.*, orders and quotes submitted during a CUBE Auction that are executed against the agency order).<sup>9</sup> Specifically, the Exchange increased RFR Response fees for Non-Customers (including market makers) from \$0.12 to \$0.70 for classes subject to the Penny Pilot<sup>10</sup> ("Penny classes") and from \$0.12 to \$1.05 for classes not subject to the Penny Pilot ("Non-Penny classes").

Further, the proposal increased a rebate available to Initiating Participants in CUBE Auctions (*i.e.*, ATP Holders that initiate such auctions)<sup>11</sup> under the Exchange's ACE Program. Specifically, the proposal increased the rebate paid to Initiating Participants that meet certain tiers of the ACE Program from \$0.05 to \$0.18 (the "ACE Initiating Participant Rebate") for each of the first 5,000 Customer contracts of an agency order executed in a CUBE Auction.<sup>12</sup>

Finally, the proposal increased the credit paid by the Exchange to Initiating Participants (the "break-up credit") for each contract in the contra-side order that is paired with the agency order that does not trade with the agency order because it is replaced in the auction. Prior to the proposal, the credit granted was \$0.05 per contract in all classes. The proposal raised it to \$0.35 for Penny classes and \$0.70 for Non-Penny classes.<sup>13</sup>

The amended fees resulted in a proposed difference between the fees charged to an Initiating Participant and those charged to Non-Customer auction responders that would be a minimum of \$0.65 in Penny classes and \$1.00 in

Non-Penny classes.<sup>14</sup> Taking into consideration that the ACE rebate available to an Initiating Participant submitting the agency order into the CUBE Auction was increased to \$0.18, this proposed fee differential could be as high as \$0.83 per executed contract for Penny classes, and \$1.18 per contract for Non-Penny classes.<sup>15</sup>

In its filing, the Exchange stated that the changes to the CUBE Auction transaction fees are reasonable, equitable and not unfairly discriminatory "because they apply equally to all ATP Holders that choose to participate in the CUBE, and access to the Exchange is offered on terms that are not unfairly discriminatory."<sup>16</sup> The Exchange also took the position, with regard specifically to the ACE Initiating Participant Credit, that the change is reasonable, equitable, and not unfairly discriminatory because it is "designed to attract more volume and liquidity to the Exchange generally, and to CUBE Auctions specifically," which, according to the Exchange, "would benefit all market participants . . . through increased opportunities to trade at potentially improved prices as well as enhancing price discovery."<sup>17</sup> The Exchange stated that its proposal is reasonable because it is similar to the fee and credit structures previously applied to the CUBE Auction and to fees charged for similar auctions on other exchanges.<sup>18</sup> The Exchange further stated that the proposal "would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants."<sup>19</sup> Finally, the Exchange stated that it did not believe the proposal would impose any unnecessary or inappropriate burden on competition because it is "pro-competitive" and "designed to incent increases in the number of CUBE Auctions brought to the Exchange," thereby "benefit[ing] all Exchange participants through increased opportunities to trade as well as enhancing price discovery."<sup>20</sup>

<sup>14</sup> See Order Instituting Proceedings, *supra* note 7, at 39090 n.20.

<sup>15</sup> See *id.* at 39091.

<sup>16</sup> See Notice, *supra* note 6, at 24675.

<sup>17</sup> See *id.* at 24675–76.

<sup>18</sup> See *id.* at 24675 & n.10.

<sup>19</sup> See *id.* at 24676. The Exchange stated that the CUBE fee and credit adjustments established by the instant proposal are consistent with the fees and credits that were in place for the same items in its Fee Schedule prior to February 2016. See *id.* at 24675 n.6.

<sup>20</sup> See *id.* at 24676. The Exchange also noted that it operates in a highly-competitive market. See *id.*

<sup>3</sup> The CUBE Auction is a mechanism in which an Exchange ATP Holder submits an agency order on behalf of a customer for price improvement, paired with a contra-side order guaranteeing execution of the agency order at or better than the National Best Bid or Offer ("NBBO") depending on the circumstances. The contra-side order could be for the account of the ATP Holder that initiated the CUBE Auction ("Initiating Participant"), or an order solicited from another participant. The agency order is exposed for a random period of time between 500 and 750 milliseconds in which other ATP Holders submit competing interest at the same price as the initial price or better ("RFR Responses"). The Initiating Participant is guaranteed at least 40% of any remainder of the order (after public customers and better-priced RFR Responses) at the final price for the CUBE order. See NYSE MKT Rule 971.1NY.

<sup>4</sup> Under the ACE Program, credits are available to ATP Holders that bring customer orders to the Exchange based on the percentage (by tier) of national industry customer volume those customer orders comprise. See NYSE Amex Options Fee Schedule Section I.E.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> See Securities Exchange Act Release No. 77658 (April 20, 2016), 81 FR 24674 ("Notice").

<sup>7</sup> See Securities Exchange Act Release No. 78029, 81 FR 39089 (June 15, 2016) ("Order Instituting Proceedings").

<sup>8</sup> See Letters to Brent J. Fields, Secretary, Commission, from John C. Nagel, Managing Director and Sr. Deputy General Counsel, Citadel LLC, dated July 6, 2016 ("Citadel Letter"); Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, dated July 8, 2016 ("NYSE MKT Letter"); Eric Chern, Chief Executive Officer, CTC Trading Group, L.L.C., dated July 28, 2016 ("CTC Letter"); Sebastiaan Koeling, Chief Executive Officer, Optiver US LLC, dated August 3, 2016 ("Optiver Letter"); Gerald D. O'Connell, Susquehanna International Group, Andrew Stevens, IMC Financial Markets LLC, Edward Haravon, Spot Trading, Kurt Eckert, Wolverine Trading and Peter Schwarz, Integral Derivatives, dated August 5, 2016 ("Options Market Maker Firms Letter"); John Kinahan, Chief Executive Officer, Group One Trading, L.P., dated August 8, 2016 ("Group One Letter"); Joanna Mallers, Secretary, FIA Principal Traders Group, dated August 10, 2016 ("FIA PTG Letter"); John Russell, Chairman of the Board and James Toes, President and CEO, Security Traders Association, dated August 29, 2016 ("STA Letter"); and John A. McCarthy, General Counsel, KCG Holdings, Inc., dated September 16, 2016 ("KCG Letter"); and Letter to Robert W. Errett, Deputy

Secretary, Commission, from Ellen Greene, Managing Director, Securities Industry and Financial Markets Association, dated July 12, 2016 ("SIFMA Letter").

<sup>9</sup> See *supra* note 3 and NYSE Amex Options Fee Schedule, Section I.G.

<sup>10</sup> See Commentary .02 to NYSE MKT Rule 960NY. See also Securities Exchange Act Release No. 75281 (June 24, 2015), 80 FR 37338 (June 30, 2015) (SR-NYSEMKT-2015-43) (extending the Penny Pilot through June 30, 2016).

<sup>11</sup> See *supra* note 3.

<sup>12</sup> See NYSE Amex Options Fee Schedule, Section I.G.

<sup>13</sup> See *id.* In addition to its proposed changes to CUBE Auction fees and credits, the Exchange's proposal also increased certain credits available through its ACE Program with respect to non-CUBE transactions. See Notice, *supra* note 6, at 24674–75. See also NYSE Amex Options Fee Schedule, Section I.E.

### III. Order Instituting Proceedings and Comments Received

In the Order Instituting Proceedings, the Commission stated that it would further assess whether the proposal satisfies the statutory provisions that require exchange rules to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities;<sup>21</sup> (2) be designed to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;<sup>22</sup> and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>23</sup>

In the Order Instituting Proceedings, the Commission expressed concern about the potential effect the proposal could have on the operation of the CUBE Auction and its potential to provide price improvement to customers, as well as about its effect upon competition among participants initiating CUBE Auctions and those responding to them.<sup>24</sup> The Commission acknowledged that increasing the rebates and break-up credits provided to Initiating Participants likely would strengthen their incentive to bring customer orders to the Exchange.<sup>25</sup> However, the Commission also noted that substantially increasing the fees paid by Non-Customer auction responders could deter them from participating in CUBE Auctions.<sup>26</sup> The Commission observed that in Penny classes, for example, the fee charged Non-Customer auction responders would exceed one-half the minimum trading increment, and the economic differential between such auction responders and the Initiating Participants with whom they are competing would be even more.<sup>27</sup>

Further, in the Order Instituting Proceedings, the Commission raised questions as to whether the proposal would in fact provide the additional trading opportunities for Non-Customer auction responders and other market quality benefits suggested by the Exchange.<sup>28</sup> The Commission noted that the Exchange did not address the fact

that the proposal would substantially increase the difference in the fees assessed by the Exchange on Initiating Participants and Non-Customer auction responders, and indicated that substantially exacerbating the differences in the fees assessed by the Exchange on Initiating Participants and those assessed on Non-Customer auction responders raises issues as to whether the proposal is equitable and not unfairly discriminatory among Exchange members.<sup>29</sup> The Commission also noted in the Order Instituting Proceedings that the Exchange did not support with specific reasoning or data its statement that the proposal would provide all members additional trading opportunities and other market quality benefits. The Commission further stated that the Exchange did not sufficiently address the potential burden that its proposed fee changes would have on competition between Initiating Participants and Non-Customer auction responders, or the prospect that competition in CUBE Auctions could be impaired, by substantially increasing the auction response fees paid by Non-Customer auction responders. Moreover, the Commission noted that the Exchange did not address in any detail the increases in the break-up credit payable to an Initiating Participant for each contract in a CUBE Order that is executed by others, and why the proposed increase in this payment is reasonable, equitable, and not unfairly discriminatory.<sup>30</sup>

The Commission received ten comment letters in response to the Order Instituting Proceedings, one of which was from the Exchange.<sup>31</sup> The nine commenters other than the Exchange either specifically recommended that the Commission disapprove the Exchange's proposal or expressed concerns about the proposal in its current form.<sup>32</sup> Broadly, these commenters echoed many of the concerns, summarized above, that were raised by the Commission in the Order Instituting Proceedings. Among other things, commenters focused on the potential impact of the proposed raising of fees for Non-Customer auction responders, increases in rebates to Initiating Participants, and heightened differential in the costs between Non-Customer auction responders and Initiating Participants, that would result from the proposal. They also questioned

the level of auction response fees generally, the consequences of break-up credits, and the potential effect of the proposal on the quoting behavior of market makers.

More specifically, many commenters believed that the fee differentials created by the Exchange's proposal would significantly favor Initiating Participants over Non-Customer auction responders.<sup>33</sup> Some commenters highlighted the fact that the proposed increase in fees assessed on Non-Customer auction responders, without any change to the Initiating Participant fees, would widen the differential between these two groups of participants.<sup>34</sup> Several commenters acknowledged that the Exchange's auction fee structure was not unique in providing for differentials, but emphasized their belief that the Exchange's proposal would further and unacceptably exacerbate a trend of raising auction response fees and widening differentials.<sup>35</sup> To the extent that the proposal would further increase these fees and widen the disparity in fees assessed on the different participants, these commenters believed that the proposal was inequitable, unfairly discriminatory, and unreasonably burdensome on competition.<sup>36</sup>

A few commenters stated that an effect of the proposed fees would be to limit opportunities for price improvement in the CUBE mechanism by discouraging auction responders from effectively participating.<sup>37</sup> One of these commenters further argued that the diminished competition would encourage Initiating Participants to submit less competitive prices to begin an auction.<sup>38</sup> Two commenters took the

<sup>33</sup> See, e.g., Citadel Letter at 2–3; CTC Letter at 2–4; Group One Letter at 2; Options Market Maker Firms Letter at 3; Optiver Letter at 2; KCG Letter at 2, 6.

<sup>34</sup> See Citadel Letter at 2; KCG Letter at 2.

<sup>35</sup> See, e.g., Citadel Letter at 2–3 (stating that the Exchange's proposal would "significantly" increase the difference in net cost to Non-Customer auction responders as compared to Initiating Participants and would be "starkly discriminatory"); Options Market Maker Firms Letter at 3–5; 8 (arguing that the fee differential for participating in CUBE is "so punitive that [Non-Customer auction responders] cannot compete on price at anywhere near equal terms with [Initiating Participants]" and objecting to fee differentials that would be "significantly higher" than any other options exchange auction); Optiver Letter at 2, 4 (noting a "gross disparity in fees" between Non-Customer auction responders and Initiating Participants under the proposal and finding such disparity to be the highest among competing exchanges). See also STA Letter at 1 (suggesting that the Exchange be permitted to adopt fees "more aligned with other exchanges").

<sup>36</sup> See *id.*

<sup>37</sup> See, e.g., Citadel Letter at 2–3; CTC Letter at 4; Group One Letter at 2.

<sup>38</sup> See Group One Letter at 2.

<sup>21</sup> 15 U.S.C. 78f(b)(4).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78f(b)(8).

<sup>24</sup> See Order Instituting Proceedings, *supra* note 7, at 39090.

<sup>25</sup> See *id.* at 39091.

<sup>26</sup> See *id.*

<sup>27</sup> See *id.* See also *supra* text accompanying notes 14 and 15.

<sup>28</sup> See Order Instituting Proceedings, *supra* note 7, at 39090.

<sup>29</sup> See *id.* at 39091.

<sup>30</sup> See *id.*

<sup>31</sup> See *supra* note 8.

<sup>32</sup> See SIFMA Letter; FIA PTG Letter; Options Market Maker Firms Letter; Optiver Letter; Group One Letter; STA Letter; CTC Letter; Citadel Letter; KCG Letter.

position that it was unfairly discriminatory to increase fees for Non-Customer auction responders while correspondingly increasing rebates to Initiating Participants.<sup>39</sup> One of these commenters further suggested that the Commission impose a maximum fee differential of \$0.02 between Initiating Participants and non-Initiating Participants.<sup>40</sup>

Commenters expressed other concerns as well. One commenter stated that high response fees generally disincentivize firms from responding to an auction and offering price improvement.<sup>41</sup> Another commenter argued that auction response fees are comparable to access fees charged by exchanges and should be limited more generally.<sup>42</sup> Two commenters supported limiting auction response fees in both Penny and Non-Penny classes to no more than half the minimum trading increment.<sup>43</sup> Another commenter similarly supported a cap on auction response fees, but stated that the amount should be set at a much lower level than half the minimum increment in the Penny classes.<sup>44</sup> Still another commenter stated that an absolute cap would not be necessary.<sup>45</sup> Instead, this commenter maintained, the Commission should prohibit fee differentials between market participants, reasoning that, if exchanges were barred from discriminating between participant types, competitive market forces would lower the absolute fee levels to a reasonable amount.<sup>46</sup> In addition, five commenters expressed specific concern about break-up credits,<sup>47</sup> contending that they are per se unfairly discriminatory in that they provide a benefit solely to Initiating Participants

and thereby discourage competition and limit price improvement.<sup>48</sup>

Several commenters expressed concern that high transaction fees in auction mechanisms generally, not only the fees under the Exchange's proposal, could harm options market quality by negatively impacting market maker quoting behavior.<sup>49</sup> A few commenters believed that high auction response fees, such as those proposed by the Exchange, would discourage quoting in the options markets because they would encourage increased internalization in the auctions.<sup>50</sup> One of these commenters stated that market makers would respond to the proposed fees by reducing the number, size, and quality of their displayed quotations.<sup>51</sup> Another commenter believed that this would diminish the degree of actual price improvement provided by the auctions, because, while auction executions will occur at or better than the NBBO, this NBBO may have been better at the outset if not for the negative effects of the high auction fees.<sup>52</sup> One commenter contended that increased transaction fees in general, and especially disproportionate fees among various market participants, will lead to overall decreased competition and liquidity in the options market.<sup>53</sup> In addition, several commenters expressed concerns that break-up fees, break-up credits, auto-match functionality, and the ability to initiate an auction at the NBBO are all among features of auctions that may incentivize internalization, decrease competition, and impair market quality.<sup>54</sup> Finally, commenters broadly suggested that the Commission conduct a holistic review of options exchange electronic auction mechanisms.<sup>55</sup>

In its comment letter, the Exchange broadly expressed concerns with options exchange electronic auction mechanisms, and stated its belief that such mechanisms should guarantee price improvement.<sup>56</sup> However, the Exchange did not provide additional justification for the proposal, or respond specifically to the concerns expressed in the Order Instituting Proceedings. Rather, the Exchange stated that its proposal was developed in response to competitive concerns and that the suspension placed it at a competitive disadvantage compared to other exchanges with comparable fees that were unaffected by the Order Instituting Proceedings.<sup>57</sup> The Exchange requested that the Commission end its temporary suspension of the proposal while the Commission undertakes a broad review of the fee structures applied by the options exchanges to their price improvement auctions.<sup>58</sup>

#### IV. Discussion and Commission Findings

Under Section 19(b)(2)(C) of the Act,<sup>59</sup> the Commission shall 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 that are applicable to such organization.<sup>60</sup> The Commission shall disapprove a proposed rule change if it does not make such a finding.<sup>61</sup> Rule 700(b)(3) of the Commission's Rules of Practice states that the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change" and that a "mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient."<sup>62</sup>

requested that the Commission end the suspension of the instant filing while undertaking this review. See NYSE MKT Letter at 5.

<sup>56</sup> See NYSE MKT Letter at 4.

<sup>57</sup> See *id.* at 3–4. In particular, the Exchange stated that it was aware of two other options exchanges that, like the Exchange, were charging auction response fees in Penny classes of more than \$0.50 per contract. See *id.* at 4.

<sup>58</sup> See *id.* at 1, 4.

<sup>59</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>60</sup> 15 U.S.C. 78s(b)(2)(C)(i).

<sup>61</sup> 15 U.S.C. 78s(b)(2)(C)(ii); see also 17 CFR 201.700(b)(3).

<sup>62</sup> 17 CFR 201.700(b)(3). The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. See *id.* Any failure of a self-regulatory organization to provide the information elicited by Form 19b-4 may result in the Commission not having a sufficient basis to make

Continued

<sup>39</sup> See CTC Letter at 2–4; KCG Letter at 2, 5–6.

<sup>40</sup> See CTC Letter at 2–4 (comparing this proposed limitation to transaction fee differentials between directed and unaffiliated market makers trading against a directed order).

<sup>41</sup> See SIFMA Letter at 2.

<sup>42</sup> See Citadel Letter at 4.

<sup>43</sup> See Citadel Letter at 7; CTC Letter at 3. Citadel supported limiting all transaction fees in Penny classes at \$0.50, and stated that the minimum increment considered in setting auction fees should be the minimum increment of an auction response. Citadel Letter at 7. CTC stated that auction response fees should be limited at \$0.50 for all series because all price improvement auctions allow responses in penny increments. CTC Letter at 3.

<sup>44</sup> See Options Market Maker Firms Letter at 9.

<sup>45</sup> See Optiver Letter at 5.

<sup>46</sup> *Id.* This commenter believes that, absent discriminatory fees, competition would lead to an amount that was much lower than half the minimum trading increment. *Id.* The commenter further stated that even if an absolute response fee limitation were to be imposed, an exchange could offer rebates sufficiently high to maintain a large differential in fees between market participants. *Id.*

<sup>47</sup> See *supra* text accompanying note 13.

<sup>48</sup> See CTC Letter at 4; Options Market Maker Firms Letter at 4; Optiver Letter at 3; Group One Trading Letter at 2–3; STA Letter at 2–3.

<sup>49</sup> See, e.g., Citadel Letter at 6; FIA PTG Letter at 1; NYSE MKT Letter at 2; Options Market Maker Firms Letter at 2–3, 6; SIFMA Letter at 2; KCG Letter at 2.

<sup>50</sup> See, e.g., Citadel Letter at 6; Options Market Maker Firms Letter at 6; SIFMA Letter at 2. In response, the Exchange acknowledged that price improvement auctions encourage internalization to the detriment of displayed market maker quotations, but argued that this was the result of a lack of guaranteed price improvement in most exchanges' auctions. See NYSE MKT Letter at 2.

<sup>51</sup> See Citadel Letter at 6.

<sup>52</sup> See Options Market Maker Firms Letter at 2–3.

<sup>53</sup> See FIA PTG Letter at 1.

<sup>54</sup> See, e.g., FIA PTG Letter at 2, Options Market Maker Firms Letter at 3, CTC Letter at 3.

<sup>55</sup> See Citadel Letter at 7; CTC Letter at 1; FIA PTG Letter at 2; Group One Trading Letter at 1, 3; NYSE MKT Letter at 4–5; Options Market Maker Firms Letter at 2; Optiver Letter at 1, 4; SIFMA Letter at 3; STA Letter at 3; KCG Letter at 5–6. The Commission notes that while the Exchange supported such a review in its letter, the Exchange

In the Order Instituting Proceedings, the Commission raised concerns about the effect the proposal could have on the operation of the CUBE Auction and its ability to provide price improvement to customers, as well as the impact it could have on competition among participants initiating CUBE Auctions and those responding to them.<sup>63</sup> The Commission pointed to several specific elements of the proposal for which, in its view, the Exchange had not provided sufficient justification to enable the Commission to find that the proposal was consistent with the Act.<sup>64</sup> In particular, the Commission noted that the Exchange justified the proposal on the grounds that it would create incentives for Initiating Participants to bring customer orders to the Exchange, and thereby benefit all members by providing more trading opportunities, potential price improvement, tighter spreads, and enhanced market quality.<sup>65</sup> The Commission acknowledged that increasing the rebates and break-up credits provided to Initiating Participants likely would strengthen their incentives to bring customer orders to the Exchange, but expressed concern that substantially increasing the fees paid by Non-Customer auction responders could deter them from participating in CUBE Auctions.<sup>66</sup> The Commission further noted that the proposal would substantially exacerbate the differences in the fees assessed by the Exchange on Non-Customer auction responders as compared to those for Initiating Participants.<sup>67</sup> The Commission stated that in Penny classes, for example, the fee charged Non-Customer auction responders would exceed one-half the minimum trading increment, and the economic differential between Non-Customer auction responders and the Initiating Participants with whom they are competing would be even more.<sup>68</sup> Accordingly, the Commission believed that questions were raised as to whether the proposal would in fact provide the additional trading opportunities for non-Initiating Participants and other market quality benefits suggested by the Exchange.<sup>69</sup>

an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization. *Id.*

<sup>63</sup> See Order Instituting Proceedings, *supra* note 7, at 39090.

<sup>64</sup> See *id.*

<sup>65</sup> See *id.* at 39091.

<sup>66</sup> See *id.*

<sup>67</sup> See *id.*

<sup>68</sup> See *id.*

<sup>69</sup> See *id.*

As discussed above, most commenters broadly echoed the Commission's concerns, and several expressed the view that the proposal would not provide the additional trading opportunities for non-Initiating Participants and other market quality benefits suggested by the Exchange. Specifically, several commenters stated that an effect of the proposed fees would be to limit opportunities for price improvement in the CUBE mechanism by discouraging auction responders from effectively participating,<sup>70</sup> and expressed concern that the fee structure in auction mechanisms could harm options market quality by negatively impacting market maker quoting behavior.<sup>71</sup> In addition, commenters were concerned that the proposed fees would widen the cost differential between Non-Customer auction responders and Initiating Participants such that the differential would be excessive as compared with those of other options exchanges.<sup>72</sup>

In its comment letter, the Exchange did not respond specifically to the concerns articulated in the Order Instituting Proceedings or in the comments, or otherwise offer any additional information to support its view that the proposal would provide additional trading opportunities for non-Initiating Participants and other market quality benefits.<sup>73</sup> The Exchange simply characterized its proposal as a competitive response to certain other options exchanges, two of which had been charging auction response fees in Penny classes in excess of \$0.50 per contract. The Commission notes that, in the interim, both such exchanges have reduced their auction response fees (inclusive of marketing fees) so that they no longer exceed half the minimum trading increment in Penny classes.<sup>74</sup>

<sup>70</sup> See *supra* note 37.

<sup>71</sup> See *supra* notes 50–52 and accompanying text.

<sup>72</sup> See *supra* notes 33–36 and accompanying text.

<sup>73</sup> In particular, the Exchange did not address the fact that the proposal would substantially increase the difference in the fees assessed by the Exchange on Initiating Participants and Non-Customer auction responders; did not support with specific reasoning or data its statement that the proposal would provide all members additional trading opportunities and other market quality benefits; did not sufficiently address the potential burden that its proposed fee changes would have on competition between Initiating Participants and Non-Customer auction responders, or the prospect that, by substantially increasing the auction response fees paid by Non-Customer auction responders, competition in CUBE Auctions could be impaired; and did not address in any detail the increases in the break-up credit payable to Initiating Participants for each contract that they are not able to execute in CUBE, and why this payment is reasonable, equitable, and not unfairly discriminatory.

<sup>74</sup> See Securities Exchange Act Release Nos. 78117 (June 21, 2016), 81 FR 41634 (June 27, 2016)

As noted, Rule 700(b)(3) of the Commission's Rules of Practice states that the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change" and that a "mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient."<sup>75</sup> The Exchange has taken the position that its proposal meets applicable Exchange Act standards, including that fees be reasonable, equitably allocated, and not unfairly discriminatory, and that they not impose any unnecessary or inappropriate burden on competition, on the grounds that the proposed fee changes would benefit all market participants through increased trading opportunities and improved market quality. Although the Commission expressed concern, in the Order Instituting Proceedings, that the reasoning behind this assertion was not clear and no supporting data had been provided, the Exchange has offered no additional justification or evidence to support this key aspect of its statutory basis.

Accordingly, after careful consideration, the Commission does not find that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>76</sup> In particular, the Commission does not find that the proposed rule change is consistent with: (1) Section 6(b)(4) of the Act,<sup>77</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons

(SR-NYSEMKT–2016–60); 78394 (July 22, 2016), 81 FR 49709 (July 28, 2016) (SR-Phlx–2016–77); 78427 (July 27, 2016), 81 FR 50777 (August 2, 2016) (SR-BOX–2016–34).

<sup>75</sup> 17 CFR 201.700(b)(3). The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. See *id.* Any failure of a self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization. *Id.*

<sup>76</sup> In disapproving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>77</sup> 15 U.S.C. 78f(b)(4).

using its facilities; (2) Section 6(b)(5) of the Act,<sup>78</sup> which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and (3) Section 6(b)(8) of the Act,<sup>79</sup> which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Because any of these determinations under the Act independently necessitates disapproving the proposal, the Commission does so.

## V. Conclusion

For the reasons set forth above, the Commission does not find that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Sections 6(b)(4), 6(b)(5), and 6(b)(8) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>80</sup> that the proposed rule change (SR-NYSE-MKT-2016-45) be, and hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>81</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-25941 Filed 10-26-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79130; File No. SR-NYSE-2016-67]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 497

October 21, 2016.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the

“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 13, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I 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 Rule 497 regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 497 (Additional Requirements for Listed Securities Issued by Intercontinental Exchange, Inc. or its Affiliates) regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates. Rule 497 sets forth certain requirements that securities issued by the Exchange's ultimate parent, Intercontinental Exchange, Inc. (“ICE”), or its affiliates, must meet before they can be listed on the Exchange, including certain pre-listing approvals and post-listing monitoring requirements.

Specifically, the Exchange is proposing to make the following

changes to Rule 497: (i) Expand the definition of Affiliate Security under Rule 497(a)(2); (ii) require that the annual review required under Rule 497(c)(2) be forwarded to the Exchange's Regulatory Oversight Committee (“ROC”); and (iii) make non-substantive typographical changes.

Rule 497(a)(2) currently defines “Affiliate Security” as “any security issued by an ICE Affiliate, with the exception of Investment Company Units as defined in Para. 703.16 of the Listed Company Manual.”<sup>4</sup> The Exchange proposes to expand the definition of Affiliate Security to include any Exchange-listed option on any security issued by an ICE Affiliate. As a consequence, under Rule 497(b), prior to listing any new class of options on a security issued by an ICE Affiliate, Exchange regulatory staff would be required to make a finding that the option class satisfies the Exchange's rules for listing, and the ROC would be required to approve such finding. Likewise, throughout the continued listing of such option class on the Exchange, it would be covered by the reporting requirements of Rule 497(c). In a non-substantive grammatical change to Rule 497(a)(2), the Exchange also proposes to replace the “a” before “ICE Affiliate” with “an.”

In the event that an ICE Affiliate lists an Affiliate Security, Rule 497(c)(2) requires that, throughout the continued listing of the Affiliate Security on the Exchange, an independent accounting firm will review the listing standards for the Affiliate Security and a copy of the report shall be forwarded promptly to the Securities and Exchange Commission (“Commission”). The Exchange proposes to expand Rule 497(c)(2) to require that such report also be forwarded to the ROC.

The Exchange proposes to make the following additional, non-substantive changes to Rule 497(c):

- It proposes to move “the Exchange shall” from the end of Rule 497(c) to the start of Rule 497(c)(1), as the text only applies to Rule 497(c)(1), and not subparagraphs (2) or (3), and change “shall” to “will.”
- It proposes to add “and trading” after “Throughout the continued listing” in Rule 497(c), as Rule 497 (c)(1)

<sup>4</sup> For purposes of Rule 497, an “ICE Affiliate” is “ICE and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with ICE, where ‘control’ means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.” Rule 497(a)(1).

<sup>78</sup> 15 U.S.C. 78f(b)(5).

<sup>79</sup> 15 U.S.C. 78f(b)(8).

<sup>80</sup> 15 U.S.C. 78s(b)(2).

<sup>81</sup> 17 CFR 200.30-3(a)(57) and (58).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

references the listing of Affiliate Securities, as well as their trading.

- The Exchange proposes to delete an extraneous “that” from the final clause of Rule 497(c)(1)(b), so that it reads as follows:

Exchange regulatory staff’s monitoring of the trading of the Affiliate Security including summaries of all related surveillance alerts, complaints, regulatory referrals, adjusted trades, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security’s compliance with the Exchange’s listing and trading rules.

The Exchange notes that the proposed amendments would be consistent with recent changes to the Bats BZX Exchange, Inc. (“BZX”) Rule 14.3 regarding requirements for the listing of securities listed by BZX or any of its affiliates.<sup>5</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>6</sup> in general, and Section 6(b)(5)<sup>7</sup> in particular, in that it because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Commission and the ROC with respect to oversight of the listing and trading on the Exchange of Affiliate Securities, will continue to help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. By adding Exchange-listed options on any security issued by an ICE Affiliate to the definition of “Affiliate Securities,” the proposed changes would expand the scope of Rule 497. The Exchange accordingly believes that the proposed amendments to Rule 497 would continue to eliminate any perception of a potential conflict of interest if an ICE

Affiliate seeks to list a security on the Exchange.

Lastly, the Exchange believes that the proposed non-substantive grammatical changes would promote just and equitable principles of trade and remove impediments to a free and open market by providing greater clarity in the Exchange’s rules.

## B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather provide market participants with additional specificity and transparency regarding the Exchange’s controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities 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<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> 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 Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to implement the proposed changes to Rule 497 without delay. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>12</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2016-67 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-NYSE-2016-67. 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

<sup>5</sup> See Securities Exchange Act Release No. 77639 (April 18, 2016), 81 FR 23768 (April 22, 2016) (SR-BatsBZX-2016-08).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 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.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 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).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2016-67, and should be submitted on or before November 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-25937 Filed 10-26-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32322; File No. 812-14619]

### Nuveen Fund Advisors, LLC, et al.; Notice of Application

October 21, 2016.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(j) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

**APPLICANTS:** Nuveen All Cap Energy MLP Opportunities Fund, Nuveen

AMT-Free Municipal Value Fund, Nuveen AMT-Free Quality Municipal Income Fund, Nuveen Arizona Premium Income Municipal Fund, Nuveen Build America Bond Fund, Nuveen Build America Bond Opportunity Fund, Nuveen California AMT-Free Municipal Income Fund, Nuveen California Dividend Advantage Municipal Fund, Nuveen California Dividend Advantage Municipal Fund 2, Nuveen California Dividend Advantage Municipal Fund 3, Nuveen California Municipal Value Fund 2, Nuveen California Municipal Value Fund, Inc., Nuveen California Select Tax-Free Income Portfolio, Nuveen Connecticut Premium Income Municipal Fund, Nuveen Core Equity Alpha Fund, Nuveen Credit Strategies Income Fund, Nuveen Diversified Dividend and Income Fund, Nuveen Dow 30SM Dynamic Overwrite Fund, Nuveen Energy MLP Total Return Fund, Nuveen Enhanced AMT-Free Municipal Credit Opportunities Fund, Nuveen Enhanced Municipal Credit Opportunities Fund, Nuveen Enhanced Municipal Value Fund, Nuveen Flexible Investment Income Fund, Nuveen Floating Rate Income Fund, Nuveen Floating Rate Income Opportunity Fund, Nuveen Georgia Dividend Advantage Municipal Fund 2, Nuveen Global High Income Fund, Nuveen Global Equity Income Fund, Nuveen High Income 2020 Target Term Fund, Nuveen High Income December 2018 Target Term Fund, Nuveen High Income December 2019 Target Term Fund, Nuveen High Income November 2021 Target Term Fund, Nuveen Intermediate Duration Municipal Term Fund, Nuveen Intermediate Duration Quality Municipal Term Fund, Nuveen Investment Funds, Inc., Nuveen Investment Trust, Nuveen Investment Trust II, Nuveen Investment Trust III, Nuveen Investment Trust V, Nuveen Managed Accounts Portfolios Trust, Nuveen Maryland Premium Income Municipal Fund, Nuveen Massachusetts Premium Income Municipal Fund, Nuveen Michigan Quality Income Municipal Fund, Nuveen Minnesota Municipal Income Fund, Nuveen Missouri Premium Income Municipal Fund, Nuveen Mortgage Opportunity Term Fund 2, Nuveen Mortgage Opportunity Term Fund, Nuveen Multi-Market Income Fund, Nuveen Multistate Trust I, Nuveen Multistate Trust II, Nuveen Multistate Trust III, Nuveen Multistate Trust IV, Nuveen Municipal 2021 Target Term Fund, Nuveen Municipal High Income Opportunity Fund, Nuveen Municipal Income Fund, Inc., Nuveen Municipal Trust, Nuveen Municipal Value Fund, Inc., Nuveen

NASDAQ 100 Dynamic Overwrite Fund, Nuveen New Jersey Dividend Advantage Municipal Fund, Nuveen New Jersey Municipal Value Fund, Nuveen New York AMT-Free Municipal Income Fund, Nuveen New York Dividend Advantage Municipal Fund, Nuveen New York Municipal Value Fund 2, Nuveen New York Municipal Value Fund, Inc., Nuveen New York Select Tax-Free Income Portfolio, Nuveen North Carolina Premium Income Municipal Fund, Nuveen Ohio Quality Income Municipal Fund, Nuveen Pennsylvania Investment Quality Municipal Fund, Nuveen Pennsylvania Municipal Value Fund, Nuveen Preferred and Income Term Fund, Nuveen Preferred Income Opportunities Fund, Nuveen Preferred Securities Income Fund, Nuveen Quality Municipal Income Fund, Nuveen Real Asset Income and Growth Fund, Nuveen Real Estate Income Fund, Nuveen S&P 500 Buy-Write Income Fund, Nuveen S&P 500 Dynamic Overwrite Fund, Nuveen Select Maturities Municipal Fund, Nuveen Select Tax-Free Income Portfolio, Nuveen Select Tax-Free Income Portfolio 2, Nuveen Select Tax-Free Income Portfolio 3, Nuveen Senior Income Fund, Nuveen Short Duration Credit Opportunities Fund, Nuveen Strategy Funds, Inc., Nuveen Tax-Advantaged Dividend Growth Fund, Nuveen Tax-Advantaged Total Return Strategy Fund, Nuveen Texas Quality Income Municipal Fund, Nuveen Virginia Premium Income Municipal Fund, Diversified Real Asset Income Fund, each an investment company organized as a business trust or a corporation under the laws of Massachusetts, Maryland or Minnesota and registered under the Act as an open-end or closed-end management investment company,<sup>1</sup> and Nuveen Fund Advisors, LLC (the "Adviser"), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

**FILING DATES:** The application was filed on February 23, 2016 and amended on July 1, 2016 and September 30, 2016.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving

<sup>1</sup> The Funds (as defined below) that are closed-end management investment companies will not participate as borrowers in the interfund lending facility. None of the Funds are, or will be, money market funds that comply with rule 2a-7 under the Act.

<sup>13</sup> 17 CFR 200.30-3(a)(12).



applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 15, 2016 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–1090; Applicants: Nuveen Fund Advisors, LLC, 333 West Wacker Drive, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

### Summary of the Application

1. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.<sup>2</sup> The Funds will not borrow under the facility for leverage purposes and the loans' duration will be no more than 7 days.<sup>3</sup>

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of

liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment management and administrative agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds' Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund's loans to any one Fund will not exceed 5% of the lending Fund's net assets.<sup>4</sup>

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.<sup>5</sup> Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the

Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).<sup>6</sup>

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the open-end Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the open-end Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(j) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

<sup>2</sup> Applicants request that the order apply to the applicants and to any existing or future registered open-end or closed-end management investment company or series thereof for which the Adviser or any successor thereto or an investment adviser controlling, controlled by, or under common control with the Adviser or any successor thereto serves as investment adviser (each a "Fund" and collectively the "Funds" and each such investment adviser an "Adviser"). For purposes of the requested order, "successor" is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

<sup>3</sup> Any Fund, however, will be able to call a loan on one business day's notice.

<sup>4</sup> Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

<sup>5</sup> Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

<sup>6</sup> Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.



For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-25942 Filed 10-26-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79132; File No. SR-NYSEMKT-2016-94]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 497—Equities

October 21, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 13, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Rule 497—Equities regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 497—Equities (Additional Requirements for Listed Securities Issued by Intercontinental Exchange, Inc. or its Affiliates) regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates. Rule 497—Equities sets forth certain requirements that securities issued by the Exchange's ultimate parent, Intercontinental Exchange, Inc. (“ICE”), or its affiliates, must meet before they can be listed on the Exchange, including certain pre-listing approvals and post-listing monitoring requirements.

Specifically, the Exchange is proposing to make the following changes to Rule 497—Equities: (i) Expand the definition of Affiliate Security under Rule 497—Equities (a)(2); (ii) require that the annual review required under Rule 497—Equities (c)(2) be forwarded to the Exchange's Regulatory Oversight Committee (“ROC”); and (iii) make non-substantive typographical changes.

Rule 497—Equities (a)(2) currently defines “Affiliate Security” as “any security issued by an ICE Affiliate.”<sup>4</sup> The Exchange proposes to expand the definition of Affiliate Security to include any Exchange-listed option on any security issued by an ICE Affiliate. As a consequence, under Rule 497—Equities (b), prior to listing any new class of options on a security issued by an ICE Affiliate, Exchange regulatory staff would be required to make a finding that the option class satisfies the Exchange's rules for listing, and the ROC would be required to approve such finding. Likewise, throughout the continued listing of such option class on the Exchange, it would be covered by the reporting requirements of Rule 497—Equities (c).

In the event that an ICE Affiliate lists an Affiliate Security, Rule 497—Equities (c)(2) requires that, throughout the

<sup>4</sup> For purposes of Rule 497—Equities, an “ICE Affiliate” is “ICE and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with ICE, where ‘control’ means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.” Rule 497—Equities (a)(1).

continued listing of the Affiliate Security on the Exchange, an independent accounting firm will review the listing standards for the Affiliate Security and a copy of the report shall be forwarded promptly to the Securities and Exchange Commission (“Commission”). The Exchange proposes to expand Rule 497—Equities (c)(2) to require that such report also be forwarded to the ROC.

The Exchange proposes to make the following additional, non-substantive changes to Rule 497—Equities (c):

- It proposes to move “the Exchange shall” from the end of Rule 497—Equities (c) to the start of Rule 497—Equities (c)(1), as the text only applies to Rule 497—Equities (c)(1), and not sub-paragraphs (2) or (3), and change “shall” to “will.”
- It proposes to add “and trading” after “Throughout the continued listing” in Rule 497—Equities (c), as Rule 497—Equities (c)(1) references the listing of Affiliate Securities, as well as their trading.

- The Exchange proposes to delete an extraneous “that” from the final clause of Rule 497—Equities (c)(1)(b), so that it reads as follows:

Exchange regulatory staff's monitoring of the trading of the Affiliate Security including summaries of all related surveillance alerts, complaints, regulatory referrals, adjusted trades, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules.

The Exchange notes that the proposed amendments would be consistent with recent changes to the Bats BZX Exchange, Inc. (“BZX”) Rule 14.3 regarding requirements for the listing of securities listed by BZX or any of its affiliates.<sup>5</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>6</sup> in general, and Section 6(b)(5)<sup>7</sup> in particular, in that it because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to

<sup>5</sup> See Securities Exchange Act Release No. 77639 (April 18, 2016), 81 FR 23768 (April 22, 2016) (SR-BatsBZX-2016-08).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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.

Specifically, the Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Commission and the ROC with respect to oversight of the listing and trading on the Exchange of Affiliate Securities, will continue to help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. By adding Exchange-listed options on any security issued by an ICE Affiliate to the definition of "Affiliate Securities," the proposed changes would expand the scope of Rule 497—Equities. The Exchange accordingly believes that the proposed amendments to Rule 497—Equities would continue to eliminate any perception of a potential conflict of interest if an ICE Affiliate seeks to list a security on the Exchange.

Lastly, the Exchange believes that the proposed non-substantive grammatical changes would promote just and equitable principles of trade and remove impediments to a free and open market by providing greater clarity in the Exchange's rules.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather provide market participants with additional specificity and transparency regarding the Exchange's controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities 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<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> 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 Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to implement the proposed changes to Rule 497—Equities without delay. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>12</sup>

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 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.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 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).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-94 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-NYSEMKT-2016-94. 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-NYSEMKT-2016-94, and should be submitted on or before November 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-25939 Filed 10-26-16; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration # 14911 and # 14912]**

**North Carolina Disaster Number NC-00081**

**AGENCY:** U.S. Small Business Administration.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

**ACTION:** Amendment 7.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA-4285-DR), dated 10/10/2016.

*Incident:* Hurricane Matthew.

*Incident Period:* 10/04/2016 and continuing.

**EFFECTIVE DATE:** 10/19/2016.

*Physical Loan Application Deadline Date:* 12/09/2016.

*EIDL Loan Application Deadline Date:* 07/10/2017.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of North Carolina, dated 10/10/2016 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties:* (Physical Damage and Economic Injury Loans): Onslow.

All counties contiguous to the above listed county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Lisa Lopez-Suarez,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2016-26029 Filed 10-26-16; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #14927 and #14928]**

**South Carolina Disaster #SC-00041**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA-4286-DR), dated 10/18/2016.

*Incident:* Hurricane Matthew.

*Incident Period:* 10/04/2016 and continuing.

**EFFECTIVE DATE:** 10/18/2016.

*Physical Loan Application Deadline Date:* 12/19/2016.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/18/2017.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 10/18/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Colleton, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Jasper, Lee, Marion, Orangeburg, Sumter, Williamsburg.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere .....	2.625
<i>For Economic Injury:</i>	
Non-Profit Organizations Without Credit Available Elsewhere .....	2.625

The number assigned to this disaster for physical damage is 149278 and for economic injury is 149288.

(Catalog of Federal Domestic Assistance Number 59008)

**Lisa Lopez-Suarez,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2016-25996 Filed 10-26-16; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #14921 and #14922]**

**South Carolina Disaster Number SC-00040**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major

disaster for the State of South Carolina (FEMA-4286-DR), dated 10/14/2016.

*Incident:* Hurricane Matthew.

*Incident Period:* 10/04/2016 and continuing.

**EFFECTIVE DATE:** 10/19/2016.

*Physical Loan Application Deadline Date:* 12/13/2016.

*EIDL Loan Application Deadline Date:* 07/12/2017.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of South Carolina, dated 10/14/2016 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):* Calhoun, Clarendon, Horry, Marlboro.

*Contiguous Counties (Economic Injury Loans Only):*

North Carolina: Anson, Brunswick, Richmond, Scotland.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Lisa Lopez-Suarez,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2016-25994 Filed 10-26-16; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #14925 and #14926]**

**Florida Disaster Number FL-00121**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA-4283-DR), dated 10/17/2016.

*Incident:* Hurricane Matthew.

*Incident Period:* 10/03/2016 and continuing.

**EFFECTIVE DATE:** 10/19/2016.

*Physical Loan Application Deadline Date:* 12/16/2016.

*EIDL Loan Application Deadline Date:* 07/17/2017.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business

Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Florida, dated 10/17/2016 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):* Brevard, Indian River.

*Contiguous Counties (Economic Injury Loans Only):*  
Florida: Okeechobee, Osceola, Saint Lucie.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Lisa Lopez-Suarez,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2016-25995 Filed 10-26-16; 8:45 am]

**BILLING CODE 8025-01-P**

## **SMALL BUSINESS ADMINISTRATION**

### **[Disaster Declaration #14929 and #14930]**

#### **Kansas Disaster #KS-00098**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA-4287-DR), dated 10/20/2016.

*Incident:* Severe Storms and Flooding.  
*Incident Period:* 09/02/2016 through 09/12/2016.

**EFFECTIVE DATE:** 10/20/2016.

*Physical Loan Application Deadline Date:* 12/19/2016

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/20/2017

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the

President's major disaster declaration on 10/20/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Cheyenne, Cowley, Ellis, Graham, Greenwood, Kingman, Norton, Rooks, Russell, Sedgwick, Sumner.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere .....	2.625
<i>For Economic Injury:</i>	
Non-Profit Organizations Without Credit Available Elsewhere .....	2.625

The number assigned to this disaster for physical damage is 14929B and for economic injury is 14930B

(Catalog of Federal Domestic Assistance Number 59008)

**Lisa Lopez-Suarez,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2016-26006 Filed 10-26-16; 8:45 am]

**BILLING CODE 8025-01-P**

## **SOCIAL SECURITY ADMINISTRATION**

### **[Docket No. SSA-2016-0050]**

#### **Cost-of-Living Increase and Other Determinations for 2017**

**AGENCY:** Social Security Administration.

**ACTION:** Notice.

**SUMMARY:** Under title II of the Social Security Act (Act), there will be a 0.3 percent cost-of-living increase in Social Security benefits effective December 2016. In addition, the national average wage index for 2015 is \$48,098.63. The cost-of-living increase and national average wage index affect other program parameters as described below.

**FOR FURTHER INFORMATION CONTACT:** Susan C. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-3000. Information relating to this announcement is available on our Internet site at [www.socialsecurity.gov/oact/cola/index.html](http://www.socialsecurity.gov/oact/cola/index.html). For information

on eligibility or claiming benefits, call 1-800-772-1213 (TTY 1-800-325-0778), or visit our Internet site at [www.socialsecurity.gov](http://www.socialsecurity.gov).

**SUPPLEMENTARY INFORMATION:** Because of the 0.3 percent cost-of-living increase, the following items will increase for 2017:

(1) The maximum Federal Supplemental Security Income (SSI) monthly benefit amounts for 2017 under title XVI of the Act will be \$735 for an eligible individual, \$1,103 for an eligible individual with an eligible spouse, and \$368 for an essential person;

(2) The special benefit amount under title VIII of the Act for certain World War II veterans will be \$551.25 for 2017;

(3) The student earned income exclusion under title XVI of the Act will be \$1,790 per month in 2017, but not more than \$7,200 for all of 2017;

(4) The dollar fee limit for services performed as a representative payee remains at \$41 per month (\$78 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2017; and

(5) The dollar limit on the administrative-cost fee assessment charged to an appointed representative such as an attorney, agent, or other person who represents claimants remains at \$91 beginning in December 2016.

The national average wage index for 2015 is \$48,098.63. This index affects the following amounts:

(1) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base will be \$127,200 for remuneration paid in 2017 and self-employment income earned in taxable years beginning in 2017;

(2) The monthly exempt amounts under the OASDI retirement earnings test for taxable years ending in calendar year 2017 will be \$1,410 for beneficiaries who will attain their Normal Retirement Age (NRA) (defined in the *Retirement Earnings Test Exempt Amounts* section below) after 2017 and \$3,740 for those who attain NRA in 2017;

(3) The dollar amounts ("bend points") used in the primary insurance amount (PIA) benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2017 will be \$885 and \$5,336;

(4) The bend points used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before

becoming eligible, in 2017 will be \$1,131, \$1,633, and \$2,130;

(5) The taxable earnings a person must have to be credited with a quarter of coverage in 2017 will be \$1,300;

(6) The “old-law” contribution and benefit base under title II of the Act will be \$94,500 for 2017;

(7) The monthly amount deemed to constitute substantial gainful activity (SGA) for statutorily blind persons in 2017 will be \$1,950. The corresponding amount for non-blind disabled persons will be \$1,170;

(8) The earnings threshold establishing a month as a part of a trial work period will be \$840 for 2017; and

(9) Coverage thresholds for 2017 will be \$2,000 for domestic workers and \$1,800 for election officials and election workers.

According to section 215(i)(2)(D) of the Act, we must publish the benefit increase percentage and the revised table of “special minimum” benefits within 45 days after the close of the third calendar quarter of 2016. We must also publish the following by November 1: The national average wage index for 2015 (215(a)(1)(D)), the OASDI fund ratio for 2016 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2017 (section 230(a)), the earnings required to be credited with a quarter of coverage in 2017 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2017 (section 203(f)(8)(A)), the formula for computing a PIA for workers who first become eligible for benefits or die in 2017 (section 215(a)(1)(D)), and the formula for computing the maximum benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2017 (section 203(a)(2)(C)).

### Cost-of-Living Increases

#### General

The cost-of-living increase is 0.3 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 0.3 percent for individuals eligible for December 2016 benefits, payable in January 2017. We base this increase on the authority contained in section 215(i) of the Act.

Pursuant to section 1617 of the Act, Federal SSI payment levels will also increase by 0.3 percent effective for payments made for January 2017 but paid on December 30, 2016.

#### Computation

Computation of the cost-of-living increase is based on an increase in a Consumer Price Index produced by the Bureau of Labor Statistics. At the time

the Act was amended to provide cost-of-living increases, only one Consumer Price Index existed, namely the Consumer Price Index for Urban Wage Earners and Clerical Workers. Although the Bureau of Labor Statistics has since developed other consumer price indices, we follow precedent by continuing to use the Consumer Price Index for Urban Wage Earners and Clerical Workers. We refer to this index in the following paragraphs as the CPI.

Section 215(i)(1)(B) of the Act defines a “computation quarter” to be a third calendar quarter in which the average CPI exceeded the average CPI in the previous computation quarter. The last cost-of-living increase, effective for those eligible to receive title II benefits for December 2014, was based on the CPI increase from the third quarter of 2013 to the third quarter of 2014. Therefore, the last computation quarter is the third quarter of 2014. The law states that a cost-of-living increase for benefits is determined based on the percentage increase, if any, in the CPI from the last computation quarter to the third quarter of the current year. Therefore, we compute the increase in the CPI from the third quarter of 2014 to the third quarter of 2016.

Section 215(i)(1) of the Act states that the CPI for a cost-of-living computation quarter is the arithmetic mean of this index for the 3 months in that quarter. In accordance with 20 CFR 404.275, we round the arithmetic mean, if necessary, to the nearest 0.001. The CPI for each month in the quarter ending September 30, 2014, the last computation quarter, is: For July 2014, 234.525; for August 2014, 234.030; and for September 2014, 234.170. The arithmetic mean for the calendar quarter ending September 30, 2014 is 234.242. The CPI for each month in the quarter ending September 30, 2016, is: For July 2016, 234.771; for August 2016, 234.904; and for September 2016, 235.495. The arithmetic mean for the calendar quarter ending September 30, 2016 is 235.057. The CPI for the calendar quarter ending September 30, 2016, exceeds that for the calendar quarter ending September 30, 2014 by 0.3 percent (rounded to the nearest 0.1). Therefore, beginning December 2016 a cost-of-living benefit increase of 0.3 percent is effective for benefits under title II of the Act.

Section 215(i) also specifies that a benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the OASDI fund ratio for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the OASDI Trust

Funds at the beginning of that year to the combined expenditures of these funds during that year. For 2016, the OASDI fund ratio is assets of \$2,812,510 million divided by estimated expenditures of \$924,944 million, or 304.1 percent. Because the 304.1 percent OASDI fund ratio exceeds 20.0 percent, the benefit increase for December 2016 is not limited.

### Program Amounts That Change Based on the Cost-of-Living Increase

The following program amounts change based on the cost-of-living increase: (1) Title II benefits; (2) title XVI benefits; (3) title VIII benefits; (4) the student earned income exclusion; (5) the fee for services performed by a representative payee; and (6) the appointed representative fee assessment.

#### Title II Benefit Amounts

In accordance with section 215(i) of the Act, for workers and family members for whom eligibility for benefits (that is, the worker’s attainment of age 62, or disability or death before age 62) occurred before 2017, benefits will increase by 0.3 percent beginning with benefits for December 2016, which are payable in January 2017. For those first eligible after 2016, the 0.3 percent increase will not apply.

For eligibility after 1978, we determine benefits using a formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by using a benefit table. The table is available on the Internet at [www.socialsecurity.gov/oact/ProgData/tableForm.html](http://www.socialsecurity.gov/oact/ProgData/tableForm.html) or by writing to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act requires that, when we determine an increase in Social Security benefits, we will publish in the **Federal Register** a revision of the range of the PIAs and maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as “special minimum” benefits. These benefits are payable to certain individuals with long periods of low earnings. To qualify for these benefits, an individual must have at least 11 years of coverage. To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the old-law contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25

percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of PIAs and maximum family benefit amounts after the 0.3 percent benefit increase.

**SPECIAL MINIMUM PIAS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2016**

Number of years of coverage	PIA	Maximum family benefit
11 .....	\$40.00	\$60.90
12 .....	81.70	123.70
13 .....	123.50	186.40
14 .....	165.00	248.70
15 .....	206.40	310.90
16 .....	248.40	373.80
17 .....	290.00	436.70
18 .....	331.70	498.90
19 .....	373.40	561.50
20 .....	415.20	623.60
21 .....	456.90	686.70
22 .....	498.30	749.10
23 .....	540.70	812.60
24 .....	582.30	874.60
25 .....	623.60	936.60
26 .....	666.00	1,000.10
27 .....	707.20	1,062.50
28 .....	748.90	1,124.80
29 .....	790.60	1,187.80
30 .....	832.20	1,249.70

*Title XVI Benefit Amounts*

In accordance with section 1617 of the Act, maximum Federal SSI benefit amounts for the aged, blind, and disabled will increase by 0.3 percent effective January 2017. For 2016, we derived the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—\$733, \$1,100, and \$367, respectively—from yearly, unrounded Federal SSI benefit amounts of \$8,804.43, \$13,205.18, and \$4,412.31. For 2017, these yearly unrounded amounts respectively increase by 0.3 percent to \$8,830.84, \$13,244.80, and \$4,425.55. We must round each of these resulting amounts, when not a multiple of \$12, to the next lower multiple of \$12. Therefore, the annual amounts, effective for 2017, are \$8,820, \$13,236, and \$4,416. Dividing the yearly amounts by 12 gives the respective monthly amounts for 2017—\$735, \$1,103, and \$368. For an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

*Title VIII Benefit Amount*

Title VIII of the Act provides for special benefits to certain World War II veterans who reside outside the United States. Section 805 of the Act provides that “[t]he benefit under this title

payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [the maximum amount for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual’s benefit income for the month.” Therefore, the monthly benefit for 2017 under this provision is 75 percent of \$735, or \$551.25.

*Student Earned Income Exclusion*

A blind or disabled child who is a student regularly attending school, college, university, or a course of vocational or technical training can have limited earnings that do not count against his or her SSI benefits. The maximum amount of such income that we may exclude in 2016 is \$1,780 per month, but not more than \$7,180 in all of 2016. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2017, we increase the unrounded amount for 2016 by the latest cost-of-living increase. If the amount so calculated is not a multiple of \$10, we round it to the nearest multiple of \$10. The unrounded monthly amount for 2016 is \$1,781.37. We increase this amount by 0.3 percent to \$1,786.71, which we then round to \$1,790. Similarly, we increase the unrounded yearly amount for 2016, \$7,180.65, by 0.3 percent to \$7,202.19 and round this to \$7,200. Therefore, the maximum amount of the income exclusion applicable to a student in 2017 is \$1,790 per month but not more than \$7,200 in all of 2017.

*Fee for Services Performed as a Representative Payee*

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect a monthly fee from a beneficiary for expenses incurred in providing services as the beneficiary’s representative payee. In 2016, the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) \$41 each month (\$78 each month when the beneficiary is entitled to disability benefits and has an alcoholism or drug addiction condition that makes the individual incapable of managing such benefits). The dollar fee limits are subject to increase by the cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Due to the rounding provision, the 0.3 percent COLA effective for December 2016 has no effect on the fee limits, so both the current \$41 amount and the current \$78 amount remain the same for 2017.

*Appointed Representative Fee Assessment*

Under sections 206(d) and 1631(d) of the Act, whenever we pay a fee to a representative such as an attorney, agent, or other person who represents claimants, we must impose on the representative an assessment to cover administrative costs. The assessment is no more than 6.3 percent of the representative’s authorized fee or, if lower, a dollar amount that is subject to increase by the cost-of-living increase. We derive the dollar limit for December 2016 by increasing the unrounded limit for December 2015, \$91.20, by 0.3 percent, which is \$91.47. We then round \$91.47 to the next lower multiple of \$1. The dollar limit effective for December 2016 is, therefore, \$91, the same as the current amount.

**National Average Wage Index for 2015**

*Computation*

We determined the national average wage index for calendar year 2015 based on the 2014 national average wage index of \$46,481.52, published in the **Federal Register** on October 30, 2015 (80 FR 66963), and the percentage increase in average wages from 2014 to 2015, as measured by annual wage data. We tabulate the annual wage data, including contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated from these data were \$44,569.20 for 2014 and \$46,119.78 for 2015. To determine the national average wage index for 2015 at a level consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2014 national average wage index of \$46,481.52 by the percentage increase in average wages from 2014 to 2015 (based on SSA-tabulated wage data) as follows. We round the result to the nearest cent.

*National Average Wage Index Amount*

Multiplying the national average wage index for 2014 (\$46,481.52) by the ratio of the average wage for 2015 (\$46,119.78) to that for 2014 (\$44,569.20) produces the 2015 index, \$48,098.63. The national average wage index for calendar year 2015 is about 3.48 percent higher than the 2014 index.

**Program Amounts That Change Based on the National Average Wage Index**

Under the Act, the following amounts change with annual changes in the national average wage index: (1) The OASDI contribution and benefit base; (2) the exempt amounts under the retirement earnings test; (3) the dollar

amounts, or bend points, in the PIA formula; (4) the bend points in the maximum family benefit formula; (5) the earnings required to credit a worker with a quarter of coverage; (6) the old-law contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (7) the substantial gainful activity (SGA) amount applicable to statutorily blind individuals; and (8) the coverage threshold for election officials and election workers. Additionally, under section 3121(x) of the Internal Revenue Code, the domestic employee coverage threshold is based on changes in the national average wage index.

Two amounts also increase under regulatory requirements—the SGA amount applicable to non-blind disabled persons, and the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

#### **OASDI Contribution and Benefit Base**

##### *General*

The OASDI contribution and benefit base is \$127,200 for remuneration paid in 2017 and self-employment income earned in taxable years beginning in 2017. The OASDI contribution and benefit base serves as the maximum annual earnings on which OASDI taxes are paid. It is also the maximum annual earnings used in determining a person's OASDI benefits.

##### *Computation*

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2017 is the larger of: (1) The 1994 base of \$60,600 multiplied by the ratio of the national average wage index for 2015 to that for 1992; or (2) the current base (\$118,500). If the resulting amount is not a multiple of \$300, we round it to the nearest multiple of \$300.

##### *OASDI Contribution and Benefit Base Amount*

Multiplying the 1994 OASDI contribution and benefit base (\$60,600) by the ratio of the national average wage index for 2015 (\$48,098.63 as determined above) to that for 1992 (\$22,935.42) produces \$127,086.27. We round this amount to \$127,200. Because \$127,200 exceeds the current base amount of \$118,500, the OASDI contribution and benefit base is \$127,200 for 2017.

#### **Retirement Earnings Test Exempt Amounts**

##### *General*

We withhold Social Security benefits when a beneficiary under the NRA has earnings over the applicable retirement earnings test exempt amount. The NRA is the age when retirement benefits (before rounding) are equal to the PIA. The NRA is age 66 for those born in 1943–54, and it gradually increases to age 67 for those born in 1960 or later. A higher exempt amount applies in the year in which a person attains NRA, but only for earnings in months before such attainment. A lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act provides formulas for determining the monthly exempt amounts. The annual exempt amounts are exactly 12 times the monthly amounts.

For beneficiaries who attain NRA in the year, we withhold \$1 in benefits for every \$3 of earnings over the annual exempt amount for months before NRA. For all other beneficiaries under NRA, we withhold \$1 in benefits for every \$2 of earnings over the annual exempt amount.

##### *Computation*

Under the formula that applies to beneficiaries attaining NRA after 2017, the lower monthly exempt amount for 2017 is the larger of: (1) The 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2015 to that for 1992; or (2) the 2016 monthly exempt amount (\$1,310). If the resulting amount is not a multiple of \$10, we round it to the nearest multiple of \$10.

Under the formula that applies to beneficiaries attaining NRA in 2017, the higher monthly exempt amount for 2017 is the larger of: (1) The 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2015 to that for 2000; or (2) the 2016 monthly exempt amount (\$3,490). If the resulting amount is not a multiple of \$10, we round it to the nearest multiple of \$10.

##### *Lower Exempt Amount*

Multiplying the 1994 retirement earnings test monthly exempt amount of \$670 by the ratio of the national average wage index for 2015 (\$48,098.63) to that for 1992 (\$22,935.42) produces \$1,405.08. We round this to \$1,410. Because \$1,410 exceeds the current exempt amount of \$1,310, the lower retirement earnings test monthly exempt amount is \$1,410 for 2017. The lower annual exempt amount is \$16,920 under the retirement earnings test.

##### *Higher Exempt Amount*

Multiplying the 2002 retirement earnings test monthly exempt amount of \$2,500 by the ratio of the national average wage index for 2015 (\$48,098.63) to that for 2000 (\$32,154.82) produces \$3,739.61. We round this to \$3,740. Because \$3,740 exceeds the current exempt amount of \$3,490, the higher retirement earnings test monthly exempt amount is \$3,740 for 2017. The higher annual exempt amount is \$44,880 under the retirement earnings test.

#### **Primary Insurance Amount Benefit Formula**

##### *General*

The Social Security Amendments of 1977 provided a method for computing benefits that generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's average indexed monthly earnings (AIME) to compute the PIA. We adjust the formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or index, a worker's earnings to reflect the change in the general wage levels that occurred during the worker's years of employment. Such indexing ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the AIME, we first determine the required number of years of earnings. We then select the number of years with the highest indexed earnings, add the indexed earnings for those years, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the AIME.

##### *Computing the PIA*

The PIA is the sum of three separate percentages of portions of the AIME. In 1979 (the first year the formula was in effect), these portions were the first \$180, the amount between \$180 and \$1,085, and the amount over \$1,085. We call the dollar amounts in the formula governing the portions of the AIME the "bend points" of the formula. Therefore, the bend points for 1979 were \$180 and \$1,085.

To obtain the bend points for 2017, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2015 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of \$180 and \$1,085 by the ratio of the national



average wage index for 2015 (\$48,098.63) to that for 1977 (\$9,779.44) produces the amounts of \$885.30 and \$5,336.40. We round these to \$885 and \$5,336. Therefore, the portions of the AIME to be used in 2017 are the first \$885, the amount between \$885 and \$5,336, and the amount over \$5,336.

Therefore, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2017, or who die in 2017 before becoming eligible for benefits, their PIA will be the sum of:

- (a) 90 percent of the first \$885 of their AIME, plus
- (b) 32 percent of their AIME over \$885 and through \$5,336, plus
- (c) 15 percent of their AIME over \$5,336.

We round this amount to the next lower multiple of \$0.10 if it is not already a multiple of \$0.10. This formula and the rounding adjustment are stated in section 215(a) of the Act.

### Maximum Benefits Payable to a Family

#### General

The 1977 amendments continued the policy of limiting the total monthly benefits that a worker's family may receive based on the worker's PIA. Those amendments also continued the relationship between maximum family benefits and PIAs but changed the method of computing the maximum benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96-265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980 or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

#### Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the PIA. It involves computing the sum of four separate percentages of portions of the worker's PIA. In 1979, these portions were the first \$230, the amount between \$230 and \$332, the amount between \$332 and \$433, and the amount over \$433. We refer to such dollar amounts in the formula as the "bend points" of the family-maximum formula.

To obtain the bend points for 2017, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2015 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of \$230, \$332, and \$433 by the ratio of the national average wage index for 2015 (\$48,098.63) to that for 1977 (\$9,779.44) produces the amounts of \$1,131.22, \$1,632.89, and \$2,129.64. We round these amounts to \$1,131, \$1,633, and \$2,130. Therefore, the portions of the PIAs to be used in 2017 are the first \$1,131, the amount between \$1,131 and \$1,633, the amount between \$1,633 and \$2,130, and the amount over \$2,130.

Thus, for the family of a worker who becomes age 62 or dies in 2017 before age 62, we will compute the total benefits payable to them so that it does not exceed:

- (a) 150 percent of the first \$1,131 of the worker's PIA, plus
- (b) 272 percent of the worker's PIA over \$1,131 through \$1,633, plus
- (c) 134 percent of the worker's PIA over \$1,633 through \$2,130, plus
- (d) 175 percent of the worker's PIA over \$2,130.

We then round this amount to the next lower multiple of \$0.10 if it is not already a multiple of \$0.10. This formula and the rounding adjustment are stated in section 203(a) of the Act.

### Quarter of Coverage Amount

#### General

The earnings required for a quarter of coverage in 2017 is \$1,300. A quarter of coverage is the basic unit for determining if a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of \$50 or more were paid, or with 4 quarters of coverage for every taxable year in which \$400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages yearly instead of quarterly. With the change to yearly reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each \$250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year. The amendment also provided a formula for years after 1978.

#### Computation

Under the prescribed formula, the quarter of coverage amount for 2017 is

the larger of: (1) The 1978 amount of \$250 multiplied by the ratio of the national average wage index for 2015 to that for 1976; or (2) the current amount of \$1,260. Section 213(d) provides that if the resulting amount is not a multiple of \$10, we round it to the nearest multiple of \$10.

#### Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount (\$250) by the ratio of the national average wage index for 2015 (\$48,098.63) to that for 1976 (\$9,226.48) produces \$1,303.28. We then round this amount to \$1,300. Because \$1,300 exceeds the current amount of \$1,260, the quarter of coverage amount is \$1,300 for 2017.

### Old-Law Contribution and Benefit Base

#### General

The old-law contribution and benefit base for 2017 is \$94,500. This base would have been effective under the Act without the enactment of the 1977 amendments.

The old-law contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments that correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (section 230(d) of the Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the old-law base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

#### Computation

The old-law contribution and benefit base is the larger of: (1) The 1994 old-law base (\$45,000) multiplied by the ratio of the national average wage index for 2015 to that for 1992; or (2) the current old-law base (\$88,200). If the resulting amount is not a multiple of \$300, we round it to the nearest multiple of \$300.

#### Old-Law Contribution and Benefit Base Amount

Multiplying the 1994 old-law contribution and benefit base (\$45,000) by the ratio of the national average wage

index for 2015 (\$48,098.63) to that for 1992 (\$22,935.42) produces \$94,370.99. We round this amount to \$94,500. Because \$94,500 exceeds the current amount of \$88,200, the old-law contribution and benefit base is \$94,500 for 2017.

### **Substantial Gainful Activity Amounts**

#### *General*

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in SGA. A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies the SGA amount for statutorily blind individuals under title II while our regulations (20 CFR 404.1574 and 416.974) specify the SGA amount for non-blind individuals.

#### *Computation*

The monthly SGA amount for statutorily blind individuals under title II for 2017 is the larger of: (1) The amount for 1994 multiplied by the ratio of the national average wage index for 2015 to that for 1992; or (2) the amount for 2016. The monthly SGA amount for non-blind disabled individuals for 2017 is the larger of: (1) The amount for 2000 multiplied by the ratio of the national average wage index for 2015 to that for 1998; or (2) the amount for 2016. In either case, if the resulting amount is not a multiple of \$10, we round it to the nearest multiple of \$10.

#### *SGA Amount for Statutorily Blind Individuals*

Multiplying the 1994 monthly SGA amount for statutorily blind individuals (\$930) by the ratio of the national average wage index for 2015 (\$48,098.63) to that for 1992 (\$22,935.42) produces \$1,950.33. We then round this amount to \$1,950. Because \$1,950 exceeds the current amount of \$1,820, the monthly SGA amount for statutorily blind individuals is \$1,950 for 2017.

#### *SGA Amount for Non-Blind Disabled Individuals*

Multiplying the 2000 monthly SGA amount for non-blind individuals (\$700) by the ratio of the national average wage index for 2015 (\$48,098.63) to that for 1998 (\$28,861.44) produces \$1,166.58. We then round this amount to \$1,170. Because \$1,170 exceeds the current amount of \$1,130, the monthly SGA amount for non-blind disabled individuals is \$1,170 for 2017.

### **Trial Work Period Earnings Threshold**

#### *General*

During a trial work period of 9 months in a rolling 60-month period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still receive monthly benefit payments. To be considered a trial work period month, earnings must be over a certain level. In 2017, any month in which earnings exceed \$840 is considered a month of services for an individual's trial work period.

#### *Computation*

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2017, used to determine whether a month is part of a trial work period, is the larger of: (1) The amount for 2001 (\$530) multiplied by the ratio of the national average wage index for 2015 to that for 1999; or (2) the amount for 2016. If the amount so calculated is not a multiple of \$10, we round it to the nearest multiple of \$10.

#### *Trial Work Period Earnings Threshold Amount*

Multiplying the 2001 monthly earnings threshold (\$530) by the ratio of the national average wage index for 2015 (\$48,098.63) to that for 1999 (\$30,469.84) produces \$836.64. We then round this amount to \$840. Because \$840 exceeds the current amount of \$810, the monthly earnings threshold is \$840 for 2017.

### **Domestic Employee Coverage Threshold**

#### *General*

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2017, this threshold is \$2,000. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

#### *Computation*

Under the formula, the domestic employee coverage threshold for 2017 is equal to the 1995 amount of \$1,000 multiplied by the ratio of the national average wage index for 2015 to that for 1993. If the resulting amount is not a multiple of \$100, we round it to the next lower multiple of \$100.

#### *Domestic Employee Coverage Threshold Amount*

Multiplying the 1995 domestic employee coverage threshold (\$1,000) by the ratio of the national average wage index for 2015 (\$48,098.63) to that for

1993 (\$23,132.67) produces \$2,079.25. We then round this amount to \$2,000. Therefore, the domestic employee coverage threshold amount is \$2,000 for 2017.

### **Election Official and Election Worker Coverage Threshold**

#### *General*

The minimum amount an election official and election worker must earn so the earnings are covered under Social Security or Medicare is the election official and election worker coverage threshold. For 2017, this threshold is \$1,800. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

#### *Computation*

Under the formula, the election official and election worker coverage threshold for 2017 is equal to the 1999 amount of \$1,000 multiplied by the ratio of the national average wage index for 2015 to that for 1997. If the amount we determine is not a multiple of \$100, it we round it to the nearest multiple of \$100.

#### *Election Official and Election Worker Coverage Threshold Amount*

Multiplying the 1999 coverage threshold amount (\$1,000) by the ratio of the national average wage index for 2015 (\$48,098.63) to that for 1997 (\$27,426.00) produces \$1,753.76. We then round this amount to \$1,800. Therefore, the election official and election worker coverage threshold amount is \$1,800 for 2017.

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

**Carolyn W. Colvin,**

*Acting Commissioner of Social Security.*

[FR Doc. 2016-26026 Filed 10-26-16; 8:45 am]

**BILLING CODE 4191-02-P**

### **OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**[Docket Number USTR-2016-0021; Dispute Number WT/DS508]**

### **WTO Dispute Settlement Proceeding Regarding China—Export Duties on Certain Raw Materials**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice with request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that the United States has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement). That request may be found at [www.wto.org](http://www.wto.org) in a document designated as WT/DS508/6. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, you should submit your comment on or before December 15, 2016, to be assured of timely consideration by USTR.

**ADDRESSES:** You should submit written comments through the Federal eRulemaking Portal: <http://www.regulations.gov>, docket number USTR–2016–0021. Follow the instructions for submitting comments in section III below. For alternatives to on-line submissions, please contact Sandy McKinzy at (202) 395–9483. If (as explained below) the comment contains confidential information, then the comment should only be submitted by fax to Sandy McKinzy at (202) 395–3640.

**FOR FURTHER INFORMATION CONTACT:** Katherine Wang, Assistant General Counsel, [Katherine\\_E\\_Wang@ustr.eop.gov](mailto:Katherine_E_Wang@ustr.eop.gov), (202) 395–6214, or Leigh Bacon, Senior Associate General Counsel, [Leigh\\_Bacon@ustr.eop.gov](mailto:Leigh_Bacon@ustr.eop.gov), (202) 395–5859.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires notice and opportunity for comment after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Pursuant to this provision, USTR is providing notice that the United States has requested a dispute settlement panel pursuant to the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU). Once the WTO establishes a dispute settlement panel, the panel will hold its meetings in Geneva, Switzerland.

##### **II. Major Issues Raised by the United States**

On October 13, 2016, the United States requested the establishment of a WTO dispute settlement panel regarding China's restrictions on the export of various forms of antimony, chromium, cobalt, copper, graphite, indium, lead,

magnesia, talc, tantalum, and tin identified in the *State Council Customs Tariff Commission Notice on Issuing the 2016 Tariff Adjustment Plan* (State Council Customs Tariff Commission, Shui Wei Hui [2015] No. 23, issued December 4, 2015, effective January 1, 2016) and the *Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76 on Announcing the 2016 Export Licensing Management Commodities Catalogue* (Ministry of Commerce and General Administration of Customs 2015 Public Notice No. 76, issued December 29, 2015, effective January 1, 2016).<sup>1</sup> These export restrictions include export duties on the materials; quantitative restrictions such as quotas on the export of the materials; and additional requirements that impose restrictions on the trading rights of enterprises seeking to export various forms of the materials, such as prior export performance requirements.

China's export restraints appear to be inconsistent with Article XI:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Paragraphs 5.1 and 11.3 of Part I of the *Protocol on the Accession of the People's Republic of China* (Accession Protocol), and Paragraph 1.2 of Part I of the Accession Protocol (which incorporates paragraphs 83, 84, 162, and 165 of the Working Party Report on the Accession of China).

##### **III. Public Comments: Requirements for Submissions**

USTR invites written comments concerning the issues raised in this dispute. You should submit your comment electronically to [www.regulations.gov](http://www.regulations.gov), docket number USTR–2016–0021. For alternatives to electronic submissions, contact Sandy McKinzy at (202) 395–9483.

To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number USTR–2016–0021 on the home page and click “search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting Notice under Document Type on the left side of the search-results page, and click on the link entitled “Comment Now!” For further information on using the [www.regulations.gov](http://www.regulations.gov) Web site, please consult the resources provided on the Web site by clicking on “How to Use Regulations.gov” on the bottom of the home page.

<sup>1</sup> The forms of these materials subject to export duties and quotas include, but are not limited to, the items falling under the Chinese Customs Commodity Codes listed in the panel request.

The [www.regulations.gov](http://www.regulations.gov) Web site allows users to provide comments by filling in a “Type Comment” field, or by attaching a document using an “Upload File” field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comment” field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the “Type Comment” field.

Submit any comments containing business confidential information by fax to Sandy McKinzy at (202) 395–3640. A person requesting that information contained in a comment be treated as confidential business information must certify that s/he would not customarily release the information to the public. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top and bottom of that page. Filers of submissions containing business confidential information also must submit a public version of their comments electronically through [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment, other than business confidential information, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If a submitter believes that information or advice is confidential, s/he must clearly designate the information or advice as confidential and mark it as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page, and provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2016–0021, accessible to the public at [www.regulations.gov](http://www.regulations.gov). The public file will include non-confidential public comments USTR receives regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, USTR will make the following documents publicly available at [www.ustr.gov](http://www.ustr.gov): The U.S. submissions and any non-confidential summaries of submissions received from other participants in the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, the report of the panel, and, if applicable, the report of the

Appellate Body, will also be available on the Web site of the World Trade Organization, at [www.wto.org](http://www.wto.org).

**Juan A. Millán,**

*Acting Assistant U.S. Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative.*

[FR Doc. 2016-25990 Filed 10-26-16; 8:45 am]

BILLING CODE 3290-F7-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0130]

#### Commercial Driver's License: Application for Exemption; Missouri Department of Revenue (DOR)

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; grant of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant a limited exemption to the Missouri Department of Revenue (DOR), Driver's License Bureau, and, at their option, all other State driver licensing agencies (SDLAs), from the commercial driver's license (CDL) regulations. These regulations require a driver to pass the general knowledge test before being issued a Commercial Learner's Permit (CLP). The Missouri DOR requested an exemption from the knowledge test requirement for qualified current or former military personnel who participated in training in military heavy-vehicle driving programs. The Missouri DOR contends that qualified personnel who participated in such training have already received numerous hours of classroom training, practical skills training, and one-on-one road training that are essential for safe driving.

**DATES:** The exemption is effective from October 27, 2016 through October 29, 2018.

**ADDRESSES:** *Docket:* For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit 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., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any

personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

###### *Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov) and insert the docket number, "FMCSA-2016-0130" in the "Keyword" box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

##### II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which the exemption is granted. The notice must also specify the effective period of the exemption, and explain its

terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

##### III. Request for Exemption

The Missouri DOR requested an exemption from 49 CFR 383.71(a)(2)(ii), which requires any person applying for a Commercial Learner's Permit (CLP) on or after July 8, 2015, to have taken and passed a general knowledge test that meets the Federal standards contained in subparts F, G and H of 49 CFR part 383 for the commercial vehicle group that person operates or expects to operate. The Missouri DOR requested an exemption from the knowledge test requirements for trained military truck drivers, in effect giving designated drivers credit for military training and experience.

The Missouri DOR provided a number of reasons for its application. It contends that qualified veterans who completed military heavy-vehicle driver training programs have already received numerous hours of classroom training, practical skills training, and one-on-one road training that are essential for safe driving. Other reasons for their request included:

- The hours of training in these military programs exceeds hours required by FMCSA's proposed entry-level driver training rule. The skill level required by military courses is comparable to that needed to pass the American Association of Motor Vehicle Administrators (AAMVA) 2005 CDL Test Model (amended 2010);
- Military personnel who complete specialized driver training are assigned duties where their driving skills are applied and used on a frequent basis, an obvious asset in civilian life; and
- The trucking industry predicts a growing shortage of new drivers. Providing this incentive will helpfully assist trained military truck drivers' transition into civilian jobs.

##### IV. Public Comments

On April 20, 2016, FMCSA published notice of this application and requested public comments (81 FR 23349). The Minnesota Department of Motor Vehicle Safety, the North Dakota Department of Transportation, and the Advocates for Highway and Auto Safety (Advocates) filed comments opposing the exemption. The North Dakota Department of Transportation stated that the exemption should not be granted until there are assurances that military training in lieu of the State knowledge test meets the requirements in 49 CFR 383.111, Required knowledge. The Minnesota Department of Motor Vehicle Safety suggested that, in lieu of granting this exemption

request, the military's training and licensing programs could be accepted as SDLA programs; *i.e.*, military licenses could be treated as equivalent to a CDL.

The Advocates pointed out that the current skills test exemption in § 383.77 requires applicants to provide evidence that they were regularly employed within the last 90 days in a military position requiring the operation of a CMV. Advocates expressed concern that the Missouri DOR application did not include a similar experience requirement for ex-military personnel seeking a knowledge test exemption. Such a requirement should be included if the Agency grants the application to ensure that the knowledge obtained in the military has not diminished over an extended period of time. However, Advocates argues that making this exemption available to all 50 States and the District of Columbia is a permanent and material revision of Federal regulations that must be done through formal rulemaking allowing for review and comment by the public, including SDLAs.

#### V. FMCSA Response

FMCSA disagrees with the North Dakota Department of Transportation comments that this exemption should not be granted until there are assurances that military training in lieu of the State knowledge tests meets the requirements in 49 CFR 383.111. The training provided by these specialized military programs includes many hours of classroom training (typically based on FMCSA's own regulations, including all of the elements of § 383.111), practical skills training, and on-the-road training, followed by actual driving in support of the military mission. There is no reason to believe that military training is deficient compared to the requirements of § 383.111. FMCSA further disagrees with the Minnesota Department of Motor Vehicle Safety's suggestion that in lieu of granting this exemption request, the military's licensing and training program should be accepted as an SDLA program. Such an action would first require extensive legal analysis and would be very complex in any case.

The limited exemption approved today allows the States to waive the CDL knowledge test but does not require them to do so. The Agency expects few SDLAs to participate due to a lack of demand in their geographical areas and the administrative burden involved. However, because FMCSA cannot predict which State SDLAs may want to use this exemption, the Agency has made it available to all States. SDLAs that choose to participate will be able to

establish their own administrative procedures to implement the exemption, *e.g.*, policies for acceptable documentation showing that the applicant has received the required military heavy-vehicle operation training, and has been employed in the past year in a position requiring such duties.

Although Missouri used the term "veterans" in its application, to add clarity and be consistent with similar programs, we have expanded the eligibility to include "current or former members of the military services (including Reserve and National Guard units), who have been regularly employed within the last year in a military position that requires operation of large trucks, and have received formal military training for that duty." This is consistent with comments filed by Advocates.

#### VI. FMCSA Decision

FMCSA has evaluated Missouri DOR's application and the public comments and decided to grant the exemption. FMCSA agrees with the reasons for the request made by the Missouri DOR. The two primary reasons were that the training provided by these specialized military programs includes many hours of classroom training, practical skills training, and on-the-road training that are essential for safe driving. In addition, the hours of training in these programs is in excess of the training proposed in FMCSA's own entry-level driver training rule (81 FR 11944, March 7, 2016), and is comparable to the skills needed to pass the AAMVA CDL test model. FMCSA has concluded that the exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption, in accordance with § 381.305(a).

#### VII. Terms and Conditions

The following are the Terms and Conditions of this exemption:

(1) SDLAs may, at their discretion, issue CLP/CDLs to qualifying applicants as described below, without these applicants being required to complete the knowledge test required by 49 CFR 383.71(a)(2)(ii).

(2) "Qualifying applicants" must:

(a) Be current or former members of the military services (including Reserve and National Guard units),

(b) Have been regularly employed within the year prior to application in a military position that requires operation of large trucks, and

(c) Have received formal military training for that duty.

(3) Participating SDLAs may establish their own requirements and administrative procedures for verifying the eligibility of applicants.

Issued on: October 20, 2016.

**T.F. Scott Darling, III,**  
Administrator.

[FR Doc. 2016-25965 Filed 10-26-16; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0325]

### Motor Carrier Safety Assistance Program Multiyear Plans

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice: Request for comments.

**SUMMARY:** The Fixing America's Surface Transportation (FAST) Act requires the Secretary to prescribe procedures for a State to submit multiple-year plans for the Motor Carrier Safety Assistance Program (MCSAP) grants. FMCSA seeks information to improve development and implementation of multiple-year plans.

**DATES:** Responses to these questions must be received on or before November 28, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2016-0325 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line 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 or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit 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., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Liberatore, Chief, State Programs Division, FMCSA, (202) 366-3030 or by email at [Thomas.Liberatore@dot.gov](mailto:Thomas.Liberatore@dot.gov). Office hours are from 8:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

##### Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2016-0325), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and put the docket number, "FMCSA-2016-0325" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches,

suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

##### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert the docket number, "FMCSA-2016-0325" in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

##### Background

As prescribed in the FAST Act, the goal of the MCSAP is to ensure that there is a partnership to establish programs to improve motor carrier, commercial motor vehicle (CMV), and driver safety to support a safe and efficient surface transportation system. MCSAP makes targeted investments to promote CMV safety, including the transportation of passengers and hazardous materials. FMCSA encourages the States and Territories to invest in activities likely to maximize reductions in the number and severity of CMV crashes and fatalities resulting from such crashes. This is accomplished by adopting and enforcing effective motor carrier, CMV, and driver safety regulations and practices consistent with Federal requirements, assessing and improving statewide performance by setting program goals, and meeting performance standards, measures, and benchmarks.

Since Fiscal Year (FY) 1983, the Federal Highway Administration (FHWA), FMCSA's predecessor agency, or FMCSA have awarded MCSAP funds annually to the States after submission of a satisfactory Commercial Vehicle Safety Plan (CVSP). Pursuant to FMCSA regulation, CVSPs are due to the Agency on August 1 of the fiscal year preceding the requested funds.

Often safety initiatives can only be properly evaluated after lengthy implementation periods. The removal of the annual CVSP requirement is

intended to provide States/Territories with additional flexibility to continue these initiatives for a longer period, such that funding can be appropriate requested and CMV crash reduction benefits can be documented. In addition, the use of multiple-year plans will reduce the States'/Territories' administrative burdens associated with submitting the plan each year. With implementation of multi-year plans, an annual, full submission of the CVSP will no longer be required. Only annual data and budget updates might be needed, depending on changes in the States'/Territories' operations and/or annual MCSAP funding allocation.

It is noted that the period of performance for MCSAP grants did not change under the FAST Act, so MCSAP funding will continue to be available to the State/Territory for the fiscal year of award and for the next fiscal year.

FMCSA codified the FAST Act changes to remove the annual requirements for the plan in the final rule titled, "Amendments to Implement Grants Provisions of the Fixing America's Surface Transportation Act." This rule was published in the **Federal Register** on October 14, 2016 [81 FR 71002].

Additionally, the FAST Act requires that FMCSA publish each approved State/Territory multiple-year plan, and each annual update thereto, on a publically accessible Internet Web site of the Department of Transportation not later than 30 days after the date the Secretary approves the plan or update. 49 U.S.C. 311029(c)(3).

##### Questions

To assist FMCSA in developing the information technology system, form, and procedures for submission of a multiple-year plan, FMCSA requests information primarily from the MCSAP agencies responsible for developing and submitting the plan in response to the following questions:

1. How many years should a multi-year plan cover (*i.e.*, 2 years, 3 years, 5 years, etc.)? Please explain and provide a rationale for the specific length of time between full plans.

2. Should the length (*e.g.*, 2 years, 3 years, etc.) of a multi-year plan be fixed for all States/Territories or should States/Territories be able to vary the length? Please explain.

3. How many years long is the State's Strategic Highway Safety Plan (SHSP)? Should the CVSP be aligned with length of the SHSP? Please explain.

4. Can your State/Territory provide complete and accurate data to support a performance-based, multi-year plan? If so, how many years?

5. What data elements, certifications, and documents required under 49 CFR part 350 should be revised from or added to the current CVSP format to capture multiple years (*e.g.*, State certification, etc.)? Please explain how they should be revised.

6. Would your State/Territory be confident submitting a multi-year plan knowing that FMCSA's program authorizations (*i.e.*, U.S. Congressional legislation that continues one or more programs) are expiring in the next year? Two Years? If so or if not, please explain.

7. Should a State/Territory be required to submit a full application on *Grants.gov* only once for a multi-year plan or annually? Please explain.

8. Should FMCSA institute the multi-year CVSP at one time for all States/Territories, or is a phased-in approach, with a proportionate number of States submitting such plans over the time period of the multi-year plan (*e.g.*, half of States over a two-year plan, a third of States for a three-year plan, etc.), be a more advantageous implementation method? Please explain.

9. Are there other factors, concerns and/or elements that FMCSA should consider in the implementation of multi-year plans? Please provide specifics regarding these additional considerations.

10. In moving to a multi-year CVSP with annual updates, in order to enhance usability of the electronic CVSP (eCVSP) application, what additional features should FMCSA add? Please be specific in providing recommendations for additional features.

11. FMCSA is considering requiring certain CVSP data fields to be validated or updated annually. Examples of such data fields include prior-year activity objectives, current-year activity goals, current-year spending plans, etc. What additional data fields do you believe should be updated annually and why?

12. Should the annual update be a mechanism within the eCVSP tool's multi-year CVSP or a completely separate module with the eCVSP tool? Please explain.

13. What data elements and documents should be revised from, or added to, the current CVSP format to capture the annual update? Please explain how they should be revised.

14. Should the FMCSA require States/Territories to provide detailed spending plans or only require grantees to estimate their costs utilizing the SF-424A budget categories for the multi-year plan and annual update in the eCVSP tool? Please explain how your

preference would enhance the CVSP planning process.

After consideration of the information received in response to this notice, FMCSA will prescribe the procedures required by the FAST Act through a future **Federal Register** notice.

Issued on: October 20, 2016.

**T.F. Scott Darling, III,**

*Administrator.*

[FR Doc. 2016-25980 Filed 10-26-16; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2016-0098]

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated October 3, 2016, CSX Transportation (CSX) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA-2016-0098.

Applicant: CSX Transportation, Mr.

Jody Cox, Chief Engineer,  
Communications & Signals, 500 Water  
Street, Speed Code J-350,  
Jacksonville, FL 32202

CSX proposes to retire CSX rules for Control Point (CP) 511, Traffic Control (TC) 510, and Yard Limit (YL-S) 508 on all tracks and operate under Rule 502, Other Than Main Track, between Milepost (MP) CA-664.9 and RH West MP BB-4.7, on the Cincinnati Terminal Subdivision, Louisville Division, Cincinnati, OH.

All existing power switches would remain in place, controlled by the yard master, and all existing signals would be retired and replaced with switch position indicators. In support of its request, CSX indicates the signal system, CSX rules TC-510 and YL-S 508, is no longer needed for present-day operation.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 12, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov) as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy). See also <https://www.regulations.gov/privacyNotice> for the privacy notice of regulations.gov.

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety,  
Chief Safety Officer.*

[FR Doc. 2016-25975 Filed 10-26-16; 8:45 am]

**BILLING CODE 4910-06-P**



**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****[Docket No. DOT-NHTSA-2016-0082]****Notice and Request for Comments**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 17, 2016, 81 FR 54918.

**DATES:** Comments must be submitted on or before November 28, 2016.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirlene Ball, 202-366-2245, Office of the Chief Information Officer, NPO-420, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2127-0588.

*Title:* Air Bag Deactivation.

*Type of Review:* Renewal of a previously approved information collection.

*Abstract:* If a private individual or lessee wants to install an air bag on-off switch to turn-off either or both frontal air bags, they must complete Form OMB 2127-0588 to certify certain statements regarding use of the switch. The dealer or business must, in turn, submit the completed forms to NHTSA within seven days. The submission of the completed forms by the dealers and repair business to NHTSA, as required, will serve the agency several purposes. They will aid the agency in monitoring the number of authorization requests submitted and the pattern in claims of risk group membership. The completed forms will enable the agency to determine whether the dealers and repair business are complying with the terms of the exemption, which include

a requirement that the dealers and repair businesses accept only fully completed forms. Finally, submission of the completed forms to the agency will promote honesty and accuracy in the filling out of the forms by vehicle owners. The air bag on-off switches are installed only in vehicles in which the risk of harm needs to be minimized on a case-by-case basis.

*Affected Public:* Private Individuals, fleet owners and lessees, motor vehicle dealers, and repair business.

*Estimated Number of Respondents:* 750.

*Number of Responses:* 750.

*Estimated Total Annual Burden:* 375.

*Estimated Total Annual Burden:* \$345.00.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department'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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

**Kevin Mahoney,**

*Director, Office of Corporate Customer Services.*

[FR Doc. 2016-25977 Filed 10-26-16; 8:45 am]

**BILLING CODE 4910-59-P**

**DEPARTMENT OF TRANSPORTATION****[Docket No. DOT-MARAD 2016-0109]****Agency Requests for Renewal of a Previously Approved Information Collection(s): America's Marine Highway Program**

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Maritime Administration (MARAD) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used by the Maritime Administration to evaluate and review applications being submitted for project designation. The review will assess factors such as project scope, impact, public benefit, environmental effect,

offsetting costs, cost to the government (if any), the likelihood of long-term self-supporting operations, and its relationship with Marine Highway Routes once designated. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104-13.

**DATES:** Written comments should be submitted by December 27, 2016.

**ADDRESSES:** You may submit comments [identified by Docket No. DOT-MARAD-2016-0109] through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lauren Brand, Office of Intermodal System Development, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202-366-7057; or email [lauren.brand@dot.gov](mailto:lauren.brand@dot.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2133-0541.

*Title:* America's Marine Highway Program.

*Form Numbers:* None.

*Type of Review:* Renewal of currently approved information collection.

*Background:* The Department of Transportation will solicit applications for Marine Highway Projects as specified in the America's Marine Highway Program Final Rule, MARAD-2010-0035, published in the **Federal Register** on April 9, 2010. These applications must comply with the requirements of the referenced America's Marine Highway Program Final Rule, and be submitted in accordance with the instructions contained in that Final Rule. Open season for Marine Highway Project applications will be from December 31, 2016 through December 31, 2018.

*Respondents:* State, Local, or Tribal Government and Business or other for-profit.

*Number of Respondents:* 35.

*Frequency:* Bi-annually.

*Number of Responses:* 35.

*Total Annual Burden:* 350.

**Public Comments Invited:** You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the

accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

By Order of the Maritime Administrator.

Dated: October 18, 2016.

**T. Mitchell Hudson, Jr.,**

Secretary, Maritime Administration.

[FR Doc. 2016-26034 Filed 10-26-16; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB-2016-0001]

#### Proposed Information Collections; Comment Request (No. 61)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

**DATES:** We must receive your written comments on or before December 27, 2016.

**ADDRESSES:** As described below, you may send comments on the information collections listed in this document using the *Regulations.gov* online comment form for this document, or you may send written comments via U.S. mail or hand delivery. TTB no longer accepts public comments via email or fax.

- *http://www.regulations.gov*: Use the comment form for this document posted within Docket No. TTB-2016-0001 on *Regulations.gov*, the Federal e-rulemaking portal, to submit comments via the Internet;

- *U.S. Mail*: Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.

- *Hand Delivery/Courier in Lieu of Mail*: Michael Hoover, Alcohol and

Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit separate comments for each specific information collection listed in this document. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment.

You may view copies of this document, the information collections listed in it and any associated instructions, and all comments received in response to this document within Docket No. TTB-2016-0001 at *https://www.regulations.gov*. A link to that docket is posted on the TTB Web site at *https://www.ttb.gov/forms/comment-on-form.shtml*. You may also obtain paper copies of this document, the information collections described in it and any associated instructions, and any comments received in response to this document by contacting Michael Hoover at the addresses or telephone number shown below.

#### FOR FURTHER INFORMATION CONTACT:

Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005; telephone 202-453-1039, ext. 135; or email *informationcollections@ttb.gov* (please *do not* submit comments on this notice to this email address).

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

For each information collection listed below, we invite comments on: (a) Whether the information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality,

utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

#### Information Collections Open for Comment

Currently, we are seeking comments on the following information collections (forms, recordkeeping requirements, or questionnaires):

**Title:** Usual and Customary Business Records Maintained by Brewers.

**OMB Number:** 1513-0058.

**TTB Recordkeeping Number:** REC 5130/1.

**Abstract:** The Internal Revenue Code (IRC) at 26 U.S.C. 5415 requires brewers to keep records in such form and containing such information as the Secretary of the Treasury may prescribe by regulation as necessary to protect the revenue. Under this authority, TTB regulations in 27 CFR part 25 require brewers to keep usual and customary business records that allow TTB to verify, for example, the quantities of raw materials received at a brewery, the quantity of beer and cereal beverages produced and removed taxpaid or without payment of tax from a brewery, and the quantity of beer previously removed subject tax that is returned to the brewery.

**Current Actions:** TTB is submitting this collection as a revision. The information collection remains unchanged. However, TTB is increasing the estimated number of respondents due to an increase in the number of brewers regulated by TTB. There is no increase in the estimated total annual burden hours for this information collection because the required operational and production records are usual and customary records kept by brewers during the normal course of business and would be maintained even without the TTB regulatory requirements to do so.

**Type of Review:** Revision of a currently approved collection.

**Affected Public:** Businesses and other for-profits.

**Estimated Number of Respondents:** 6,700.

**Estimated Total Annual Burden Hours:** 1 (one).

**Title:** Application, Permit, and Report—Wine and Beer (Puerto Rico), and Application, Permit, and Report—Distilled Spirits (Puerto Rico).

**OMB Number:** 1513-0123.

*TTB Form Numbers:* F 5100.21 and F 5110.51.

**Abstract:** In general, under the Internal Revenue Code (IRC) at 26 U.S.C. 7652(a)(1), merchandise manufactured in Puerto Rico and shipped to the United States for consumption or sale is subject to a tax equal to the internal revenue tax imposed in the United States upon like articles of merchandise of domestic manufacture. The IRC at 26 U.S.C. 7652(a)(2) provides that the Secretary of the Treasury shall by regulation prescribe the mode and time for payment and collection of the tax, and 26 U.S.C. 7805(a) provides the Secretary of the Treasury the authority to prescribe all needful rules and regulations for enforcement of the IRC. Under this authority, in order to protect the revenue, the TTB regulations require, among other things, the use of TTB F 5100.21 and TTB F 5110.51 by persons shipping wine, beer, and certain distilled spirits products produced in Puerto Rico to the United States for domestic consumption or sale. TTB F 5100.21 is an application and permit to compute the Federal excise tax on, taxpay, and withdraw wine or beer for shipment to the United States. TTB F 5110.51 is an application and permit to compute the tax on, taxpay, and withdraw for shipment to the United States certain distilled spirits products.

**Current Actions:** We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated number of burden hours remain unchanged.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Businesses and other for-profits.

**Estimated Number of Respondents:** 35.

**Estimated Total Annual Burden Hours:** 35.

Dated: October 19, 2016.

**Amy R. Greenberg,**

*Director, Regulations and Rulings Division.*

[FR Doc. 2016-25971 Filed 10-26-16; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Advisory Council to the Internal Revenue Service; Meeting

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** The Internal Revenue Service Advisory Council (IRSAC) will hold a public meeting on Wednesday, November 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Millikan, IRSAC Program Manager, Office of National Public Liaison, CL:NPL:P, Room 7559, 1111 Constitution Avenue NW, Washington, DC 20224. Telephone: 202-317-6851 (not a toll-free number). Email address: [PublicLiaison@irs.gov](mailto:PublicLiaison@irs.gov).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRSAC will be held on Wednesday, November 16, 2016, from 9:20 a.m. to 1:15 p.m. at the Melrose Georgetown Hotel, 2430 Pennsylvania Avenue NW., Potomac III Ballroom, Washington, DC 20037. Issues to be discussed include, but are not limited to: *IRS Should Evaluate the Effects of Penalties on Voluntary Compliance; Risk Assessment; Promoting Confidentiality of Treaty-Exchanged Information; Fraud Prevention through Individual Taxpayer and Business Master File (BMF) Authentication; Enhancement of IRS2Go Mobile Application and Online Accounts; Field and Campus Exam Letters and Attachments; Statutory Authority of IRS to Regulate Tax Practice; and Revisions and Updates to Circular 230.* Last-minute agenda changes may preclude advanced notice. The meeting room accommodates approximately 70 people; this number includes IRSAC members and Internal Revenue Service officials. Due to limited seating, please call Anna Millikan at 202-317-6851 to confirm your attendance. Attendees are encouraged to arrive at least 30 minutes before the meeting begins. Should you wish the IRSAC to consider a written statement, please write to Internal Revenue Service, Office of National Public Liaison, CL:NPL, Room 7559, 1111 Constitution Avenue NW., Washington, DC 20224 or email [PublicLiaison@irs.gov](mailto:PublicLiaison@irs.gov).

Dated: October 20, 2016.

**Candice Cromling,**

*Director, National Public Liaison.*

[FR Doc. 2016-25946 Filed 10-26-16; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Multiemployer Pension Plan Application To Reduce Benefits

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Board of Trustees of the Automotive Industries Pension Plan (Auto Industries Pension Plan), a multiemployer pension plan, has submitted an application to Treasury to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014. The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Auto Industries Pension Plan has been published on the Web site of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Auto Industries Pension Plan.

**DATES:** Comments must be received by December 12, 2016.

**ADDRESSES:** You may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>, in accordance with the instructions on that site. Electronic submissions through [www.regulations.gov](http://www.regulations.gov) are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

**Additional Instructions.** All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on [www.regulations.gov](http://www.regulations.gov) or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the application from the Auto Industries Pension Plan, please contact Treasury at (202) 622-1534 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit

an application to the Secretary of the Treasury, which Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor, is required to approve or deny.

On September 27, 2016, the Board of Trustees of the Auto Industries Pension Plan submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's Web site at <https://auth.treasury.gov/services/Pages/Plan-Applications.aspx>. Treasury is publishing this notice in the **Federal Register**, in consultation with the PBGC and the Department of Labor, to solicit public comments on all aspects of the Auto Industries Pension Plan application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Auto Industries Pension Plan. Consideration will be given to any comments that are timely received by Treasury.

Dated: October 20, 2016.

**David R. Pearl,**

*Executive Secretary, Department of the Treasury.*

[FR Doc. 2016-25961 Filed 10-26-16; 8:45 am]

**BILLING CODE 4810-25-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 24, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before November 28, 2016 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite

8142, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

#### FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622-0934, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

#### Bureau of the Fiscal Service (Fiscal Service)

*OMB Control Number:* 1530-0006.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Direct Deposit Sign-Up Form and Go Direct Sign Up Form.

*Forms:* SF-1199A, FS Form 1200, FS Form 1200VADE, FS Form 1201L, FS Form 1201S.

*Abstract:* The Direct Deposit Sign-Up Form is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. The information is used to route the Direct Deposit payment to the correct account at the correct financial institution. It identifies persons who have executed the form.

*Affected Public:* Individuals or Households.

*Estimated Total Annual Burden Hours:* 67,786.

*OMB Control Number:* 1530-0011.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Assignment Form.

*Form:* FS Form 6314.

*Abstract:* This form is used when an award holder wants to assign or transfer all or part of his/her award to another person. When this occurs, the award holder forfeits all future rights to the portion assigned.

*Affected Public:* Individuals or Households.

*Estimated Total Annual Burden Hours:* 75.

*OMB Control Number:* 1530-0016.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* 31 CFR part 208—Management of Federal Agency Disbursements.

*Abstract:* This regulation requires that most Federal payments be made by Electronic Funds Transfer (EFT); sets forth waiver requirements; and provides for a low-cost Treasury-designated account to individuals at a financial institution that offers such accounts.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 325.

*OMB Control Number:* 1530-0025.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Request To Reissue United States Savings Bonds.

*Form:* FS Form 4000.

*Abstract:* The information is requested to support a request to reissue paper (definitive) Series EE, HH, and I United States Savings Bonds, Retirement Plan Bonds, and Individual Retirement Bonds and to indicate the new registration required.

*Affected Public:* Individuals or Households.

*Estimated Total Annual Burden Hours:* 57,500.

*OMB Control Number:* 1530-0039.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* U.S. Treasury Securities State and Local Government Series Early Redemption Request.

*Form:* FS Form 5377.

*Abstract:* The information is used to process early redemption requests for the owners of State and Local Government Series Securities.

*Affected Public:* State, Local, and Tribal Governments.

*Estimated Total Annual Burden Hours:* 247.

**Bob Faber,**

*Acting Treasury PRA Clearance Officer.*

[FR Doc. 2016-25974 Filed 10-26-16; 8:45 am]

**BILLING CODE 4810-AS-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 21, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before November 28, 2016 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer,

1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

**FOR FURTHER INFORMATION CONTACT:**

Copies of the submissions may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622-0934, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

**Internal Revenue Service (IRS)**

*OMB Control Number:* 1545-0231.

*Type of Review:* Revision of a currently approved collection.

*Title:* Biofuel Producer Credit.

*Form:* 6478.

*Abstract:* Form 6478 is used to figure a taxpayer's section 40 biofuel producer credit. Taxpayers may claim the credit for the tax year in which the sale or use occurs. This credit consists of the second generation biofuel producer credit.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 13,233.

*OMB Control Number:* 1545-0956.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

*Form:* 5500-EZ.

*Abstract:* Form 5500-EZ is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 7,005,000.

*OMB Control Number:* 1545-0962.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Tax Information Security Guidelines for Federal, State, and Local Agencies.

*Abstract:* Internal Revenue Code (IRC) section 6103(p) requires that IRS provide periodic reports to Congress describing safeguard procedures, utilized by agencies which receive information from the IRS, to protect the confidentiality of the information. This section also requires that these agencies furnish reports to the IRS describing their safeguards.

*Affected Public:* State, Local, and Tribal Governments.

*Estimated Total Annual Burden Hours:* 204,000.

*OMB Control Number:* 1545-1093.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Final Minimum Tax-Tax Benefit Rule (TD 8416).

*Abstract:* Section 58(h) of the 1954 Internal Revenue Code provides that the Secretary shall provide for adjusting tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items provided no tax benefit because of available credits and describes how to claim a credit or refund of minimum tax paid on such preferences.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 40.

*OMB Control Number:* 1545-1271.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Treatment of transfers of stock or securities to foreign corporations.

*Abstract:* A U.S. person must generally file a gain recognition agreement with the IRS in order to defer gain on a section 367(a) transfer of stock to a foreign corporation, and must file a notice with the Service if it realizes any income in a section 367(b) exchange. These requirements ensure compliance with the respective Code sections.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 2,390.

*OMB Control Number:* 1545-1580.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Compensation Deferred Under Eligible Deferred Compensation Plans (TD 9075).

*Abstract:* Final regulation provides guidance regarding the trust requirements for certain eligible deferred compensation plans enacted in the Small Business Job Protection Act of 1996.

*Affected Public:* State, Local, and Tribal Governments.

*Estimated Total Annual Burden Hours:* 10,600.

*OMB Control Number:* 1545-1693.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Political Organization Notice of Section 527 Status.

*Form:* 8871, 8453-X.

*Abstract:* Political organizations must use Form 8871 to notify the IRS that the organization is to be treated as a tax-exempt section 527 organization. The

IRS is required to make publicly available on the Internet and at its offices a list of the organizations that file Form 8871 (including the organization's mailing address, email address, custodian of records, and contact person as shown on Form 8871). Political organizations must also use Form 8871 to notify the IRS of any material change in the information reported on a previously filed Form 8871. Form 8453-X must be submitted when electronically submitting Form 8871.

*Affected Public:* Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 35,195.

*OMB Control Number:* 1545-1823.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* e-Services Registration TIN Matching—Application and Screens for TIN Matching Interactive/e-Services Products.

*Form:* 13350.

*Abstract:* E-services is a system which permits the IRS to electronically communicate with third party users to support electronic filing and resolve tax administration issues for practitioners, payers, states, and Department of Education Contractors. Registration is required to authenticate users that plan to access e-services products. This system is a necessary outgrowth of advanced information and communication technologies. TIN Matching is one of the products available through e-Services offered via the internet and accessible through the [irs.gov](http://irs.gov) Web site.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 3,670,000.

*OMB Control Number:* 1545-1981.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Alternative Fuel Vehicle Refueling Property Credit.

*Form:* 8911.

*Abstract:* IRC section 30C allows a credit for alternative fuel vehicle refueling property. Form 8911, Alternative Fuel Vehicle Refueling Property Credit, will be used by taxpayers to claim the credit.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 3,420,759.

**Bob Faber,**

*Acting Treasury PRA Clearance Officer.*

[FR Doc. 2016-25934 Filed 10-26-16; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Submission for OMB Review;  
Comment Request**

October 24, 2016.

The Department of the Treasury will submit the following information collection request(s) 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 28, 2016 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimates, or any other aspect of the information collection(s), including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

**FOR FURTHER INFORMATION CONTACT:**

Copies of the submissions may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622–0934, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

**Alcohol and Tobacco Tax and Trade Bureau (TTB)**

*OMB Control Number:* 1513–0124.

*Type of Review:* Revision of a currently approved collection.

*Title:* Customer Satisfaction Surveys for Permit Applications, Permits Online (PONL), Formulas Online (FONL), and COLAs Online.

*Abstract:* As part of our efforts to improve customer service, TTB surveys its customers who apply for original or amended permits, submit formula approval requests, and submit requests for certificates of label approval. These surveys assist TTB in identifying potential customer needs and problems, as well as opportunities for improvement in our applications processes, with particular focus on our customers' experiences with TTB's various electronic application systems.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 6,000.

**Bob Faber,**

*Acting Treasury PRA Clearance Officer.*

[FR Doc. 2016–26032 Filed 10–26–16; 8:45 am]

**BILLING CODE 4810–31–P**

**DEPARTMENT OF VETERANS AFFAIRS****Notice of Availability of a Draft Environmental Impact Statement (EIS) for a Replacement Veterans Affairs Medical Center, Louisville, Kentucky**

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of availability.

**SUMMARY:** VA proposes to site, construct and operate a new campus to replace the existing Robley Rex VA Medical Center (VAMC), Veterans Benefits Administration (VBA) regional office, and three community-based outpatient clinics (CBOC) in Louisville, Kentucky. In accordance with the National Environmental Policy Act (NEPA), VA has prepared a Draft EIS that analyzes the potential impacts of three alternatives for the replacement VAMC. The Draft EIS is available for review on the agency Web site and at the St. Matthews and Westport Branches of the Louisville Free Public Library system.

**DATES:** Interested parties are invited to submit comments in writing on the Replacement Robley Rex VAMC Draft EIS by December 12, 2016.

**ADDRESSES:** Submit written comments on the Replacement Robley Rex VAMC online at [www.Louisville-EIS.com](http://www.Louisville-EIS.com); by email to [LouisvilleReplacementHospitalComments@va.gov](mailto:LouisvilleReplacementHospitalComments@va.gov); or by regular mail to the Replacement VAMC Activation Team Office, 800 Zorn Avenue, Louisville, KY 40206. Please refer to “Replacement Robley Rex VA Medical Center” in any correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Replacement VAMC Activation Team Office, 800 Zorn Avenue, Louisville, KY 40206 or by email to [LouisvilleReplacementHospitalComments@va.gov](mailto:LouisvilleReplacementHospitalComments@va.gov).

**SUPPLEMENTARY INFORMATION:** VA proposes to site, construct, and operate a VAMC and VBA regional office to replace the existing Robley Rex VAMC located on Zorn Avenue in Louisville, KY. The existing 63-year-old VAMC facilities have reached the end of their serviceable lives and need to be replaced. The existing building conditions and site configuration are inadequate to effectively and efficiently

meet the expanding needs of VA's health care mission in the region. The replacement campus would include diagnostic and treatment facilities and required site amenities and improvements needed to provide sufficient capacity to meet the current and projected future health care needs of Veterans in the Louisville service area. This EIS analyzes the potential impacts of three alternatives for the replacement VAMC.

Alternative A proposes construction and operation of a replacement VAMC campus at the Brownsboro Site at 4906 Brownsboro Road, Louisville, KY. Alternative B would construct and operate a replacement VAMC campus at the St. Joseph site on a parcel located east of I–265 and south of Factory Lane in Louisville, KY. Alternative C is the No Action alternative, which is required by NEPA and its regulations and also provides a baseline for comparing potential impacts from the action alternatives.

VA's preferred alternative is Alternative A, the proposed construction and operation of a replacement VAMC campus at the Brownsboro Site at 4906 Brownsboro Road, in Louisville. VA would relocate medical facility operations to the Brownsboro Site from Zorn Avenue and a later process would evaluate the future use or disposition of the Zorn Avenue property.

Environmental topics that are addressed in the Draft EIS include aesthetics, air quality, cultural resources, geology and soils, hydrology and water quality, wildlife and habitat, noise, land use, floodplains and wetlands, socioeconomic, community services, solid waste and hazardous materials, transportation and parking, utilities, and environmental justice. Best management practices and mitigation measures that could alleviate environmental effects have been considered and are included where relevant within the Draft EIS.

The Draft EIS describes mitigation measures for the potential impacts to environmental resources that are identified in the impact analysis. Unavoidable adverse impacts include effects to air quality, aesthetics, noise, land use, solid waste and hazardous materials, utilities, and transportation and traffic. With the exception of aesthetics and land use, implementation of specified mitigation measures would substantially decrease the magnitude of these impacts.

The Replacement Robley Rex VAMC Draft EIS is available for viewing on the VA Web site at [www.louisville.va.gov/newmedicalcenter/](http://www.louisville.va.gov/newmedicalcenter/) and at the St.

Matthews and Westport Branches of the Louisville Free Public Library located at 3940 Grandview Avenue, Louisville, KY 40207 and 8100 Westport Road, Louisville, KY 40222, respectively.

Information related to the EIS process is also available for viewing on the VA Web site at [www.louisville.va.gov/newmedicalcenter/](http://www.louisville.va.gov/newmedicalcenter/).

**Meetings:** Interested parties are invited to participate in any of two public meetings summarizing the results of the Draft EIS. These meetings will be held in Louisville, KY. The dates, times, and locations for these meetings will be

published in the Louisville Courier-Journal and online at [www.louisville.va.gov/newmedicalcenter/](http://www.louisville.va.gov/newmedicalcenter/). A court reporter will document comments from participants who wish to submit comments on the Draft EIS verbally instead of (or in addition to) submitting comments in writing as described under the **ADDRESSES** section above.

#### **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 21, 2016, for publication.

Dated: October 24, 2016.

**Jeffrey Martin,**

*Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary.*

[FR Doc. 2016-25964 Filed 10-26-16; 8:45 am]

**BILLING CODE 8320-01-P**





# FEDERAL REGISTER

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Vol. 81

Thursday,

No. 208

October 27, 2016

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## Part II

### Department of Defense

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Office of the Secretary

32 CFR Part 161

Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals; Interim Final Rule

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 161**

[Docket ID: DoD–2015–OS–0069]

RIN 0790–AJ37

**Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals**

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Interim final rule; amendment.

**SUMMARY:** This rule amends an interim rule published on January 6, 2014 which provided procedures for DoD ID cards. These cards are issued to uniformed service members, their dependents, and other eligible individuals and are used as proof of identity and DoD affiliation as well as to facilitate the extension of DoD benefits. The previous rule extended benefits to all eligible dependents of Uniformed Service members and eligible DoD civilians. DoD is proposing further amendments to its ID card policy to include ID card eligibility documentation requirements incorporating guidance addressing the modification of gender in a record for transgender retirees and family members who have completed their gender transition. The rule also aligns the CFR to match revised contents of various DoD policy issuances and NIST Federal Information Processing Standards.

**DATES:** This rule is effective on October 27, 2016. Comments must be received by December 27, 2016.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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.

**FOR FURTHER INFORMATION CONTACT:** Robert Eves at 571–372–1956; email: [robert.c.eves.civ@mail.mil](mailto:robert.c.eves.civ@mail.mil).

**SUPPLEMENTARY INFORMATION:****Changes Since the Last Interim Rule**

The amendments DoD is proposing would:

a. Ensure the issuance of ID cards and extension of benefits to all eligible dependents of Uniformed Service members and eligible DoD civilians is implemented across the DoD.

b. Align policy for the implementation of Homeland Security Presidential Directive (HSPD) 12 within DoD with the most current version of FIPS 201–2. “Personal Identity Verification (PIV) of Federal Employees and Contractors” (available at <http://dx.doi.org/10.6028/NIST.FIPS.201-2>).

c. Align the benefits for commissary; exchange; and, morale, welfare, and recreation (MWR) in subpart C with the current versions of the following:

- DoD Instruction 1015.10, “Military Morale, Welfare, and Recreation (MWR) Programs” (available at <http://www.dtic.mil/whs/directives/corres/pdf/101510p.pdf>).

- DoD Instruction 1330.17, “Armed Services Commissary Operations”; (available at <http://www.dtic.mil/whs/directives/corres/pdf/133017p.pdf>), and

- DoD Instruction 1330.21, “Armed Services Exchange Regulations.” (available at <http://www.dtic.mil/whs/directives/corres/pdf/133021p.pdf>).

d. Provide procedures and defines acceptable documentation for enrollment and eligibility verification, as necessary, for DoD ID card issuance as described in DoD Manual 1000.13 Volume 3 which identifies:

- The eligibility documentation requirements for all DoD ID card eligible populations, and
- Documentation requirements for the correction of Defense Enrollment Eligibility Reporting System (DEERS) records, to include changing one’s gender in DEERS.

All revisions to this rule will be reported in future updates to DoD’s retrospective plan under Executive Order 13563 as completed in August 2011. DoD’s full plan can be accessed at: <http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036>.

**Authority for This Regulatory Action**

Authorities for this rule include Title 5, Section 5703 and Title 10 U.S.C., Sections 1044a, 1061–1064, 1072–1074,

1074a–1074c, 1076, 1076a, 1077, 1095 (k) (2), 1408(H), and chapter 1223 authorize members of the Uniformed Services (active duty, Reserve, or retired members) and their spouses and dependents certain benefits and privileges. Title 18, Sections 499, 506, 509, 701, and 1001 address penalties, fines and imprisonment for unauthorized reproduction of ID cards. The DoD ID cards authorize eligible individuals (to include specific categories of civilians and contractors) certain benefits and privileges to include health care; use of commissary; exchange; and morale, welfare, and recreation facilities.

**Costs and Benefits of This Regulatory Action**

The public will not incur any costs from the amendments DoD is proposing. The amendments benefit the Department and the public by strengthening the identity proofing requirements for ID card issuance. The amendments also benefit members of the public by ensuring that those eligible for DoD benefits will be issued an ID card conveying those benefits in a timely manner, and retirees, dependents and contractors have the ability to have their gender marker in DEERS reflect their gender identity.

**Justification To Issue an Interim Final Rule**

A void currently exists in DoD’s policy with respect to the documentation required to establish eligibility for benefits extended by Title 10 United States Code in terms of the information required to change a record. The addition of Subpart D in this regulation fills that void by providing specific policy guidance addressing the modification of gender in a record for transgender uniformed service retirees and family members following completion of a gender transition. Immediate implementation of this rule eliminates confusion for those seeking enrollment and benefit eligibility while clarifying documentation requirements necessary to update a record to accurately reflect an individual’s personal information.

In addition, the revised Commissary, Exchange, and Morale, Welfare and Recreation policy issuances provide additional clarity concerning who is eligible to receive their respective benefits and the circumstances under which they are eligible for those benefits. The revision to the benefits tables in Subpart C capture the changes to the updated benefits policy issuances and correct previously identified discrepancies, ensuring that those who

are eligible for these benefits are provided timely access to those benefits.

Finally, the revision to the most current version of the Department of Commerce, National Institute of Standards and Technology FIPS PUB 201–2 released August 2013 are incorporated into these amendments. FIPS PUB 201–2 mandates changes to the acceptable forms of identification for the Personal Identity Verification (PIV) identity proofing and registration requirements, providing lists of acceptable primary and secondary identity source documents. These revisions ensure DoD policy is compliant with the current Federal standard for identity proofing and registration requirements, the required identity source documents are provided by the ID card applicant during the actual ID card issuance process, and provide additional assurance that the individual receiving an ID card has been positively identified. DoD issues approximately five million ID cards each year to military members, civilian employees, contractors, foreign nationals, and where applicable, family members. The Department believes portions of this rule relate to “agency management or personnel” and those portions are exempt under sec. 553(a)(2) from all requirements of sec. 533. However, the Department also believes there are significant portions of the rule that relate to members of the public that are not exempt from rule making. The Department prefers to submit this rule content in its entirety, including both required and exempt portions, to maintain the intent of its policy as written and avoid the potential confusion that separation of any exempt portions from the non-exempt portions could create.

### Regulatory Procedures

*Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”*

It has been determined that 32 CFR part 161 is a significant regulatory action as it does raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive Orders.

However, 32 CFR part 161 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 section 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.

### 2 U.S.C. Ch. 25, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

### Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. Ch. 6)

The Department of Defense certifies that this interim final rule is not subject to the Regulatory Flexibility Act because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

### Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

This rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These reporting requirements have been approved by the Office of Management and Budget and assigned OMB Control Number 0704–0415, “Application for Department of Defense Common Access Card—DEERS Enrollment.”

### Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule will not have a substantial effect on State and local governments.

### List of Subjects in 32 CFR Part 161

Administrative practice and procedure, Armed forces, Military personnel, National defense, Privacy, Security measures.

Accordingly, 32 CFR part 161 is amended as follows:

## PART 161—IDENTIFICATION (ID) CARDS FOR MEMBERS OF THE UNIFORMED SERVICES, THEIR DEPENDENTS, AND OTHER ELIGIBLE INDIVIDUALS

■ 1. The authority citation for 32 CFR part 161 is revised to read as follows:

**Authority:** 10 U.S.C. 1061–1064, 1072–1074, 1074a–1074c, 1076, 1076a, 1077, and 1095(k)(2), and 18 U.S.C. 499, 506, 509, 701, and 1001; 5 U.S.C. 5703, 10 U.S.C. 1408(h), 10 U.S.C. 1044a, 10 U.S.C. chapter 1223.

### Subpart A—Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals

■ 2. Amend § 161.1 by:

■ a. Removing “their dependents and other eligible individuals” and adding in its place “their dependents, DoD civilian employees, and other eligible individuals” in paragraph (a).

■ b. Adding paragraph (d).

The addition reads as follows:

#### § 161.1 Purpose.

\* \* \* \* \*

(d) Provides procedures and defines acceptable documentation for enrollment and eligibility verification, as necessary, for DoD ID card issuance and as described in DoD Instruction 1000.13 and subparts B and C of this part.

■ 3. Amend § 161.3 by:

■ a. Adding in alphabetical order the definitions of “Abused dependent,” “Annulment decree,” “Certificate of live birth,” “Dissolution decree,” “Divorce decree,” “Federal employee,” “Federally controlled information systems,” “Financial dependency determination,” “Full-time student,” “Intergovernmental Personnel Act personnel,” “Invitational travel order,” “Letter of authorization,” “Letter from a school registrar,” “Marriage certificate,” “Medical sufficiency statement,” “Notarization,” “Placement agreement,” “Stepchild,” “Surviving dependent,” “United States,” “U.S. territories and possessions,” “VA rating determination letter,” and “Voluntary acknowledgement of paternity.”

■ b. Revising the definitions of “Certified document,” “Child,” “Cross-servicing,” “Foreign affiliate,” “Placement agency (recognized by the Secretary of Defense),” “Pre-adoptive child,” “Privileges,” “Sponsor,” “Spouse,” “Unmarried,” “Unremarried,” “Ward,” “Widow,” and “Widower.”

■ c. Removing the definitions “ID card sponsor” and “Intergovernmental Personnel Act (IPA) employees.”

■ d. Designating the definition of “Individual Ready Reserve” in alphabetical order in the list of definitions.

The additions and revisions read as follows:

**§ 161.3 Definitions.**

\* \* \* \* \*

*Abused dependent.* Dependents of active duty uniformed service members:

(1) Entitled to retired pay based on 20 or more years of service who, on or after October 23, 1992, while a member, are eligible to receive retired pay terminated as a result of misconduct involving the abuse of the spouse or dependent child pursuant to 10 U.S.C. 1408(h); or

(2) Not entitled to retired pay, who have received a dishonorable or bad-conduct discharge, dismissal from a uniformed service as a result of a court martial conviction for an offense involving physical or emotional abuse of a spouse or child, or were administratively discharged as a result of such an offense, separated on or after November 30, 1993.

\* \* \* \* \*

*Annulment decree.* An order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) that grants an annulment of a marriage.

\* \* \* \* \*

*Certificate of live birth.* A certificate authenticated by an attending physician or other responsible person from a U.S. hospital or a military treatment facility showing the name of at least one parent.

\* \* \* \* \*

*Certified document.* A document that is certified as a true original and:

(1) Conveys the appropriate seal or markings of the issuer;

(2) Has a means to validate the authenticity of the document by a reference or source number;

(3) Is a notarized legal document or other document approved by a Judge Advocate, other members of the armed forces designated by law and regulations to have the powers set forth in 10 U.S.C. 1044a, or other eligible persons in accordance with 10 U.S.C. 1044a; or

(4) Has the appropriate certificate of authentication by a U.S. Consular Officer in the foreign country of issuance which attests to the authenticity of the signature and seal.

\* \* \* \* \*

*Child.* A legitimate child, illegitimate child, stepchild, or adopted child of the sponsor, who is younger than 21 years of age. If 21 or older, the child may remain eligible if the child is:

(1) 21 or 22 years old and enrolled in a full-time course of higher learning;

(2) 21 or older but incapable of self-support because of a mental or physical incapacity that existed before the 21st birthday; or

(3) 21 or 22 years old and was enrolled full-time in an accredited institution of higher learning but became incapable of self-support because of a mental or physical condition while a full-time student.

\* \* \* \* \*

*Cross-servicing.* Agreement amongst all uniformed services to assist Service members, regardless of the Service member's responsible uniformed service, and their dependents, for all ID card or benefits-related matters, when appropriate and not restricted by subpart B of this part.

\* \* \* \* \*

*Dissolution decree.* An order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) that grants dissolution of a marriage.

*Divorce decree.* An order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) that grants termination of a marriage.

\* \* \* \* \*

*Federal employee.* Defined in 5 U.S.C. 2105.

*Federally controlled information systems.* (1) An information technology system (or information system), as defined by the Federal Information Security Management Act of 2002 (44 U.S.C. 3502(8)).

(2) Information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency (44 U.S.C. 3544(a)(1)(A)).

\* \* \* \* \*

*Financial dependency determination.* Service-level process used to determine whether the financial dependency of a dependent on a sponsor meets the requirement for benefits eligibility.

*Foreign affiliate.* A foreign national, including foreign civilian, foreign contractor, or foreign uniformed services personnel, who is sponsored by their government in accordance with DoD Directive 5230.20, “Visits and Assignments of Foreign Nationals” (available at <http://www.dtic.mil/whs/directives/corres/pdf/523020p.pdf>) through an official visit, assignment, temporary duty, school, training, policy board, or other defined agreement to work or reside on a DoD facility, or require access to DoD networks on-site or remotely.

\* \* \* \* \*

*Full-time student.* A child who has not attained the age of 23, who is

enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, dependent on the member or former member for more than 50 percent of the child's support.

\* \* \* \* \*

*Intergovernmental Personnel Act personnel.* Employees covered by Public Law 91-648, “Intergovernmental Personnel Act of 1970.” The Intergovernmental Personnel Act mobility program provides temporary assignment of personnel between the Federal Government and State and local governments, colleges and universities, tribal governments, federally funded research and development centers, and other eligible organizations.

\* \* \* \* \*

*Invitational travel order (ITO).* The document authorizing travel by individuals either not employed by the government or employed in accordance with 5 U.S.C. 5703 intermittently in the government's service as consultants or experts and paid on a daily basis, when actually employed. ITOs include the names of accompanying dependents who may be eligible for DoD benefits in accordance with DoD policy and reciprocal international agreements.

*Letter of authorization (LOA).* A document generated by Synchronized Predeployment and Operational Tracker (SPOT) that states the intended length of assignment, planned use of government facilities and privileges, and name of the approving governmental official.

*Letter from a school registrar.* A letter certifying enrollment in a full-time in-residence, or online course of study, leading to an associate degree or higher and listing an anticipated graduation date. Students attending two institutions less than full-time may not combine courses from both institutions to meet full-time student status. Most colleges and universities contract with third parties, such as the National Student Clearinghouse, to verify student enrollment. These third parties must comply with 20 U.S.C. 1232g and 34 CFR part 99 and are considered official agents of the institution for that purpose. Such documentation is considered equivalent to and accepted in lieu of a letter from the registrar's office. For graduate students, a letter of acceptance of enrollment signed by an authorized officer of the college or university is required to serve as the school letter.

*Marriage certificate.* State-certified record of marriage.

*Medical sufficiency statement.* A statement from a physician from a military treatment facility or approved TRICARE provider used in conjunction with eligibility and dependency determinations. The statement includes a recent medical or psychiatric evaluation and diagnosis, a statement of illness (including the date, child's age, and onset of incapacity), the current treatment being rendered, the prognosis for recovery, and the ability to become self-supporting.

\* \* \* \* \*

*Notarization.* The official fraud-deterrent process that assures that the signatures on a document are authentic and valid. The signature of any such person acting as notary, together with the title of that person's offices, is *prima facie* evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act. A person acting as notary must be impartial.

\* \* \* \* \*

*Placement agency (recognized by the Secretary of Defense).* An authorized placement agency in the United States or U.S. territories or possessions that must be licensed for adoption by the State, territory, or possession in which the adoption procedures will be completed. In all other locations, a request for recognition must be approved by the appropriate Assistant Secretary of the Military Department concerned or an appropriate official who has been delegated approval authority.

*Placement agreement.* An agreement between the State and the parent(s) placing the child in the legal custody of the parent(s). To establish the child as a pre-adoptive child, the placement agreement must include the intent to adopt.

*Pre-adoptive child.* With respect to determinations of dependency made on or after October 5, 1994, an unmarried person who is placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by any other source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption of the child by the member or former member, and:

- (1) Has not attained the age of 21; or
- (2) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on the member or former

member for over one-half of the child's support; or

(3) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a member or former member and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support.

*Privileges.* Benefits or advantages allowed based on position, authority, relationship, or status and which may be removed by proper authority. Privileges are not necessarily "rights" specifically granted by law.

\* \* \* \* \*

*Sponsor.* The person affiliated to the DoD, uniformed service, or other Federal agency who is delegated the responsibility for verifying and authorizing an applicant's need for an ID card. This term also refers to the prime beneficiary who derives eligibility based on individual status rather than dependence upon or relationship to another person. This beneficiary receives benefits based on the beneficiary's direct affiliation to the DoD or other uniformed service.

*Spouse.* A person legally married to a current, former, or retired uniformed service member, eligible civilian employee, or other eligible individual in accordance with subpart C of this part, regardless of gender or State of residence.

\* \* \* \* \*

*Stepchild.* A natural or adopted child of a spouse of a sponsor and who qualifies as a child.

*Surviving dependent.* The dependent of a member who died while on active duty under orders that specified a period of more than 30 days, or a member who died while in a retired with-pay status.

\* \* \* \* \*

*United States.* The 50 United States and the District of Columbia.

*Unmarried.* A widow or widower who remarried and whose remarriage ended by death or divorce, or a former spouse of a sponsor whose subsequent remarriage ended by death or divorce.

*Unremarried.* A widow or widower who has never remarried, or a former spouse whose only remarriage was to the same military sponsor. Periods of marriage in this case may be combined to document eligibility for former spouse benefits.

*U.S. territories and possessions.* Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

*VA rating determination letter.* A letter from the appropriate VA authorities that establishes that the uniformed service member has been rated as 100 percent disabled or incapable of pursuing substantially gainful employment by the VA.

\* \* \* \* \*

*Voluntary acknowledgment of paternity.* A document recognized by relevant and applicable State law as establishing legal paternity. Such documents must be certified as a "true copy" by the appropriate state office.

*Ward.* An unmarried person who is placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States (or a U.S. territory or possession) for a period of at least 12 consecutive months; is dependent on the member or former member for more than 50 percent of the person's support; resides with the member or former member unless separated by the necessity of uniformed service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary may by regulation prescribe; is not a dependent of a member or a former member under 10 U.S.C. 1072(2); and either:

- (1) Has not attained the age of 21;
- (2) Has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary; or

(3) Is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member.

*Widow.* The female spouse of a deceased member of the uniformed Services.

*Widower.* The male spouse of a deceased member of the uniformed Services.

#### § 161.4 [Amended]

- 4. Amend § 161.4 by:
- a. Removing "their dependents, and other eligible individuals" and adding in its place "their dependents, DoD civilian employees, and other eligible individuals" in paragraph (a).
  - b. Removing "DoD Directive 1000.25" and adding in its place "DoD Instruction 1000.25" in paragraph (c).
  - c. In paragraph (e):
  - i. Removing "FIPS Publication 201-1" and adding in its place "FIPS Publication 201-2."
  - ii. Removing "(available at <http://csrc.nist.gov/publications/fips/fips201-1/FIPS-201-1-chng1.pdf>)" and adding in

its place “(available at <http://dx.doi.org/10.6028/NIST.FIPS.201-2>).”

#### § 161.5 [Amended]

##### ■ 5. Amend § 161.5 by:

■ a. Removing “DoD Directive 1000.25” and adding in its place “DoD Instruction 1000.25” in paragraphs (a)(3) and (4).

■ b. Removing “FIPS Publication 201–1” and adding in its place “FIPS Publication 201–2” in paragraph (a)(7).

■ c. In paragraph (d):

■ i. Adding in “and in addition to the responsibilities in paragraph (h) of this section,” immediately following “control of the USD(P&R).”

■ ii. Removing “DoD Directive 1000.25” and adding in its place “DoD Instruction 1000.25.”

■ d. Adding paragraphs (d)(7) and (8).

■ e. Removing “The Heads of the DoD Components, the Director, USPHS, and the NOAA Administrator,” and adding in its place “The OSD and DoD Component heads other than the Secretaries of the Military Departments,” in paragraph (h).

■ f. Adding paragraphs (h)(12) and (13) and (i)(3) and (4).

■ g. Removing “Federal Information Processing Standards Publication 201–1” and adding in its place “FIPS Publication 201–2” in paragraph (h)(8).

■ h. Removing “Director, USPHS;” and adding in its place “Director, Division of Commissioned Corps Personnel and Readiness, USPHS;” in paragraph (i).

The additions read as follows:

#### § 161.5 Responsibilities.

(d) \* \* \*

(7) Determines and maintains a list of forms of documentation that are acceptable for the purpose of eligibility verification, in accordance with applicable law.

(8) Through the Director, Defense Manpower Data Center:

(i) Provides and maintains training on the examination and inspection of documentation for the purpose of eligibility verification for DEERS enrollment, record management, and ID card issuance.

(ii) Supports and maintains the development of automated data feeds to DEERS that serve as authoritative eligibility sources for applicable DoD ID card-eligible personnel.

(iii) Supports and maintains the development of the Real-time Automated Personnel Identification System (RAPIDS) as the application used to incorporate and collect eligibility documentation.

\* \* \* \* \*

(h) \* \* \*

(12) Comply with the provisions of this part and provide timely and

accurate support to the provisions of this part.

(13) Ensure that the policies and procedures in subpart D of this part are implemented to protect the privacy of individuals in the collection, use, maintenance, and dissemination of personally identifiable information, in accordance with 32 CFR part 310.

(i) \* \* \*

(3) Coordinate with the Director, DoDHRA, through the Joint Uniformed Services Personnel Advisory Committee, to determine if the list of acceptable eligibility documentation needs to be amended to add new documents or remove outdated documents.

(4) Ensure that the policies and procedures in this subpart are implemented to protect the privacy of individuals in the collection, use, maintenance, and dissemination of personally identifiable information, in accordance with 32 CFR part 310.

#### § 161.6 [Amended]

##### ■ 6. Amend § 161.6 by:

■ a. Removing “FIPS Publication 201–1” and adding in its place “FIPS Publication 201–2” in paragraph (a).

■ b. In paragraph (a)(3):

■ i. Removing “A background investigation is required” and adding in its place “Background investigation is required” in the first sentence.

■ ii. Removing “FIPS Publication 201–1” and adding in its place “FIPS Publication 201–2” in both places it appears.

■ c. Removing “FIPS Publication 201–1” and adding in its place “FIPS Publication 201–2” in paragraph (c).

■ d. Removing “FIPS Publication 201–1” and adding in its place “FIPS Publication 201–2” in paragraph (c)(1)(iii).

■ e. Removing “FIPS Publication 201–1” and adding in its place “FIPS Publication 201–2” in paragraph (c)(1)(iv).

■ f. Removing “FIPS Publication 201–1” and adding in its place “FIPS Publication 201–2” in paragraph (c)(1)(v).

■ g. Removing “DoD Directive 1000.25” and adding in its place “DoD Instruction 1000.25” in paragraph (c)(3)(i).

■ h. Removing “FIPS Publication 201–1” and adding in its place “FIPS Publication 201–2” in paragraph (c)(3)(ii).

#### Subpart B—DoD Identification (ID) Cards: ID Card Life-Cycle

##### ■ 7. Amend § 161.7 by:

■ a. Revising the first sentence and the last sentence in paragraph (c) introductory text.

■ b. Removing “comply with the FIPS Publication 201–1 before a CAC is authorized for issuance” and adding in its place “comply with the DoD Instruction 5200.46 and FIPS Publication 201–2 before a CAC is authorized for issuance” in paragraph (c)(1).

■ c. Revising paragraph (c)(2) and paragraph (c)(3) introductory text.

■ d. Revising paragraph (d)(1) introductory text.

■ e. Removing “from the Form I–9 required for ID card issuance” and adding in its place “from the FIPS Publication 201–2 PIV Identity Proofing and Registration Requirements required for ID card issuance” in paragraph (d)(1)(ii).

■ f. Removing “DoD Directive 1000.25” and adding in its place “DoD Instruction 1000.25” in paragraph (d)(4).

■ g. Adding a paragraph heading for paragraph (e)(2)(i).

■ h. Removing “DD Form 1173, “United States Uniformed Services ID and Privilege Card,” or” in paragraph (e)(2)(i)(A).

■ i. Revising paragraph (e)(2)(ii).

■ j. Revising paragraphs (b)(1) introductory text, (c)(1), (d)(1), and (e)(1) in appendix 1 to § 161.7.

■ k. Removing “FIPS Publication 201–1” and adding in its place “FIPS Publication 201–2” in paragraph (a)(2) in appendix 2 to § 161.7.

The revisions and additions read as follows:

#### § 161.7 ID card life-cycle procedures.

\* \* \* \* \*

(c) *Background Investigation.* In accordance with this subpart and DoDI 5200.46, “DoD Investigative and Adjudicative Guidance for Issuing the Common Access Card (CAC)” (available at: <http://www.dtic.mil/whs/directives/corres/pdf/520046p.pdf>), a background investigation is required for those individuals eligible for a CAC. \* \* \* Sponsored CAC applicants shall not be issued a CAC without the required background investigation stipulated in DoDI 5200.46 and FIPS Publication 201–2.

\* \* \* \* \*

(2) Issuance of a CAC requires, at a minimum, the completion of the Federal Bureau of Investigation (FBI) fingerprint check with favorable results and successful submission of a NACI (or investigation approved in Federal Investigative Standards) to the Office of Personnel Management (OPM). Completed background investigations for CAC issuance shall be adjudicated in accordance with DoD Instruction 5200.46 and Office of Personnel Management Memorandum, “Final

Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12" (available at [http://www.opm.gov/investigate/resources/final\\_credentialing\\_standards.pdf](http://www.opm.gov/investigate/resources/final_credentialing_standards.pdf)).

(3) Except for uniformed services members, special considerations for conducting background investigations of non-U.S. nationals are addressed in DoD Instruction 5200.46. Non-U.S. person CAC applicants that do not meet the criteria to complete a NACI (e.g., U.S. residency requirements), must meet one of the criteria in paragraph (c)(3)(i) or (ii) of this section prior to CAC issuance. CACs issued to these non-U.S. persons shall display a blue stripe as described in appendix 2 of this section.

Procedures for the acceptance of this CAC shall be in accordance with DoD Instruction 5200.46 and Office of Personnel Management Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12." The specific background investigation conducted on the non-U.S. person may vary based on governing international agreements. Non-U.S. persons must:

\* \* \* \* \*

(d) \* \* \*

(1) *Identity documents.* Applicants for initial ID card issuance shall submit two identity documents in original form as proof of identity. A VO at a RAPIDS workstation shall inspect and verify the documents presented by the applicant before ID card issuance. The identity documents must come from the list of acceptable primary and secondary documents included in the FIPS Publication 201-2 PIV Identity Proofing and Registration Requirements, or, for non-U.S. persons, other sources as outlined within paragraph (d)(1)(ii) of this section. Copies of the identity documentation may be accepted so long as they are certified documents. In accordance with FIPS Publication 201-2 PIV Identity Proofing and Registration Requirements, the identity documents shall be neither expired nor cancelled. The primary identity document shall be a State or Federal Government-issued picture ID. The identity documents shall be inspected for authenticity and scanned and stored in the DEERS in accordance with the DMDC, "Real-time Automated Personnel Identification System (RAPIDS) User Guide" upon issuance of an ID card. The requirement for the primary identity document to have a photo cannot be waived for initial ID card issuance, consistent with applicable statutory requirements. Identity documentation requirements for renewal or re-issuance are provided in paragraph (e)(3) of this section. When

it has been determined that a CAC applicant has purposely misrepresented or not provided the applicant's true identity, the case shall be referred by the relevant RAPIDS Service Project office (SPO) to the sponsoring DoD or other Uniformed Service Component organization. The DoD or other Uniformed Service Component organization concerned shall initiate an investigation or provide appeals procedures as appropriate. Exceptions to the identity documentation requirements for initial ID card issuance are provided in paragraphs (d)(1)(i) and (ii) of this section:

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) CACs. \* \* \*

(ii) *Non-CAC ID cards.* (A) DD Form 1173, "United States Uniformed Services ID and Privilege Card" issued to dependents of DoD civilian employees, contractors, and other eligible personnel assigned overseas or deploying in support of contingency operations shall have an expiration date coinciding with their deployment period end date.

(B) An indefinite DD Form 1173 will be issued to a dependent of retired Service members who are either 75 years of age or permanently incapacitated in accordance with 10 U.S.C. 1060b.

(C) All other non-CAC ID cards shall be given expiration dates in accordance with the guidance listed on [www.cac.mil](http://www.cac.mil).

\* \* \* \* \*

#### Appendix 1 to § 161.7—ID Card Descriptions and Population Eligibility Categories

\* \* \* \* \*

(b) *Armed Forces of the United States Geneva Conventions ID Card—(1) Description.* This CAC is the primary ID card for uniformed services members and shall be used to identify the member's eligibility for benefits and privileges administered by the uniformed services as described in subpart C of this part. The CAC shall also be used to facilitate standardized, uniform access to DoD facilities, and installations in accordance with Directive Type Memorandum 09-012, "Interim Policy Guidance for DoD Physical Access Control" (available at: <http://www.dtic.mil/whs/directives/corres/pdf/DTM-09-012.pdf>) and DoD 5200.08-R, "Physical Security Program," and to computer systems in accordance with DoD Instruction 8520.02, "Public Key Infrastructure (PKI) and Public Key (PK) Enabling," (available at: <http://www.dtic.mil/whs/directives/corres/pdf/852002p.pdf>).

\* \* \* \* \*

(c) *U.S. DoD or Uniformed Services ID Card—(1) Description.* This CAC is the

primary ID card for eligible civilian employees, contractors, and foreign national affiliates and shall be used to facilitate standardized, uniform access to DoD facilities, and installations in accordance with Directive Type Memorandum 09-012, "Interim Policy Guidance for DoD Physical Access Control" and DoD 5200.08-R, "Physical Security Program," and computer systems in accordance with DoD Instruction 8520.02, "Public Key Infrastructure (PKI) and Public Key (PK) Enabling."

\* \* \* \* \*

(d) *U.S. DoD or Uniformed Services ID and Privilege Card—(1) Description.* This CAC is the primary ID card for civilian employees, contractors, and foreign national military, as well as other eligible individuals entitled to benefits and privileges administered by the uniformed services as described in subpart C of this part. The CAC shall be used to facilitate standardized, uniform access to DoD facilities, and installations in accordance with Directive Type Memorandum 09-012, "Interim Policy Guidance for DoD Physical Access Control" and DoD 5200.08-R, "Physical Security Program," and computer systems in accordance with DoD Instruction 8520.02, "Public Key Infrastructure (PKI) and Public Key (PK) Enabling."

\* \* \* \* \*

(e) *U.S. DoD or Uniformed Service Geneva Conventions ID Card for Civilians Accompanying the Armed Forces—(1) Description.* This CAC serves as the DoD and/or Uniformed Services Geneva Conventions ID card for civilians accompanying the uniformed services and shall be used to facilitate standardized, uniform access to DoD facilities, and installations in accordance with Directive Type Memorandum 09-012, "Interim Policy Guidance for DoD Physical Access Control" and DoD 5200.08-R, "Physical Security Program," and computer systems in accordance with DoD Instruction 8520.02, "Public Key Infrastructure (PKI) and Public Key (PK) Enabling."

\* \* \* \* \*

■ 8. Subpart C is revised to read as follows:

#### Subpart C—DoD Identification (ID) Cards: Benefits for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals

Sec.

161.9 DoD benefits.

161.10 Benefits for active duty members of the uniformed services.

161.11 Benefits for National Guard and Reserve members of the uniformed services.

161.12 Benefits for former uniformed services members.

161.13 Benefits for retired members of the uniformed services.

161.14 Benefits for MOH recipients.

161.15 Benefits for Disabled American Veterans (DAV).

161.16 Benefits for transitional health care members and dependents.

161.17 Benefits for surviving dependents.



- 161.18 Benefits for abused dependents.  
 161.19 Benefits for former spouses.  
 161.20 Benefits for civilian personnel.  
 161.21 Benefits for retired civilian personnel.  
 161.22 Benefits for foreign affiliates.

#### § 161.9 DoD benefits.

The benefits population is defined by roles. There are roles that have a direct affiliation with the DoD, such as an active duty Service member, or those that have an association to someone who is affiliated, such as the spouse of an active duty member. This section reflects benefit eligibility established by law and associated DoD policy, and addresses the roles that receive benefits. These benefits can include civilian health care, direct care at an MTF, commissary, exchange, and MWR, which are conveyed on the authorized CAC or uniformed services ID card. Sections 161.10 through 161.22 identify the categories of eligible persons and their authorized benefits as they would be recorded in the Defense Eligibility Enrollment Reporting System (DEERS).

(a) Sections 161.10 through 161.22 reflect the eligibility of persons for the benefits administered by the uniformed services in accordance with 10 U.S.C. chapter 55 and DoD Instruction 1330.17, "Armed Services Commissary Operations" (available at <http://www.dtic.mil/whs/directives/corres/pdf/133017p.pdf>); DoD Instruction 1330.21, "Armed Services Exchange Regulations" (available at <http://www.dtic.mil/whs/directives/corres/pdf/133021p.pdf>); and DoD Instruction 1015.10.

(1) Additional benefits may be authorized by DoD Instruction 1330.17, DoD Instruction 1330.21, and DoD Instruction 1015.10, but are not printed on the DoD ID card; access to benefits may be facilitated in another manner in accordance with DoD Instruction 1330.17, DoD Instruction 1330.21, and DoD Instruction 1015.10.

(2) Installation commanders may never authorize benefits beyond those allowed by DoD Instruction 1330.17, DoD Instruction 1330.21, and DoD Instruction 1015.10, but they may deny privileges indicated when base support facilities cannot handle the burden imposed as authorized by DoD Instruction 1330.17, DoD Instruction 1330.21, and DoD Instruction 1015.10.

(b) A sponsor's begin date for benefit eligibility is based on the date the sponsor begins their affiliation with the Department.

(c) A dependent's begin date for benefit eligibility is based on the date the dependent becomes associated as an eligible dependent to an eligible sponsor.

(d) Guidance on benefit eligibility begin dates and ID card expiration dates

based on benefits will be maintained at <http://www.cac.mil>.

(e) Refer to the figure 1 to this subpart for abbreviations for the tables in this subpart.

FIGURE 1 TO SUBPART C OF PART 161—BENEFITS TABLE ABBREVIATIONS

CHC .....	civilian health care.
DC .....	direct care at MTFs.
C .....	commissary privileges.
MWR .....	MWR privileges.
E .....	exchange privileges.

#### § 161.10 Benefits for active duty members of the uniformed services.

This section describes the benefits for active duty uniformed services members and their eligible dependents administered by the uniformed services in accordance with 10 U.S.C. chapter 55. Descriptions of benefits for National Guard and Reserve members and their eligible dependents are contained in § 161.11. Descriptions of benefits for surviving dependents of active duty uniformed services members are contained in § 161.17.

(a) *Active duty service members.* Active duty uniformed services members are eligible for benefits administered by the uniformed services as shown in Table 1 to this subpart.

TABLE 1 TO SUBPART C OF PART 161—BENEFITS FOR ACTIVE DUTY MEMBERS, NOT INCLUDING NATIONAL GUARD OR RESERVE MEMBERS

	CHC	DC	C	MWR	E
Member (Self) .....	No .....	Yes .....	Yes .....	Yes .....	Yes.

(b) *Dependents of active duty members.* Dependents of active duty members are eligible for benefits as shown in Table 2 to this subpart. Benefits for the eligible dependents of

National Guard or Reserve members, non-regular Service retirees not yet age 60, or members entitled to retired pay or who are in receipt of retired pay for non-regular service, and non-regular

Service retirees who are not in receipt of retired pay are identified in §§ 161.11 through 161.14.

TABLE 2 TO SUBPART C OF PART 161—BENEFITS FOR DEPENDENTS OF ACTIVE DUTY MEMBERS

	CHC	DC	C	MWR	E
Spouse .....	Yes .....	Yes .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years: Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged.	Yes .....	Yes .....	1 .....	1 .....	1.
Ward .....	3 .....	3 .....	3 .....	3 .....	3.
Pre-adoptive Child .....	4 .....	4 .....	4 .....	4 .....	4.
Foster Child .....	No .....	No .....	1 .....	1 .....	1
Children, Unmarried, 21 Years and Over .....	5 .....	5 .....	6 .....	6 .....	6.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	2 .....	2 .....	2 .....	2.

#### Notes:

1. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support.
2. Yes, if dependent on an authorized sponsor for over 50 percent of the parent's support and residing in the sponsor's household.
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:

- a. Is dependent on the member for over 50 percent support.
- b. Resides with the member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary or Director may, by regulation, prescribe.
4. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another organization authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.
5. Yes, if the child:
- a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is dependent on the member for over 50 percent of the child's support; or
- b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member and is dependent on the member for over 50 percent of the child's support.
6. Yes, if the child:
- a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is dependent on the member for over 50 percent of the child's support; or
- b. Is incapable of self-support because of a mental or physical incapacity and is dependent on the member for over 50 percent of the child's support.

**§ 161.11 Benefits For National Guard and Reserve members of the uniformed services.**

This section describes the benefits for National Guard and Reserve members of the uniformed services and their eligible dependents. Benefits for members of the

Retired Reserve and their eligible dependents are described in § 161.13. Benefits for surviving dependents of deceased National Guard and Reserve members are described in § 161.17.

(a) *National Guard and Reserve members.* National Guard and Reserve

members are eligible for benefits based on being ordered to periods of active duty or full-time National Guard duty or active status in the SelRes, including Ready Reserve and Standby Reserve and participation in the Reserve Officer Training Corps.

**TABLE 3 TO SUBPART C OF PART 161—BENEFITS FOR NATIONAL GUARD AND RESERVE MEMBERS NOT ON ACTIVE DUTY GREATER THAN 30 DAYS**

	CHC	DC	C	MWR	E
Member (Self) .....	No .....	No .....	Yes .....	Yes .....	Yes.

**TABLE 4 TO SUBPART C OF PART 161—BENEFITS FOR NATIONAL GUARD AND RESERVE MEMBERS ON ACTIVE DUTY FOR PERIODS GREATER THAN 30 DAYS**

	CHC	DC	C	MWR	E
Member (Self) .....	No .....	Yes .....	Yes .....	Yes .....	Yes.

**Notes:**

1. This includes reported periods of early identification of Service members in support of a contingency operation in accordance with DoD Instruction 7730.54, "Reserve Components Common Personnel Data System (RCCPDS)" (available at <http://www.dtic.mil/whs/directives/corres/pdf/773054p.pdf>).

(b) *Dependents of National Guard or Reserve members.* Dependents of National Guard or Reserve members are eligible for benefits as shown in Table 5 to this subpart.

**TABLE 5 TO SUBPART C OF PART 161—BENEFITS FOR DEPENDENTS OF NATIONAL GUARD OR RESERVE MEMBERS**

	CHC	DC	C	MWR	E
Spouse .....	1 .....	1 .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged.	1 .....	1 .....	2 .....	2 .....	2.
Ward .....	1, 4 .....	1, 4 .....	4 .....	4 .....	4.
Pre-adoptive Child .....	1, 5 .....	1, 5 .....	5 .....	5 .....	5.
Foster Child .....	No .....	No .....	2 .....	2 .....	2.
Children, Unmarried, 21 Years and Over .....	1, 6 .....	1, 6 .....	7 .....	7 .....	7.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	1, 3 .....	3 .....	3 .....	3.

**Notes:**

1. Yes, if the sponsor is on active duty greater than 30 days. When the order to active duty period is greater than 30 days the eligibility for CHC and DC for eligible dependents begins on the first day of the active duty period.
2. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support.
3. Yes, if dependent on an authorized sponsor for over 50 percent support of the parent's support and residing in the sponsor's household.
4. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:
- a. Is dependent on the member for over 50 percent support.
- b. Resides with the member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.

5. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.

6. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member and is dependent on the member for over 50 percent of the child's support.

7. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity and is dependent on the member for over 50 percent of the child's support.

#### **§ 161.12 Benefits for former uniformed services members.**

This section describes the benefits for former uniformed services members and their eligible dependents. Former members are eligible to receive retired

pay, at age 60, for non-regular service in accordance with 10 U.S.C. chapter 1223, but have been discharged from their respective Service or agency and maintain no military affiliation.

(a) *Former members and their eligible dependents.* Former members and their dependents are eligible for benefits as shown in Table 6 to this subpart.

**TABLE 6 TO SUBPART C OF PART 161—BENEFITS FOR FORMER MEMBERS AND DEPENDENTS**

	CHC	DC	C	MWR	E
Former Member (Self) .....	1 .....	1 .....	Yes .....	Yes .....	Yes.
Lawful Spouse .....	1 .....	2 .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged.	1 .....	2 .....	3 .....	3 .....	3.
Ward .....	1, 5 .....	2, 5 .....	5 .....	5 .....	5.
Pre-adoptive Child .....	1, 6 .....	2, 6 .....	6 .....	6 .....	6.
Foster Child .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	1, 7 .....	2, 7 .....	8 .....	8 .....	8.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	2, 4 .....	4 .....	4 .....	4.

#### **Notes:**

1. Yes, if the former member is age 60 or over and in receipt of retired pay for non-regular service; and is:

a. Not entitled to Medicare Part A hospital insurance through the SSA, or

b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84, “National Defense Authorization Act for Fiscal Year 2010.”

2. Yes, if former member is age 60 or over and in receipt of retired pay for non-regular service.

3. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support.

4. Yes, if dependent on an authorized sponsor for over 50 percent of the parent's support and residing in the sponsor's household.

5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:

a. Is dependent on the member for over 50 percent support.

b. Resides with the member or former member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.

6. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.

7. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the former member for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member, and is dependent on the member or former member for over 50 percent of the child's support.

8. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the former member for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity and is dependent on the former member for over 50 percent of the child's support.

(b) [Reserved]

#### **§ 161.13 Benefits for retired members of the uniformed services.**

This section describes the benefits for retired uniformed service members entitled to retired pay and their eligible dependents. Retired uniformed service members are entitled to retired pay and eligible for benefits administered by the

uniformed services in accordance with 10 U.S.C., DoD Instruction 1330.17, DoD Instruction 1330.21, DoD Instruction 1015.10, and TRICARE Policy Manual 6010.57–M (available at [http://www.tricare.mil/contracting/healthcare/t3manuals/change2/tp08/c8s9\\_1.pdf](http://www.tricare.mil/contracting/healthcare/t3manuals/change2/tp08/c8s9_1.pdf)). This includes voluntary, temporary, and permanent disability retired list (PDRL)

retirees. Benefits for former members and their eligible dependents are described in § 161.12.

(a) *Retired members.* Benefits for voluntary retired members and PDRL retirees are shown in Table 7 to this subpart. Benefits for temporary disability retired list (TDRL) retirees are shown in Table 8 to this subpart.

TABLE 7 TO SUBPART C OF PART 161—BENEFITS FOR VOLUNTARY RETIRED MEMBERS AND PDRL MEMBERS

	CHC	DC	C	MWR	E
Member (Self) .....	1 .....	Yes .....	Yes .....	Yes .....	Yes.

**Notes:**

1. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA or
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.

TABLE 8 TO SUBPART C OF PART 161—BENEFITS FOR TDRL MEMBERS

	CHC	DC	C	MWR	E
Member (Self) .....	1, 2 .....	Yes .....	Yes .....	Yes .....	Yes.

**Notes:**

1. If not removed sooner, retention of the service member on the TDRL shall not exceed a period of 5 years. The uniformed service member must be returned to active duty, separated with or without severance pay, or retired as PDRL in accordance with 10 U.S.C. 1210.
2. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA or
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.

(b) *Retired Reserve.* Benefits for members of the Retired Reserve who have attained 20 creditable years of service, have not reached the age of 60, and are not in receipt of retired pay are

shown in Table 9 to this subpart. When a Retired Reserve member is ordered to active duty greater than 30 days, their benefits will reflect what is shown in Table 10 to this subpart. When a Retired

Reserve member is in receipt of retired pay under age 60 (non-regular Service retirement), or upon reaching age 60, their benefits will reflect what is shown in Table 11 to this subpart.

TABLE 9 TO SUBPART C OF PART 161—BENEFITS FOR RETIRED RESERVE MEMBERS

	CHC	DC	C	MWR	E
Member (Self) .....	No .....	No .....	Yes .....	Yes .....	Yes.

TABLE 10 TO SUBPART C OF PART 161—BENEFITS FOR RETIRED RESERVE MEMBERS ORDERED TO ACTIVE DUTY GREATER THAN 30 DAYS

	CHC	DC	C	MWR	E
Member (Self) .....	No .....	Yes .....	Yes .....	Yes .....	Yes.

TABLE 11 TO SUBPART C OF PART 161—BENEFITS FOR NON-REGULAR SERVICE RETIREMENT FOR QUALIFYING READY RESERVE MEMBERS

	CHC	DC	C	MWR	E
Member (Self) .....	1 .....	1 .....	Yes .....	Yes .....	Yes.

**Notes:**

1. Yes, if age 60 or over, and:
  - a. Applied for or in receipt of retired pay in accordance with 10 U.S.C. 1074. If in receipt of retired pay in accordance with the provisions of 10 U.S.C. 12731, after the date of the enactment of section 647 of Public Law 110–181, “National Defense Authorization Act for Fiscal Year 2008,” the member must be age 60 to qualify for CHC and DC.
  - b. Not entitled to Medicare Part A hospital insurance through the SSA, or
  - c. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.

(c) *Dependents.* Dependents of retired uniformed services members entitled to retired pay, including TDRL and PDRL, non-regular Service retirees not yet age 60 not in receipt of retired pay; non-

regular Service retirees entitled to retired pay in accordance with the provisions of 10 U.S.C. 12731 after the date of the enactment of section 647 of Public Law 110–181; and non-regular

Service retirees, age 60 or over, in receipt of retired pay for non-regular service in accordance with 10 U.S.C. chapter 1223, are eligible for benefits as shown in Table 12 to this subpart.

TABLE 12 TO SUBPART C OF PART 161—BENEFITS FOR DEPENDENTS OF RETIRED UNIFORMED SERVICES MEMBERS

	CHC	DC	C	MWR	E
Lawful Spouse .....	1 .....	2 .....	Yes .....	Yes .....	Yes.

TABLE 12 TO SUBPART C OF PART 161—BENEFITS FOR DEPENDENTS OF RETIRED UNIFORMED SERVICES MEMBERS—Continued

	CHC	DC	C	MWR	E
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged.	1 .....	2 .....	3 .....	3 .....	3.
Ward .....	1, 5 .....	2, 5 .....	5 .....	5 .....	5.
Pre-adoptive Child .....	1, 6 .....	2, 6 .....	6 .....	6 .....	6.
Foster Child .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	1, 7 .....	2, 7 .....	8 .....	8 .....	8.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	2, 4 .....	4 .....	4 .....	4.

**Notes:**

1. Yes, if the sponsor is:
  - a. Retired (as shown in Tables 7 and 8 to this subpart) and the dependent is not entitled to Medicare Part A hospital insurance through the SSA; or if entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84;
  - b. A National Guard or Reserve member on a period of active duty in excess of 30 days (as shown in Table 10 to this subpart). When the ordered to active duty period is greater than 30 days the eligibility for CHC and DC for the eligible dependents begins on the first day of the active duty period; or
  - c. A medically eligible non-regular Service Reserve Retiree, age 60 or over, as shown in Table 11 of this subpart.
2. Yes, if the sponsor is:
  - a. Retired (as shown in Tables 7 and 8 to this subpart);
  - b. A National Guard or Reserve member on a period of active duty in excess of 30 days (as shown in Table 10 to this subpart). When the ordered to active duty period is greater than 30 days the eligibility for CHC and DC for the eligible dependents begins on the first day of the active duty period; or
  - c. A medically eligible non-regular Service Reserve Retiree, age 60 or over, as seen in Table 11 to this subpart.
3. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support.
4. Yes, if dependent on an authorized sponsor for over 50 percent of the parent's support and residing in the sponsor's household.
5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:
  - a. Is dependent on the member for over 50 percent support.
  - b. Resides with the member or former member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
6. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the former member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member, and is dependent on the member or former member for over 50 percent of the child's support.
8. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the retired member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity and is dependent on the retired member for over 50 percent of child's support.

**§ 161.14 Benefits for MOH recipients.**

This section describes the benefits for MOH recipients and their dependents who are authorized pursuant to section 706 of Public Law 106–398, “National Defense Authorization Act for Fiscal Year 2001” and who are not otherwise

entitled to military medical and dental care. Section 706 of Public Law 106–398 authorized MOH recipients not otherwise entitled to military medical and dental care and their dependents to be given care in the same manner that such care is provided to former

uniformed service members who are entitled to military retired pay and the dependents of those former members. Eligibility for the benefits described in Table 13 to this subpart begins on the date of award of the MOH but no earlier than October 30, 2000.

TABLE 13 TO SUBPART C OF PART 161—BENEFITS FOR MOH RECIPIENTS AND DEPENDENTS

	CHC	DC	C	MWR	E
Self .....	1 .....	2 .....	Yes .....	Yes .....	Yes.
Lawful Spouse .....	1 .....	2 .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged.					
Ward .....	1, 5 .....	2, 5 .....	5 .....	5 .....	5.
Pre-adoptive Child .....	1, 6 .....	2, 6 .....	6 .....	6 .....	6.
Foster Child .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	1, 7 .....	2, 7 .....	8 .....	8 .....	8.

TABLE 13 TO SUBPART C OF PART 161—BENEFITS FOR MOH RECIPIENTS AND DEPENDENTS—Continued

	CHC	DC	C	MWR	E
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	2, 4 .....	4 .....	4 .....	4.

**Notes:**

1. Yes, if the sponsor is a MOH recipient and is not otherwise entitled to medical care as of or after October 30, 2000 pursuant to section 706 of Public Law 106–398 and:
  - a. Is not entitled to Medicare Part A hospital insurance through the SSA or
  - b. Is entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
2. Yes, if the sponsor is a MOH recipient and is not otherwise entitled to medical care as of or after October 30, 2000 pursuant to section 706 of Public Law 106–398.
3. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support.
4. Yes, if dependent on an authorized sponsor for over 50 percent of the parent's support and residing in the sponsor's household.
5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:
  - a. Is dependent on the member for over 50 percent support.
  - b. Resides with the member or former member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
6. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the former member for over 50 percent of the child's support or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member, and is dependent on the member or former member for over 50 percent of the child's support.
8. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the MOH recipient for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity and is dependent on the MOH recipient for over 50 percent of the child's support.

**§ 161.15 Benefits for Disabled American Veterans (DAV).**

This section describes the benefits for DAVs rated as 100 percent disabled or incapable of pursuing substantially gainful employment by the VA and their

eligible dependents. Neither DAVs nor their eligible dependents receive CHC or DC benefits from the DoD based on their affiliation. Honorably discharged veterans rated by the VA as 100 percent disabled or incapable of pursuing

substantially gainful employment from a service-connected injury or disease, and their dependents, are eligible for benefits as shown in Table 14 to this subpart.

TABLE 14 TO SUBPART C OF PART 161—BENEFITS FOR 100 PERCENT DAVS AND DEPENDENTS

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	Yes .....	Yes .....	Yes.
Lawful Spouse .....	No .....	No .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged.	No .....	No .....	1 .....	1 .....	1.
Ward .....	No .....	No .....	3 .....	3 .....	3.
Pre-adoptive Child .....	No .....	No .....	4 .....	4 .....	4.
Foster Child .....	No .....	No .....	1 .....	1 .....	1.
Children, Unmarried, 21 Years and Over .....	No .....	No .....	5 .....	5 .....	5.
Parent, Parent-in-Law, Stepparent, or Parent-by-Adoption .....	No .....	No .....	2 .....	2 .....	2.

**Notes:**

1. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support.
2. Yes, if dependent on an authorized sponsor for over 50 percent of the parent's support and residing in the sponsor's household.
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:
  - a. Is dependent on the member for over 50 percent support.
  - b. Resides with the member or former member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
4. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.
5. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the authorized sponsor for over 50 percent of the child's support or
  - b. Is incapable of self-support because of a mental or physical incapacity, and is dependent on the authorized sponsor for over 50 percent of the child's support.

**§ 161.16 Benefits for transitional health care members and dependents.**

This section shows the benefits for THC members and their eligible dependents. THC (formerly the TAMP) was instituted in section 502 of Public Law 101–510, “Department of Defense Appropriations Bill Fiscal Year 1991” effective October 1, 1990. Section 706 of Public Law 108–375, “National Defense

Authorization Act of for Fiscal Year 2005” made the THC program permanent and made the medical eligibility 180 days for all eligible uniformed services members. Section 651 of Public Law 110–181 extended 2 years’ commissary and exchange benefits to THC members. Section 734 of Public Law 110–417, “National

Defense Authorization Act for Fiscal Year 2009” extended THC benefits to uniformed service members separating from active duty who agree to become members of the SelRes of the Ready Reserve of a reserve component. Uniformed service members separated as uncharacterized entry-level separations do not qualify for THC.

TABLE 15 TO SUBPART C OF PART 161—BENEFITS FOR THC MEMBERS AND DEPENDENTS

	CHC	DC	C	MWR	E
THC Member (Self) .....	1 .....	1 .....	2, 3 .....	2, 3 .....	2, 3.
Lawful Spouse .....	1 .....	1 .....	2, 3 .....	2, 3 .....	2, 3.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged.	1 .....	1 .....	2, 3, 4 .....	2, 3, 4 .....	2, 3, 4.
Ward .....	1, 6 .....	1, 6 .....	2, 3, 6 .....	2, 3, 6 .....	2, 3, 6.
Pre-adoptive Child .....	1, 7 .....	1, 7 .....	2, 3, 7 .....	2, 3, 7 .....	2, 3, 7.
Foster Child .....	No .....	No .....	2, 3, 4 .....	2, 3, 4 .....	2, 3, 4.
Children, Unmarried, 21 Years and Over .....	1, 8 .....	1, 8 .....	9 .....	9 .....	9.
Parent, Parent-in-Law, Stepparent, or Parent-by-Adoption .....	No .....	1, 5 .....	2, 3, 5 .....	2, 3, 5 .....	2, 3, 5.

**Notes:**

1. Yes, medical entitlement for 180 days beginning on the date after the member separated from the qualifying active duty period. There is no exception based on entitlement to Medicare Part A. The THC eligible sponsor and eligible dependents receive the medical benefits as if they were active duty eligible dependents.

2. No, if the member:

a. Separated on or after January 1, 2001 but before October 1, 2007

b. Separated in accordance with 10 U.S.C. 1145(a)(2)(F).

c. Separated from active duty to join the SelRes or the Ready Reserve of a Reserve Component.

3. Yes, if the member was separated during the period beginning on October 1, 1990, through December 31, 2001, or after October 1, 2007. Entitlement shall be for 2 years, beginning on the date the member separated.

4. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support.

5. Yes, if dependent on an authorized sponsor for over 50 percent of the parent's support and residing in the sponsor's household.

6. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:

a. Is dependent on the member for over 50 percent support.

b. Resides with the member or former member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.

7. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.

8. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the authorized sponsor for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member, and is dependent on the authorized sponsor for over 50 percent of the child's support.

9. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the authorized sponsor for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity and is dependent on the authorized sponsor for over 50 percent of the child's support.

**§ 161.17 Benefits for surviving dependents.**

This section describes the benefits for surviving dependents of active duty deceased uniformed services members, deceased National Guard and Reserve service members, deceased MOH

recipients, and deceased 100 percent DAV. Surviving children who are adopted by a non-military member after the death of the sponsor remain eligible for all benefits as shown in this section.

(a) *Surviving dependents of active duty deceased members.* Surviving

dependents of members who died while on active duty under orders that specified a period of more than 30 days or members who died while in a retired with pay status are eligible for benefits as shown in Table 16 to this subpart.

TABLE 16 TO SUBPART C OF PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF ACTIVE DUTY DECEASED MEMBERS

	CHC	DC	C	MWR	E
Widow or widower:					
Unremarried .....	1 .....	Yes .....	Yes .....	Yes .....	Yes.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	No .....	No .....	Yes .....	Yes .....	Yes.



TABLE 16 TO SUBPART C OF PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF ACTIVE DUTY DECEASED MEMBERS—Continued

	CHC	DC	C	MWR	E
Children, Unmarried, or Under 21 Years (Including Orphans):					
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged.	1 .....	Yes .....	2 .....	2 .....	2.
Ward .....	1, 4 .....	1, 4 .....	4 .....	4 .....	4.
Pre-adoptive Child .....	1, 5 .....	1, 5 .....	5 .....	5 .....	5.
Foster Child .....	No .....	No .....	2 .....	2 .....	2.
Children, Unmarried, 21 Years and Over .....	1, 6 .....	6 .....	7 .....	7 .....	7.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	3 .....	3 .....	3 .....	3.

**Notes:**

1. Yes, if the sponsor died on active duty (for dependents of National Guard or Reserve members or Retired Reserve members the period of active duty must be in excess of 30 days in order to qualify for the benefits in this table) and:

a. If claims are filed less than 3 years from the date of death, there is no Medicare exception for the widow. After 3 years from the date of death, the widow is eligible if,

(1) Not entitled to Medicare Part A hospital insurance through the SSA.

(2) Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.

b. Yes, for children regardless of the number of years from the date of death or entitlement to Medicare they are entitled.

2. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support at the time of the sponsor's death.

3. Yes, if dependent on an authorized sponsor for over 50 percent of the parent's support and residing in the sponsor's household at the time of the sponsor's death.

4. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and was at the time of the sponsor's death:

a. Dependent on the member for over 50 percent support.

b. Residing with the member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.

5. Yes, if, for determinations of dependency made on or after October 5, 1994, and prior to the death of the member, the child had been placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.

6. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's death dependent on the member for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member and is or was at the time of the member's death dependent on the member for over 50 percent of the child's support.

7. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is, or was at the time of the member's death, dependent on the member for over 50 percent of the child's support.

b. Is incapable of self-support because of a mental or physical incapacity and is, or was at the time of the member's death, dependent on the member for over 50 percent of the child's support.

(b) *Surviving dependents of deceased National Guard and Reserve members not on an active duty period greater than 30 days.* The surviving dependents of National Guard and Reserve Service members are eligible for the benefits shown in Table 17 to this subpart if:

(1) The National Guard or Reserve member died from an injury or illness incurred or aggravated while on active duty for a period of 30 days or less, on

active duty for training, or on inactive duty training, or while traveling to or from the place at which the member was to perform, or performed, such active duty, active duty for training, or inactive duty training pursuant to 10 U.S.C. 1076 and 1086(c)(2) and if death occurred on or after October 1, 1985; or

(2) The National Guard or Reserve member died from an injury, illness, or disease incurred or aggravated while

performing, or while traveling to or from performing active duty for a period of 30 days or less, or active duty for training, or inactive duty training, or while performing service on funeral honors in accordance with 10 U.S.C. 1074a and if death occurred on or after November 15, 1986.

TABLE 17 TO SUBPART C OF PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF DECEASED NATIONAL GUARD AND RESERVE MEMBERS NOT ON ACTIVE DUTY FOR A PERIOD GREATER THAN 30 DAYS

	CHC	DC	C	MWR	E
Widow or Widower:					
Unremarried .....	1, 2 .....	2 .....	Yes .....	Yes .....	Yes.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	No .....	No .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years (Including Orphans):					
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged.	1, 2 .....	2 .....	3 .....	3 .....	3.
Ward .....	1, 2, 5 .....	2, 5 .....	5 .....	5 .....	5.
Pre-adoptive Child .....	1, 2, 6 .....	2, 6 .....	6 .....	6 .....	6.

TABLE 17 TO SUBPART C OF PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF DECEASED NATIONAL GUARD AND RESERVE MEMBERS NOT ON ACTIVE DUTY FOR A PERIOD GREATER THAN 30 DAYS—Continued

	CHC	DC	C	MWR	E
Foster Child .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	1, 2, 7 .....	2, 7 .....	8 .....	8 .....	8.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	2, 4 .....	4 .....	4 .....	4.

**Notes:**

1. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA.
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
2. Yes, only if death occurred on or after 1 October 1985 in accordance with the provisions of 10 U.S.C. 1076, or on or after November 15, 1986 in accordance with the provisions of 10 U.S.C. 1074a.
3. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support at the time of the sponsor's death.
4. Yes, if dependent on an authorized sponsor for over 50 percent of the parent's support and residing in the sponsor's household at the time of the sponsor's death.
5. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months and was at the time of the sponsor's death:
  - a. Dependent on the member for over 50 percent support.
  - b. Residing with the member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
6. Yes, if, for determinations of dependency made on or after October 5, 1994, and prior to the death of the member, the child had been placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's death dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member and is or was at the time of the member's or former member's death dependent on the member for over 50 percent of the child's support.
8. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is, or was at the time of the member's death, dependent on the member for over 50 percent of the child's support.
  - b. Is incapable of self-support because of a mental or physical incapacity and is, or was at the time of the member's death, dependent on the member for over 50 percent of the child's support.

(c) *Surviving dependents of deceased National Guard and Reserve members in receipt of their notice of eligibility (NOE), Retired Reserve members not yet age 60, and former members not in receipt of retired pay.* The surviving dependents of National Guard and

Reserve members who have died before the age of 60 are eligible for the benefits shown in Table 18 to this subpart if the deceased sponsor was:

- (1) A Reserve member who had earned 20 qualifying years for retirement and received their NOE for

retired pay at age 60, but had not transferred to the Retired Reserve.

- (2) A Retired Reserve member eligible for pay at age 60, not yet age 60.

- (3) A former member who had met time-in-service requirements.

TABLE 18 TO SUBPART C OF PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF NATIONAL GUARD AND RESERVE MEMBERS WHO HAVE DIED BEFORE AGE 60

	CHC	DC	C	MWR	E
Widow or Widower:					
Unremarried .....	1, 2 .....	1 .....	Yes .....	Yes .....	Yes.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	No .....	No .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years (Including Orphans):					
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged.	1, 2 .....	1 .....	3 .....	3 .....	3.
Ward .....	1, 2, 5 .....	1, 5 .....	5 .....	5 .....	5.
Pre-adoptive Child .....	1, 2, 6 .....	1, 6 .....	6 .....	6 .....	6.
Foster Child .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	1, 2, 7 .....	1, 7 .....	8 .....	8 .....	8.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	1, 4 .....	4 .....	4 .....	4.

**Notes:**

1. Yes, on or after the date the member would have become age 60.
2. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA or
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
3. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support at the time of the sponsor's death.
4. Yes, if dependent on an authorized sponsor for over 50 percent of the parent's support and residing in the sponsor's household at the time of the sponsor's death.

5. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and was at the time of the sponsor's death:

a. Dependent on the member for over 50 percent support.

b. Residing with the member or former member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.

6. Yes, if, for determinations of dependency made on or after October 5, 1994, and prior to the death of the member, the child had been placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.

7. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's or former member's death dependent on the former member for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member and is, or was at the time of the member's or former member's death, dependent on the member or former member for over 50 percent of the child's support.

8. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is, or was at the time of the member's death, dependent on the member for over 50 percent of the child's support.

b. Is incapable of self-support because of a mental or physical incapacity and is, or was at the time of the member's death, dependent on the member for over 50 percent of the child's support.

(d) *Surviving dependents of deceased National Guard and Reserve members whose death is unrelated to the member's service.* The surviving dependents of National Guard and Reserve members are eligible for the

benefits shown in Table 19 to this subpart if:

(1) The member's death was unrelated to the member's service.

(2) The member was not on active duty, active duty for training, or on inactive duty training, or while traveling

to or from the place at which the member was to perform, or performed, such active duty, active duty for training, or inactive duty training.

(3) The member was not eligible for retired pay.

TABLE 19 TO SUBPART C OF PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF NATIONAL GUARD AND RESERVE MEMBERS WHOSE DEATH WAS UNRELATED TO THE MEMBER'S SERVICE

	CHC	DC	C	MWR	E
Widow or Widower:					
Unremarried .....	No .....	No .....	Yes .....	Yes .....	Yes.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	No .....	No .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years (Including Orphans):					
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged, foster child.	No .....	No .....	1 .....	1 .....	1.
Ward .....	No .....	No .....	2 .....	2 .....	2.
Pre-adoptive Child .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	No .....	No .....	4 .....	4 .....	4.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	No .....	5 .....	5 .....	5.

**Notes:**

1. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support at the time of the sponsor's death.

2. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months and was at the time of the sponsor's death:

a. Dependent on the member for over 50 percent support.

b. Residing with the member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.

3. Yes, if, for determinations of dependency made on or after October 5, 1994, and prior to the death of the member, the child had been placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.

4. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is, or was at the time of the member's death, dependent on the member for over 50 percent of the child's support.

b. Is incapable of self-support because of a mental or physical incapacity and is, or was at the time of the member's death, dependent on the member for over 50 percent of the child's support.

5. Yes, if dependent on that sponsor for over 50 percent of the child's support and residing in the sponsor's household at the time of the sponsor's death.

(e) *Surviving dependents of deceased uniformed services retirees or deceased MOH recipients.* The surviving

dependents of deceased uniformed services retirees or deceased MOH

recipients are eligible for the benefits shown in Table 20 to this subpart.

TABLE 20 TO SUBPART C OF PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF DECEASED UNIFORMED SERVICES RETIREES AND DECEASED MOH RECIPIENTS

	CHC	DC	C	MWR	E
Widow or Widower:					
Unremarried .....	1, 2 .....	2, 4 .....	Yes .....	Yes .....	Yes.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	No .....	No .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of member, illegitimate child of spouse.	1, 2 .....	2, 4 .....	4 .....	3 .....	3.
Ward .....	1, 2, 6 .....	2, 3, 6 .....	6 .....	6 .....	6.
Pre-adoptive Child .....	1, 2, 7 .....	2, 3, 7 .....	7 .....	7 .....	7.
Foster Child .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	1, 2, 8 .....	2, 8 .....	9 .....	9 .....	9.
Parent, Parent-in-Law, Stepparent, or Parent-by-Adoption .....	No .....	No .....	5 .....	5 .....	5.

**Notes:**

1. Yes, if the:
  - a. Deceased uniformed service member was a retired uniformed service member entitled to retired pay, including TDRL or PDRL, or a non-regular Service retiree, age 60 or over, in receipt of retired pay, and if the person is:
    - (1) Not entitled to Medicare Part A hospital insurance through the SSA; or,
    - (2) Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
  - b. Deceased MOH recipient was not otherwise entitled to medical care as of, or after October 30, 2000 in accordance with section 706 of Public Law 106–398 and if the person is:
    - (1) Not entitled to Medicare Part A hospital insurance through the SSA; or,
    - (2) Entitled to Medicare Part A, hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
2. No, if the deceased uniformed service member was a non-regular Service Retiree in accordance with the provision of 10 U.S.C. 12731 after the enactment of Public Law 110–181, sections 647 and 1106. The eligible surviving dependents will become eligible for CHC and DC on the anniversary of the 60th birthday of the deceased uniformed service member. Eligibility for CHC also requires that the person is:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA; or,
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
3. Yes, if dependent on an authorized sponsor for over 50 percent of the individual's support at the time of the sponsor's death.
4. Yes, if the deceased was a retired uniformed services member entitled to retired pay, including TDRL or PDRL, or a non-regular Service retiree, age 60 or over, in receipt of retired pay, or a deceased MOH recipient not otherwise entitled to medical care as of or after, October 30, 2000, or a deceased non-regular Service retiree entitled in accordance with the provisions of 10 U.S.C. 12731 after the enactment of Public Law 110–181, sections 647 and 1106 on the anniversary of the 60th birthday of the deceased uniformed Service member.
5. Yes, if dependent on an authorized sponsor for over 50 percent of the individual's support and residing in the sponsor's household at the time of the sponsor's death.
6. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and was at the time of the sponsor's death:
  - a. Dependent on the member for over 50 percent support.
  - b. Residing with the member or former member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
7. Yes, if, for determinations of dependency made on or after October 5, 1994, and prior to the death of the member, the child had been placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.
8. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's or former member's death dependent on the former member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member and is or was at the time of the member's or former member's death dependent on the member or former member for over 50 percent of the child's support.
9. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is, or was at the time of the member's death, dependent on the member for over 50 percent of the child's support.
  - b. Is incapable of self-support because of a mental or physical incapacity and is, or was at the time of the member's death, dependent on the member for over 50 percent of the child's support.

(f) *Surviving dependents of 100 percent DAVs.* Surviving dependents of honorably discharged veterans rated as 100 percent disabled or incapable of

pursuing substantially gainful employment by the VA from a service-connected injury or disease at the time of the veteran's death are eligible for

benefits as shown in Table 21 to this subpart.

TABLE 21 TO SUBPART C OF PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF 100 PERCENT DAVS

	CHC	DC	C	MWR	E
Widow or Widower (DoD Beneficiary):					
Unremarried .....	No .....	No .....	Yes .....	Yes .....	Yes.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	No .....	No .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years:					

TABLE 21 TO SUBPART C OF PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF 100 PERCENT DAVs—Continued

	CHC	DC	C	MWR	E
Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged, foster child.	No .....	No .....	1 .....	1 .....	1.
Ward .....	No .....	No .....	2 .....	2 .....	2.
Pre-adoptive Child .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	No .....	No .....	4 .....	4 .....	4.
Parent, Parent-in-Law, Stepparent, or Parent-by-Adoption .....	No .....	No .....	5 .....	5 .....	5.

**Notes:**

1. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support at the time of the sponsor's death.
2. Yes, if, for determination of dependency made on or after July 1, 1994, was placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and was at the time of the sponsor's death:
  - a. Dependent on the member for over 50 percent support.
  - b. Residing with the member or former member unless separated by the necessity of uniformed service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
3. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.
4. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's or former member's death, dependent on the former member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member and is, or was at the time of the member's or former member's death, dependent on the member or former member for over 50 percent of the child's support.
5. Yes, if dependent on that sponsor for over 50 percent of the parent's support and residing in the sponsor's household at the time of the sponsor's death.

**§ 161.18 Benefits for abused dependents.**

(a) Abused dependents of active duty uniformed services members entitled to retired pay based on 20 or more years of service who, on or after October, 23, 1992, while a member, have their

eligibility to receive retired pay terminated as a result of misconduct involving the abuse of the spouse or dependent child pursuant to 10 U.S.C. 1408(h), are eligible for benefits as shown in Table 22 to this subpart. For

the purposes of these benefits the eligible spouse or child may not reside in the household of the sponsor. See § 161.19 for additional information on abused dependents under the 10/20/10 former spouse rule.

TABLE 22 TO SUBPART C OF PART 161—BENEFITS FOR ABUSED DEPENDENTS OF RETIREMENT ELIGIBLE UNIFORMED SERVICES MEMBERS

	CHC	DC	C	MWR	E
Lawful Spouse .....	1, 2, 6 .....	2, 6 .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 18 Years:					
Legitimate, adopted, stepchild, pre-adoptive .....	1, 3 .....	3 .....	4 .....	4 .....	4.
Children, Unmarried, 18 Years and Over:					
(If entitled above) .....	1, 4, 5 .....	4, 5 .....	7 .....	7 .....	7.

**Notes:**

1. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA.
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
2. Yes, if a court order provides for an annuity for the spouse.
3. Yes, if a member of the household where the abuse occurred.
4. Yes, if dependent on an authorized sponsor for over 50 percent of child's support at the time the abuse occurred.
5. Yes, if the child:
  - a. Is older than 18 years old and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 18, or occurred before the age of 23 while a full-time student.
6. The spouse must have been married to the uniformed service member for at least 10 years, the uniformed service member must have completed 20 creditable years for retired pay, and they must have been married at least 10 years during the 20 years of creditable service (see § 161.19). The uniformed services shall prescribe specific procedures to verify the eligibility of an applicant.
7. Yes, if the child:
  - a. Is older than 18 years old but has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and was dependent on the sponsor for over 50 percent the child's support at the time the abuse occurred; or
  - b. Is incapable of self-support because of a mental or physical incapacity and was dependent on the sponsor for over 50 percent of the child's support at the time the abuse occurred.

(b) Dependents of active duty uniformed service members (who have

served for a continuous period greater than 30 days) not entitled to retired pay

who have received a dishonorable or bad-conduct discharge, dismissal from a

uniformed service as a result of a court martial conviction for an offense involving physical or emotional abuse of the spouse or child, or was administratively discharged as a result of such an offense, separated on or after November 30, 1993, are eligible for

transitional privileges in accordance with DoD Instruction 1342.24, "Transitional Compensation for Abused Dependents" (available at: <http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf>). For the purposes of these benefits the eligible spouse or child may

not reside in the household of the sponsor. A maximum of up to 36 months of medical benefits can be granted by the uniformed services to the transitional compensation dependent.

TABLE 23 TO SUBPART C OF PART 161—BENEFITS FOR ABUSED DEPENDENTS OF NON-RETIREMENT ELIGIBLE UNIFORMED SERVICES MEMBERS

	CHC	DC	C	MWR	E
Lawful Spouse .....	1, 2 .....	2 .....	4 .....	4 .....	4.
Children, Unmarried, Under 18 Years: Legitimate, adopted, and stepchild .....	1, 2 .....	2 .....	4 .....	4 .....	4.
Children, Unmarried, 18 Years and Over (If entitled above) .....	1, 2, 3 .....	2, 3 .....	4 .....	4 .....	4.

**Notes:**

1. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA.
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
2. Yes, if:
  - a. Residing with the member at the time of the dependent-abuse offense and not residing with the member while receiving transitional compensation for abused dependents.
  - b. Married to and residing with the member at the time of the dependent-abuse offense and while receiving transitional compensation for abused dependents.
3. Yes, if:
  - a. 18 years of age or older and incapable of self-support because of a mental or physical incapacity that existed before the age of 18 and who is (or was when a punitive or other adverse action was carried out on the member) dependent on the member for over one-half of the child's support; or
  - b. 18 years of age or older, but less than 23 years of age, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or was when a punitive or other adverse action was carried out on the member) dependent on the member for over one-half of the child's support.
4. Yes, if receiving transitional compensation.

**§ 161.19 Benefits for former spouses.**

(a) *20/20/20 former spouses.*  
Unremarried former spouses of a uniformed services member or retired member, married to the member or retired member for a period of at least 20 years, during which period the member or retired member performed at least 20 years of service that is

creditable in determining the member's or retired member's eligibility for retired or retainer pay, or equivalent pay pursuant to 10 U.S.C. 1408 and 1072(2)(F), and the period of the marriage and the service overlapped by at least 20 years are eligible for benefits as shown in Tables 24 and 25 to this subpart. The benefit eligibility period

begins on qualifying date of divorce from the uniformed services member.

(1) *20/20/20 former spouses of an active duty, regular retired, or a non-regular retired sponsor at age 60.* 20/20/20 former spouses of an active duty, regular retired, or a non-regular retired sponsor at age 60 are eligible for benefits as shown in Table 24 to this subpart.

TABLE 24 TO SUBPART C OF PART 161—BENEFITS FOR 20/20/20 FORMER SPOUSES OF ACTIVE DUTY, REGULAR RETIRED, AND NON-REGULAR RETIRED MEMBERS AT AGE 60

	CHC	DC	C	MWR	E
Former Spouse:					
Unremarried .....	1, 2 .....	1 .....	Yes .....	Yes .....	Yes.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	No .....	No .....	Yes .....	Yes .....	Yes.

**Notes:**

1. Yes, if the former spouse certifies in writing that the former spouse has no medical coverage under an employer-sponsored health plan.
2. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA.
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance with the exception of those individuals who qualify in accordance with section 706 of Public Law 111–84.

(2) *20/20/20 former spouses of a National Guard, Reserve member, or Retired Reserve member under age 60.*

(i) In the case of former spouses of National Guard, Reserve, or Retired Reserve members or former members who are entitled to retired pay at age 60, but have not yet reached age 60, the former spouse is only entitled to

commissary, MWR, and exchange benefits as shown in Table 25 to this subpart. When the Retired Reserve member or former member attains or would have attained, age 60, the former spouse will be entitled to benefits as shown in Table 24 to this subpart.

(ii) In the case of former spouses of National Guard members or Reserve

members ordered to active duty, or Retired Reserve members under age 60 recalled to active duty, they continue to receive benefits as shown in Table 25 to this subpart if the orders are for a period of 30 days or less. If the National Guard member, Reserve member, or recalled Retired Reserve member is on active duty orders in excess of 30 days, the

former spouse will receive benefits as shown in Table 24 to this subpart.

TABLE 25 TO SUBPART C OF PART 161—BENEFITS FOR 20/20/20 FORMER SPOUSES FOR RETIRED RESERVE UNDER AGE 60

	CHC	DC	C	MWR	E
Former Spouse:					
Unmarried .....	No .....	No .....	Yes .....	Yes .....	Yes.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	No .....	No .....	Yes .....	Yes .....	Yes.

(b) *20/20/15 former spouses.*  
Unmarried former spouses described in paragraph (a)(1) of this section, with the period of overlap of marriage and the member's creditable service at least

15 years, but less than 20 years, are not eligible for the commissary, MWR, or exchange benefits.

(1) *20/20/15 former spouses of an active duty, regular retired, or a non-*

*regular retired sponsor at age 60.* 20/20/15 former spouses of an active duty, regular retired, or a non-regular retired sponsor at age 60 are eligible for benefits as shown in Table 26 to this subpart.

TABLE 26 TO SUBPART C OF PART 161—BENEFITS FOR 20/20/15 FORMER SPOUSES OF ACTIVE DUTY, REGULAR RETIRED, AND NON-REGULAR RETIRED AT AGE 60

	CHC	DC	C	MWR	E
Former Spouse:					
Unmarried .....	1, 2, 3 .....	1, 3 .....	No .....	No .....	No.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	No .....	No .....	No .....	No .....	No.

**Notes:**

1. Yes, if former spouse certifies in writing that the former spouse has no medical coverage under an employer-sponsored health plan.
2. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA; or
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
3. Yes, if the:
  - a. Final decree of divorce, dissolution, or annulment of the marriage was before April 1, 1985; or
  - b. Marriage ended on, or after, September 29, 1988, entitlements shall exist for 1 year, beginning on the date of the divorce, dissolution, or annulment pursuant to 10 U.S.C. 1076 and 1072(2)(H).

(2) *20/20/15 former spouses of a Retired Reserve member under age 60.*  
(i) In the case of former spouses of Retired Reserve members or former members who are entitled to retired pay at age 60, but have not yet reached age 60, the former spouse has no entitlement prior to the Retired Reserve member or former member reaching age 60. The benefit eligible period is 1 year

from the date of divorce. If any period of eligibility extends beyond the Retired Reserve or former member's 60th birthday then the former spouse will receive benefits as shown in Table 26 to this subpart for that period.

(ii) In the case of former spouses of Reserve members or Retired Reserve members under age 60 recalled to active duty on orders for a period of 30 days

or less they are not entitled to any benefits as shown in Table 27 to this subpart. If the Reserve member or recalled Retired Reserve member is on active duty orders in excess of 30 days, the former spouse will receive benefits as shown in Table 26 to this subpart if they are within 1 year from the date of divorce from the uniformed service member.

TABLE 27 TO SUBPART C OF PART 161—BENEFITS FOR 20/20/15 FORMER SPOUSES OF A RETIRED RESERVE MEMBER UNDER AGE 60

	CHC	DC	C	MWR	E
Former Spouse:					
Unmarried .....	No .....	No .....	No .....	No .....	No.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	No .....	No .....	No .....	No .....	No.

(c) *10/20/10 former spouses.*  
Unmarried former spouses of a member or retired member, married to the member or retired member for a period of at least 10 years to a member or retired member who performed at least 20 years of service that is

creditable in determining the member's or retired member's eligibility for retired or retainer pay, when the period of overlap of marriage and the member's creditable service was at least 10 years and the former spouse is in receipt of an annuity as a result of the member being

separated from the service due to misconduct involving dependent abuse pursuant to 10 U.S.C. 1408(h), are eligible for benefits as shown in Table 28 to this subpart.

TABLE 28 TO SUBPART C OF PART 161—BENEFITS FOR 10/20/10 FORMER SPOUSES

	CHC	DC	C	MWR	E
Former Spouse:					
Unmarried .....	1, 2 .....	1, 2 .....	Yes .....	Yes .....	Yes.
Remarried .....	No .....	No .....	No .....	No .....	No.
Unmarried .....	1, 2 .....	1, 2 .....	Yes .....	Yes .....	Yes.

**Notes:**

1. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA.
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
2. The spouse must have been married to the uniformed service member for at least 10 years, the uniformed service member must have completed 20 creditable years for retired pay, and they must have been married at least 10 years during the 20 years of creditable service (see § 161.18, paragraph (a)(1)). The uniformed services shall prescribe specific procedures to verify the eligibility of an applicant.

**§ 161.20 Benefits for civilian personnel.**

Civilian personnel may be eligible for certain benefits described in this section based on their affiliation with DoD, Service-specific guidelines, or other authorizing conditions. The definition

of “civilian personnel” (e.g., civilian employee, DoD contractor, Red Cross employee) is specific to each benefit set described.

(a) Civilian personnel in the United States may be issued a DoD ID card as

a condition of employment or assignment in accordance with subpart B of this part. Civilian personnel in the United States are eligible for benefits as shown in Table 29 to this subpart.

TABLE 29 TO SUBPART C OF PART 161—BENEFITS FOR CIVILIAN PERSONNEL IN THE UNITED STATES

	CHC	DC	C	MWR	E
Self:					
DoD Civilian Employees, IPA Personnel .....	No .....	No .....	No .....	1 .....	No.
Non-DoD Civilian Employees .....	No .....	No .....	No .....	2 .....	No.
DoD Contractors .....	No .....	No .....	No .....	2 .....	No.

**Notes:**

1. Yes, but benefit is not printed on the DoD ID card and will be facilitated in accordance with DoD Instruction 1015.10.
2. Yes, if working full-time on the installation in accordance with DoD Instruction 1015.10. Benefit is not printed on the DoD ID card and will be facilitated in accordance with DoD Instruction 1015.10.

(b) Civilian personnel residing on a military installation in the United States are eligible for benefits as shown in Table 30 to this subpart.

TABLE 30 TO SUBPART C OF PART 161—BENEFITS FOR CIVILIAN PERSONNEL WHEN RESIDING ON A MILITARY INSTALLATION IN THE UNITED STATES

	CHC	DC	C	MWR	E
Self:					
DoD Civilian Employees, IPA Personnel .....	No .....	No .....	No .....	1 .....	2.

**Notes:**

1. Yes, but benefit is not printed on the DoD ID card and will be facilitated in accordance with DoD Instruction 1015.10.
2. Yes, but subject to purchase restrictions, in accordance with DoD Instruction 1330.21. Benefit is not printed on the DoD ID card and will be facilitated in accordance with DoD Instruction 1330.21.

(c) DoD civilian personnel stationed or employed outside the United States and outside U.S. Territories and Possessions, and their accompanying dependents, when residing in the same household, are eligible for benefits as shown in Table 31 to this subpart.

TABLE 31 TO SUBPART C OF PART 161—BENEFITS FOR DoD CIVILIAN PERSONNEL STATIONED OUTSIDE THE UNITED STATES AND OUTSIDE U.S. TERRITORIES AND POSSESSIONS AND ACCOMPANYING DEPENDENTS

	CHC	DC	C	MWR	E
Self:					
DoD Civilian Employee, IPA Personnel .....	No .....	1 .....	Yes .....	Yes .....	Yes.
DoD Contractor .....	No .....	1 .....	2 .....	Yes .....	3.
Lawful Spouse .....	No .....	1 .....	4 .....	Yes .....	4.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, Illegitimate child of employee, or Illegitimate child of spouse.	No .....	1, 5 .....	5 .....	5 .....	5.
Ward .....	No .....	1, 6 .....	6 .....	6 .....	6.
Pre-adoptive .....	No .....	1, 7 .....	7 .....	7 .....	7.



TABLE 31 TO SUBPART C OF PART 161—BENEFITS FOR DOD CIVILIAN PERSONNEL STATIONED OUTSIDE THE UNITED STATES AND OUTSIDE U.S. TERRITORIES AND POSSESSIONS AND ACCOMPANYING DEPENDENTS—Continued

	CHC	DC	C	MWR	E
Foster Child .....	No .....	No .....	5 .....	5 .....	5.
Children, Unmarried, 21 Years and Over .....	No .....	1, 8 .....	9 .....	9 .....	9.
Parent, Parent-in-Law, Stepparent, or Parent-by-Adoption .....	No .....	1, 5 .....	1, 5 .....	5 .....	5.

**Notes:**

1. Yes, on a space-available, fully reimbursable basis. Medical care at uniformed services facilities shall be rendered in accordance with Service instructions. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
2. Yes, if a U.S. citizen and on a fully-reimbursable basis in accordance with DoD Instruction 1330.17 (not a local hire).
3. Yes, if a U.S. citizen assigned overseas (not a local hire).
4. Yes, if a dependent of an authorized sponsor and residing in the sponsor's household.
5. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support and residing in the sponsor's household.
6. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if dependent on the sponsor for over 50 percent of the child's support, and residing in the sponsor's household.
7. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the sponsor by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the sponsor.
8. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor and is, dependent on the sponsor for over 50 percent of the child's support.
9. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity, and is dependent on the sponsor for over 50 percent of the child's support.

(d) Non-DoD Government agency outside U.S. territories and possessions, benefits as shown in Table 32 to this  
civilian personnel stationed or and their dependents, when residing in subpart.  
employed outside the United States and the same household, are eligible for

TABLE 32 TO SUBPART C OF PART 161—BENEFITS FOR NON-DoD GOVERNMENT AGENCIES CIVILIAN PERSONNEL STATIONED OR EMPLOYED OUTSIDE THE UNITED STATES AND OUTSIDE U.S. TERRITORIES AND POSSESSIONS AND ACCOMPANYING DEPENDENTS

	CHC	DC	C	MWR	E
Self:					
Non-DoD Civilian Personnel .....	No .....	1 .....	2 .....	Yes .....	2.
Lawful Spouse .....	No .....	1 .....	3 .....	Yes .....	3.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, Illegitimate child of employee, or Illegitimate child of spouse.	No .....	1, 4 .....	4 .....	4 .....	4.
Ward .....	No .....	1, 5 .....	5 .....	5 .....	5.
Pre-adoptive .....	No .....	1, 6 .....	6 .....	6 .....	6.
Foster Child .....	No .....	No .....	4 .....	4 .....	4.
Children, Unmarried, 21 Years and Over .....	No .....	1, 7 .....	8 .....	8 .....	8.
Parent, Parent-in-Law, Stepparent, Parent-by-Adoption .....	No .....	1, 4 .....	4 .....	4 .....	4.

**Notes:**

1. Yes, on a space-available, fully reimbursable basis. Medical care at uniformed services facilities shall be rendered in accordance with Service instructions. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
2. Yes, excluding local hires in accordance with DoD Instruction 1330.17 and DoD Instruction 1330.21.
3. Yes, if a dependent of an authorized sponsor and residing in the sponsor's household.
4. Yes, if dependent on an authorized sponsor for over 50 percent of the individual's support and residing in the sponsor's household.
5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if dependent on the sponsor for over 50 percent of the dependent's support, and residing in the sponsor's household.
6. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the sponsor by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the sponsor.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor and is, dependent on the member or former member for over 50 percent of the child's support.
8. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity, and is dependent on the sponsor for over 50 percent of the child's support.

(e) Civilian personnel stationed or employed in U.S. Territories and Possessions and their dependents, when residing in the same household, are eligible for benefits as shown in Table 33 to this subpart.

**TABLE 33 TO SUBPART C OF PART 161—BENEFITS FOR CIVILIAN PERSONNEL STATIONED OR EMPLOYED IN U.S. TERRITORIES AND POSSESSIONS AND ACCOMPANYING DEPENDENTS**

	CHC	DC	C	MWR	E
Self:					
DoD Civilian employee, IPA personnel .....	No .....	1 .....	2 .....	Yes .....	2.
Non-DoD Civilian employee; DoD contractor .....	No .....	1 .....	No .....	3 .....	No.
Lawful Spouse .....	No .....	1 .....	4 .....	4 .....	4.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, Illegitimate child of employee or illegitimate child of spouse.	No .....	1, 5 .....	5 .....	5 .....	5.
Ward .....	No .....	1, 6 .....	6 .....	6 .....	6.
Pre-adoptive .....	No .....	1, 7 .....	7 .....	7 .....	7.
Foster Child .....	No .....	No .....	5 .....	5 .....	5.
Children, Unmarried, 21 Years and Over .....	No .....	1, 8 .....	9 .....	9 .....	9.
Parent, Parent -in-Law, Stepparent, Parent-by-Adoption .....	No .....	1, 5 .....	No .....	5 .....	5.

**Notes:**

1. Yes, on a space-available, fully reimbursable basis only if residing in a household on a military installation. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.

2. Yes, excluding local hires in accordance with DoD Instruction 1330.17 and DoD Instruction 1330.21.

3. Yes, if working full-time on the installation in accordance with DoD Instruction 1015.10. Benefit will not be printed on the DoD ID card and will be facilitated in accordance with DoD Instruction 1015.10.

4. Yes, if a dependent of an authorized sponsor and residing in the sponsor's household.

5. Yes, if dependent on an authorized sponsor for over 50 percent of the individual's support and residing in the sponsor's household.

6. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if dependent on the sponsor for over 50 percent of the child's support, and residing in the sponsor's household.

7. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the sponsor by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the sponsor.

8. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor, and is dependent on the sponsor for over 50 percent of the child's support.

9. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity, and is dependent on the sponsor for over 50 percent of the child's support.

(f) DoD OCONUS hires are foreign nationals in host countries who are employed by U.S. forces, consistent with any agreement with the host country as defined in Volume 1231 of DoD Instruction 1400.25. They are entered into DEERS for the purposes of issuing a CAC and are eligible for benefits as shown in Table 34 to this subpart.

**TABLE 34 TO SUBPART C OF PART 161—BENEFITS FOR DoD OCONUS HIRES**

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	No .....	1 .....	No.

**Note:**

1. Yes, for appropriated fund and NAF foreign national employees assigned and working directly for DoD installations overseas, if not prohibited by Status of Forces Agreements, other international agreements, or local laws, and the installation commander determines it is in the best interest of the command. Annual recertification of the employee authorization is required in accordance with DoD Instruction 1015.10. Benefit is not printed on the DoD ID card and will be facilitated in accordance with DoD Instruction 1015.10.

(g) Full-time paid personnel of the Red Cross assigned to duty with the uniformed services in the United States and residing on a military installation and their accompanying dependents, when residing in the same household are eligible for benefits as shown in Table 35 to this subpart.

**TABLE 35 TO SUBPART C OF PART 161—BENEFITS FOR FULL-TIME PAID PERSONNEL OF THE RED CROSS ASSIGNED TO DUTY WITH THE UNIFORMED SERVICES IN THE UNITED STATES AND RESIDING ON A MILITARY INSTALLATION AND ACCOMPANYING DEPENDENTS**

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	No .....	Yes .....	1.
Lawful Spouse .....	No .....	No .....	No .....	Yes .....	1, 2.

TABLE 35 TO SUBPART C OF PART 161—BENEFITS FOR FULL-TIME PAID PERSONNEL OF THE RED CROSS ASSIGNED TO DUTY WITH THE UNIFORMED SERVICES IN THE UNITED STATES AND RESIDING ON A MILITARY INSTALLATION AND ACCOMPANYING DEPENDENTS—Continued

	CHC	DC	C	MWR	E
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, Illegitimate child of employee, illegitimate child of spouse, or foster child.	No .....	No .....	No .....	3 .....	1, 3.
Ward .....	No .....	No .....	No .....	4 .....	1, 4.
Pre-adoptive .....	No .....	No .....	No .....	5 .....	1, 5.
Children, Unmarried, 21 Years and Over .....	No .....	No .....	No .....	6 .....	1, 6.
Parent, Parent-in-Law, Stepparent, Parent-by-Adoption .....	No .....	No .....	No .....	3 .....	1, 3.

**Notes:**

1. Yes, but subject to purchase restrictions in accordance with DoDI 1330.21.
2. Yes, if a dependent of an authorized sponsor, and residing in the sponsor's household.
3. Yes, if dependent on an authorized sponsor for over 50 percent of the individual's support and residing in the sponsor's household.
4. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if dependent on the sponsor for over 50 percent of the child's support, and residing in the sponsor's household.
5. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the sponsor by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the sponsor.
6. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor, and is dependent on the sponsor for over 50 percent of the child's support.

(h) Full-time paid personnel of the Red Cross assigned to duty with the uniformed services outside the United States and their accompanying dependents, when residing in the same household, are eligible for benefits as shown in Table 36 to this subpart.

TABLE 36 TO SUBPART C OF PART 161—BENEFITS FOR FULL-TIME PAID PERSONNEL OF THE RED CROSS ASSIGNED TO DUTY WITH THE UNIFORMED SERVICES OUTSIDE THE UNITED STATES AND ACCOMPANYING DEPENDENTS

	CHC	DC	C	MWR	E
Self .....	No .....	1 .....	2 .....	Yes .....	2.
Lawful Spouse .....	No .....	1 .....	3 .....	Yes .....	3.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, Illegitimate child of employee or illegitimate child of spouse.	No .....	1, 4 .....	4 .....	4 .....	4.
Ward .....	No .....	No .....	5 .....	5 .....	5.
Foster Child .....	No .....	No .....	4 .....	4 .....	4.
Children, Unmarried, 21 Years and Over .....	No .....	1, 6 .....	7 .....	7 .....	7.
Parent, Parent-in-Law, Stepparent, or Parent-by-Adoption .....	No .....	1, 4 .....	4 .....	4 .....	4.

**Notes:**

1. Yes, on a space-available basis at rates specified in uniformed services instructions. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
2. Yes, if U.S. citizen assigned overseas (not a local hire).
3. Yes, if a dependent of an authorized sponsor and residing in the sponsor's household.
4. Yes, if a dependent on an authorized sponsor for over 50 percent of the individual's support and residing in the sponsor's household.
5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if dependent on the sponsor for over 50 percent of the child's support, and residing in the sponsor's household.
6. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor, and is dependent on the sponsor for over 50 percent of the child's support.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity, and is dependent on the sponsor for over 50 percent of the child's support.

(i) Full-time paid personnel of the United Service Organizations (USO) serving outside the United States and their accompanying dependents when residing in the same household are eligible for benefits as shown in Table 37 to this subpart.

TABLE 37 TO SUBPART C OF PART 161—BENEFITS FOR FULL-TIME PAID PERSONNEL OF THE USO AND ACCOMPANYING DEPENDENTS SERVING OUTSIDE THE UNITED STATES

	CHC	DC	C	MWR	E
Self .....	No .....	1 .....	2 .....	Yes .....	2.
Lawful Spouse .....	No .....	1 .....	3 .....	Yes .....	3.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of employee, or illegitimate child of spouse.	No .....	1, 4 .....	4 .....	4 .....	4.
Ward .....	No .....	No .....	5 .....	5 .....	5.
Foster child .....	No .....	No .....	4 .....	4 .....	4.
Children, Unmarried, 21 Years and Over .....	No .....	1, 5 .....	7 .....	7 .....	7.
Parent, Parent-in-Law, Stepparent, or Parent-by-Adoption .....	No .....	1, 4 .....	4 .....	4 .....	4.

**Notes:**

1. Yes, on a space-available, fully reimbursable basis. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
2. Yes, if U.S. citizens assigned overseas (not a local hire).
3. Yes, if a dependent of an authorized sponsor and residing in the sponsor's household.
4. Yes, if dependent on an authorized sponsor for over 50 percent of the individual's support and residing in the sponsor's household.
5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if dependent on the sponsor for over 50 percent of the child's support, and residing in the sponsor's household.
6. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor, and is dependent on the sponsor for over 50 percent of the child's support.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity, and is dependent on the sponsor for over 50 percent of the child's support.

(j) Full-time paid personnel of the USS serving outside the United States and outside U.S. territories and possessions, and their accompanying dependents, when residing in the same household, are eligible for benefits as shown in Table 38 to this subpart.

TABLE 38 TO SUBPART C OF PART 161—BENEFITS FOR FULL-TIME PAID PERSONNEL OF THE USS SERVING OUTSIDE THE UNITED STATES AND OUTSIDE U.S. TERRITORIES AND POSSESSIONS AND ACCOMPANYING DEPENDENTS

	CHC	DC	C	MWR	E
Self .....	No .....	1 .....	No .....	Yes .....	No.
Lawful Spouse .....	No .....	1 .....	No .....	Yes .....	No.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of employee, or illegitimate child of spouse.	No .....	1, 2 .....	No .....	2 .....	No.
Ward .....	No .....	No .....	No .....	3 .....	No.
Foster Child .....	No .....	No .....	No .....	2 .....	No.
Children, Unmarried, 21 Years and Over .....	No .....	1, 4 .....	No .....	5 .....	No.
Parent, Parent-in-Law, Stepparent, or Parent-by-Adoption .....	No .....	1, 2 .....	No .....	2 .....	No.

**Notes:**

1. Yes, on a space-available, fully reimbursable basis. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
2. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support and residing in the sponsor's household.
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if dependent on the sponsor for over 50 percent of the child's support, and residing in the sponsor's household.
4. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor, and is dependent on the sponsor for over 50 percent of the child's support.
5. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity, and is dependent on the sponsor for over 50 percent of the child's support.

(k) MSC civil service Marine personnel deployed on MSC-owned and operated vessels outside the United States and outside U.S. territories and possessions are eligible for benefits as shown in Table 39 to this subpart.

TABLE 39 TO SUBPART C OF PART 161—BENEFITS FOR MSC PERSONNEL DEPLOYED ON MSC-OWNED AND OPERATED VESSELS OUTSIDE THE UNITED STATES AND OUTSIDE U.S. TERRITORIES AND POSSESSIONS

	CHC	DC	C	MWR	E
Self .....	No .....	1 .....	No .....	Yes .....	No.

**Note:**

1. Yes, on a space-available, fully reimbursable basis.

(l) Ship's officers and members of the crews of NOAA vessels are eligible for benefits in accordance with 33 U.S.C.

3074 as shown in Table 40 to this subpart. Ship's officers are not

commissioned officers, but civilian employees of NOAA.

TABLE 40 TO SUBPART C OF PART 161—BENEFITS FOR SHIP'S OFFICERS AND MEMBERS OF THE CREWS OF NOAA VESSELS

[NOAA Wage Mariner Employees]

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	Yes .....	Yes .....	Yes.
Lawful Spouse .....	No .....	No .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, Illegitimate child of employee, Illegitimate child of spouse, or Foster Child.	No .....	No .....	1 .....	1 .....	1.
Ward .....	No .....	No .....	2 .....	2 .....	2.
Pre-adoptive .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	No .....	No .....	4 .....	4 .....	4.
Parent, Parent-in-Law, Stepparent, Parent-by-Adoption .....	No .....	No .....	1 .....	1 .....	1.

**Notes:**

1. Yes, if dependent on an authorized sponsor for over 50 percent of the individual's support and residing in the sponsor's household.

2. Yes if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if dependent on the sponsor for over 50 percent of the child's support, and residing in the sponsor's household.

3. Yes if, for determinations of dependency made on or after October 5, 1994, placed in the home of the sponsor by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the sponsor.

4. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity, and is dependent on the sponsor for over 50 percent of the child's support.

(m) Officers and crews of vessels, lighthouse keepers, and depot keepers of the former Lighthouse Service are

eligible for benefits as shown in Table 41 to this subpart.

TABLE 41 TO SUBPART C OF PART 161—BENEFITS FOR OFFICERS AND CREWS OF VESSELS, LIGHTHOUSE KEEPERS, AND DEPOT KEEPERS OF THE FORMER LIGHTHOUSE SERVICE

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	Yes .....	Yes .....	Yes.

(n) Presidential appointees who have been confirmed by the Senate (PASs) are

eligible for benefits as shown in Table 42 to this subpart.

TABLE 42 TO SUBPART C OF PART 161—BENEFITS FOR PRESIDENTIAL APPOINTEES

	CHC	DC	C	MWR	E
Self .....	No .....	1 .....	2 .....	Yes .....	2.
PAS .....					

**Notes:**

1. Designation for PASs and other designated civilian officials within the DoD and the Military Departments. This is a specific reimbursable care value at the interagency rate outside the National Capital Region.

2. Yes, if residing in quarters on DoD military installations.

(o) Contract surgeons overseas during the period of their contract are eligible for benefits as shown in Table 43 to this subpart.

TABLE 43 TO SUBPART C OF PART 161—BENEFITS FOR CONTRACT SURGEONS OVERSEAS

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	No .....	1 .....	1.

**Note:**

1. Only during the period of their contract with the Surgeon General.

(p) State employees of the National Guard may be identified in DEERS for the purpose of issuing a CAC to access DoD networks. There are no benefits assigned and no dependent benefits are extended as shown in Table 44 to this subpart.

TABLE 44 TO SUBPART C OF PART 161—BENEFITS FOR STATE GUARD EMPLOYEES

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	No .....	No .....	No.

**§ 161.21 Benefits for retired civilian personnel.**

(a) *Retired DoD civilian employees.* Retired appropriated and non-appropriated fund employees of the

DoD are eligible for benefits as shown in Table 45 to this subpart. The Under Secretary of Defense for Personnel and Readiness Memorandum, "Department

of Defense Civilian Retiree Identification Cards," authorized the issuance of a DoD ID card to this population.

TABLE 45 TO SUBPART C OF PART 161—BENEFITS FOR RETIRED DOD CIVILIAN EMPLOYEES

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	No .....	1 .....	No.

**Note:**

1. Yes, but benefit is not printed on the DoD ID card and will be facilitated in accordance with DoD Instruction 1015.10.

(b) *Retired NOAA Wage Mariner employees and their eligible dependents.* Retired NOAA Wage Mariners (including retired ship's noncommissioned officers and members

of the crews of NOAA vessels and its predecessors), and their dependents are eligible for benefits in accordance with 33 U.S.C. 3074 as shown in Table 46 to this subpart. Surviving dependents of

deceased retired NOAA wage mariners remain eligible for benefits in accordance with governing policies as shown in Table 46 to this subpart.

TABLE 46 TO SUBPART C OF PART 161—BENEFITS FOR RETIRED NOAA WAGE MARINER EMPLOYEES AND THEIR ELIGIBLE DEPENDENTS

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	Yes .....	Yes .....	Yes.
Lawful Spouse .....	No .....	No .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of record of female member, illegitimate child of male member, whose paternity has been judicially determined, or foster child.	No .....	No .....	1 .....	1 .....	1.
Ward .....	No .....	No .....	2 .....	2 .....	2.
Pre-adoptive Child .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	No .....	No .....	4 .....	4 .....	4.

**Notes:**

1. Yes, if dependent on an authorized sponsor for over 50 percent of the child's support and residing in the sponsor's household.

2. Yes, if, for determinations of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if dependent on the sponsor for over 50 percent of the child's support, and residing in the sponsor's household.

3. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the sponsor by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the sponsor.

4. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity, and is dependent on the sponsor for over 50 percent of the child's support.

**§ 161.22 Benefits for foreign affiliates.**  
(a) *Sponsored NATO and PFP personnel in the United States.* Active duty officer and enlisted personnel of

NATO and PFP countries serving in the United States under the sponsorship or invitation of the DoD or a Military Service and their accompanying

dependents living in the sponsor's U.S. household are eligible for benefits as shown in Table 47 to this subpart.

**TABLE 47 TO SUBPART C OF PART 161—BENEFITS FOR SPONSORED NATO AND PFP PERSONNEL AND ACCOMPANYING DEPENDENTS IN THE UNITED STATES**

	CHC	DC	C	MWR	E
Self .....	No .....	1 .....	2 .....	2 .....	2.
Lawful Spouse .....	3 .....	1 .....	4 .....	4 .....	4.
Children, Unmarried, Under 21 Years: Legitimate, adopted, stepchild, illegitimate child of member, or illegitimate child of spouse.	3, 4 .....	1, 4 .....	4 .....	4 .....	4.
Ward .....	No .....	No .....	5 .....	5 .....	5.
Children, Unmarried, 21 Years and Over .....	3, 6 .....	1, 6 .....	7 .....	7 .....	7.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	No .....	4 .....	4 .....	4.

**Notes:**

1. Yes, for outpatient care no charge and for inpatient care at full reimbursable rate.
2. Yes, if:
  - a. Under orders issued by a U.S. Military Service; or
  - b. Assigned military attaché duties in the United States and designated on reciprocal agreements with the Department of State.
3. Yes, for outpatient care only.
4. Yes, if residing in the household of the authorized sponsor in the United States.
5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if residing in the authorized sponsor's household.
6. Yes, if residing in the household of the authorized sponsor in the United States and the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor, and is dependent on the sponsor for over 50 percent of the child's support.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical, and is dependent on the sponsor for over 50 percent of the child's support.

(b) *Sponsored non-NATO personnel in the United States.* Active duty officer and enlisted personnel of non-NATO

countries serving in the United States under DoD or Service sponsorship or invitation and their dependents, living

in the non-NATO personnel's U.S. household, are eligible for benefits as shown in Table 48 to this subpart.

**TABLE 48 TO SUBPART C OF PART 161—BENEFITS FOR SPONSORED NON-NATO PERSONNEL AND ACCOMPANYING DEPENDENTS IN THE UNITED STATES**

	CHC	DC	C	MWR	E
Self .....	No .....	1 .....	2 .....	2 .....	2.
Lawful Spouse .....	No .....	1 .....	3 .....	3 .....	3.
Children, Unmarried, Under 21 Years: Legitimate, adopted, stepchild, illegitimate child of member, or illegitimate child of spouse.	No .....	1, 4 .....	3 .....	3 .....	3.
Ward .....	No .....	No .....	4 .....	4 .....	4.
Children, Unmarried, 21 Years and Over .....	No .....	1, 5 .....	6 .....	6 .....	6.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	No .....	3 .....	3 .....	3.

**Notes:**

1. Yes, for outpatient care only on a reimbursable basis.
2. Yes, if under orders issued by a U.S. Military Service.
3. Yes, if residing in the household of the authorized sponsor in the United States.
4. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if residing in the authorized sponsor's household.
5. Yes, if residing in the household of the authorized sponsor in the United States and the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor, and is dependent on the sponsor for over 50 percent of the child's support.
6. Yes, if residing in the household of the authorized sponsor in the United States and the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical, and is dependent on the sponsor for over 50 percent of the child's support.

(c) *Non-sponsored NATO personnel in the United States.* Active duty officer

and enlisted personnel of NATO countries who, in connection with their

official NATO duties, are stationed in the United States but are not under DoD

or Service sponsorship and their household are eligible for benefits as accompanying dependents living in the shown in Table 49 to this subpart. non-sponsored NATO personnel's U.S.

TABLE 49 TO SUBPART C OF PART 161—BENEFITS FOR NON-SPONSORED NATO AND PFP PERSONNEL IN THE UNITED STATES AND ACCOMPANYING DEPENDENTS

	CHC	DC	C	MWR	E
Self .....	No .....	1 .....	No .....	No .....	No.
Lawful Spouse .....	2 .....	1 .....	No .....	No .....	No.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of member, or illegitimate child of spouse.	2, 3 .....	1, 3 .....	No .....	No .....	No.
Ward .....	No .....	No .....	No .....	No .....	No.
Children, Unmarried, 21 Years and Over .....	2, 3, 4 .....	1, 3, 4 .....	No .....	No .....	No.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	No .....	No .....	No .....	No.

**Notes:**

1. Yes, for outpatient care no charge and for inpatient care at full reimbursable rate.
2. Yes, for outpatient care only.
3. Yes, if residing in the household of the authorized sponsor in the United States.
4. Yes, if residing in the household of the authorized sponsor in the United States and the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor, and is dependent on the sponsor for over 50 percent of the child's support.

(d) *NATO and non-NATO personnel outside the United States.* Active duty officer and enlisted personnel of NATO and non-NATO countries serving outside the United States and outside their own country under DoD or Service sponsorship or invitation and their

accompanying dependents living with the sponsor are eligible for benefits as shown in Table 50 to this subpart. These benefits may be extended to this category of personnel not under DoD or Service sponsorship or invitation when it is determined by the major overseas

commander that the granting of such privileges is in the best interests of the United States and such personnel are connected with, or their activities are related to, the performance of functions of the Service establishment.

TABLE 50 TO SUBPART C OF PART 161—BENEFITS FOR NATO, PFP, AND NON-NATO PERSONNEL OUTSIDE THE UNITED STATES AND ACCOMPANYING DEPENDENTS

	CHC	DC	C	MWR	E
Self .....	No .....	1 .....	Yes .....	Yes .....	Yes.
Lawful Spouse .....	No .....	1 .....	Yes .....	Yes .....	Yes.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of member, or illegitimate child of spouse.	No .....	1, 2 .....	2 .....	2 .....	2.
Ward .....	No .....	No .....	3 .....	3 .....	3.
Children, Unmarried, 21 Years and Over .....	No .....	1, 4 .....	5 .....	5 .....	5.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	No .....	2 .....	2 .....	2.

**Notes:**

1. Yes, for outpatient care only on a reimbursable basis.
2. Yes, if residing in the household of the authorized sponsor and dependent on over 50 percent support.
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the sponsor as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months, and if dependent on the sponsor for over 50 percent of the child's support, and residing in the sponsor's household.
4. Yes, if residing in the household of the authorized sponsor and the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor, and is dependent on the sponsor for over 50 percent of the child's support.
5. Yes, if residing in the household of the authorized sponsor in the United States and the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical, and is dependent on the sponsor for over 50 percent of the child's support.

(e) *Korean Augmentation to the U.S. Army (KATUSA).* Military service is mandatory for all Republic of Korea (ROK) male citizens. Those male citizens who speak English often

become KATUSA serving with the U.S. Army forces in the ROK. This arrangement is provided for in the status of forces agreement between the United States and ROK. The KATUSAs are

identified in DEERS for the purpose of issuing CACs for access to the U.S. installations in the ROK. No other benefits are provided as shown in Table 51 to this subpart.



TABLE 51 TO SUBPART C OF PART 161—BENEFITS FOR KATUSA

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	No .....	No .....	No.

(f) *Foreign national civilians.* Civilian employees of a foreign government who are assigned a support role with the DoD or Military Services or attending school at one of the DoD or uniformed services

advanced schools may be identified in DEERS for the purpose of issuing a CAC. The foreign national civilian must be sponsored by the DoD or a Military Service regardless of whether the

foreign national civilian is from a NATO, PFP, or non-NATO country. There are no benefits assigned and no dependent benefits are extended as shown in Table 52 to this subpart.

TABLE 52 TO SUBPART C OF PART 161—BENEFITS FOR FOREIGN NATIONAL CIVILIANS

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	No .....	No .....	No.

(g) *Foreign national contractors.* Contractor personnel, contracted to a foreign government, who are assigned a support role with the DoD or Military Services or as a representative of a foreign government at one of the DoD or

uniformed services advanced schools may be identified in DEERS for the purpose of issuing a CAC for physical and logical access requirements. The foreign national contractor must be sponsored by the DoD or a Military

Service regardless of whether the foreign national civilian is from a NATO, PFP, or a non-NATO country. There are no benefits assigned and no dependent benefits are extended as shown in Table 53 to this subpart.

TABLE 53 TO SUBPART C OF PART 161—BENEFITS FOR FOREIGN NATIONAL CONTRACTORS

	CHC	DC	C	MWR	E
Self .....	No .....	No .....	No .....	No .....	No.

(h) *Personnel subject to a Reciprocal Health Care Agreement (RHCA) in the United States.* For countries that have bilateral RHCAs with the DoD, RHCAs provide that a limited number of foreign force members and their dependents in

the United States may be provided inpatient medical care at MTFs on a space-available basis without cost (except for a subsistence charge, if it applies). Provision of such care is contingent on comparable care being

made available to a comparable number of U.S. military personnel and their dependents in the foreign country. Benefits are provided as shown in Table 54 to this subpart.

TABLE 54 TO SUBPART C OF PART 161—BENEFITS FOR FOREIGN FORCE MEMBERS AND ELIGIBLE DEPENDENTS RESIDING IN THE UNITED STATES WHO ARE COVERED BY AN RHCA

	CHC	DC	C	MWR	E
Self .....	No .....	1 .....	No .....	No .....	No.
Lawful Spouse .....	No .....	1 .....	No .....	No .....	No.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of member, or illegitimate child of spouse.	No .....	1, 2 .....	No .....	No .....	No.
Ward .....	No .....	No .....	No .....	No .....	No.
Children, Unmarried, 21 Years and Over .....	No .....	1, 2, 3 .....	No .....	No .....	No.
Parent, Parent-in-Law, Stepparent, or Parent by Adoption .....	No .....	No .....	No .....	No .....	No.

**Notes:**

1. As determined by the appropriate RHCA.
2. Yes, if residing in the household of the authorized sponsor in the United States.
3. Yes, if residing in the household of the authorized sponsor in the United States, the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the sponsor for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a sponsor, and is dependent on the sponsor for over 50 percent of the child's support.

■ 9. Add subpart D to read as follows:

**Subpart D—DoD Identification (ID) Cards: Eligibility Documentation Required for Defense Enrollment Eligibility Reporting System (DEERS) Enrollment, Record Management, and ID Card Issuance**

Sec.  
161.23 Procedures.

**Subpart D—DoD Identification (ID) Cards: Eligibility Documentation Required for Defense Enrollment Eligibility Reporting System (DEERS) Enrollment, Record Management, and ID Card Issuance**

**§ 161.23 Procedures.**

(a) *Eligibility documentation*—(1) *Basic requirements.* (i) ID card applicants must provide documentation as initial verification of eligibility for benefits or as proof of relationship to the sponsor. The sponsor is the prime beneficiary who derives eligibility based on individual status rather than dependence upon or relationship to another person, in accordance with § 161.7(a). When possible, DEERS records will be established and updated by authoritative data feeds.

(ii) An individual's DEERS record is established through the in-person presentation of identity documentation and, in some cases, eligibility documentation. Documentation verifying an ID card applicant's identity is always required in accordance with § 161.7(d)(1). Eligibility documentation may also be required to update a DEERS record to reflect a change in benefits or status.

(A) Identity and eligibility documentation is reviewed for authenticity by a RAPIDS verifying official (VO) and incorporated into the individual's DEERS record as necessary.

(B) The sponsor or DoD beneficiary must provide documentation to establish or terminate the relationship to a dependent within 30 days of the change.

(C) The VO ensures that the DD Form 1172–2 is signed by the sponsor.

(1) If the sponsor refuses to sign or is physically unable to sign the application, the VO verifies that the dependency between the sponsor and dependent exists and includes reasons why the sponsor is not able to or will

not sign the application on the DD Form 1172–2. The VO then signs in the sponsor signature block and in the verifier's block.

(2) If the sponsor is deceased, the DoD beneficiary signs on the beneficiary's own behalf or on behalf of the surviving dependent.

(D) A VO may request additional documentation if there is any question of the authenticity of those presented.

(iii) Eligible individuals presenting eligibility documentation not listed in this subpart must have the responsible uniformed service Judge Advocate General or local Staff Judge Advocate (SJA) review and verify the documentation. A written Judge Advocate General or SJA opinion may need to be submitted at ID card issuance, verifying the documentation's use for DEERS enrollment.

(2) *Documentation standards*—(i) *Certified documentation.* All documentation must be an original or certified document.

(ii) *Foreign documentation.* Additional requirements are applied toward the verification of foreign eligibility documentation submitted to support enrollment of a dependent, including:

(A) A full English language translation, which the translator has certified as complete and accurate, and the translator's certification of competency to translate from the foreign language into English, in accordance with 8 CFR 103.2(b)(3). Translation must be provided by a translator other than the individual presenting the document.

(B) A written Judge Advocate General or local SJA opinion confirming use of the eligibility documentation, if the uniformed service member is stationed overseas.

(C) Documentation that attests to the genuineness of the signature and seal, or the position of the foreign official who executed, issued, or certified the foreign documentation being presented to substantiate the dependency relationship to the sponsor.

(1) An accompanying original *apostille* (i.e., certification) from a higher-level authority in the foreign country of issuance, for eligibility

documents from countries that have adopted the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, October 5, 1961 (copies may be obtained from the Internet at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=41>). Sponsors should contact their SJA for information on how to obtain an *apostille* from a member nation; or

(2) An accompanying original certificate of authentication by a U.S. Consular Officer in the foreign country of issuance, for eligibility documents from all other foreign nations. Sponsors should contact their SJA for information on how to request issuance of certificate(s) of authentication from a U.S. Consular official.

(b) *Documentation for dependents*—(1) *Overview.* This paragraph (b) describes eligibility documentation required for eligible dependents of qualifying sponsors, including current, former, and retired uniformed service members, civilian employees, and other eligible individuals in accordance with subpart C of this part. Dependents who are eligible for benefits in accordance with subpart C of this part must provide eligibility documentation that establishes the dependent's relationship to the sponsor and verifies eligibility, as shown in Tables 1 through 12 to this subpart.

(i) The uniformed services restrict cross-servicing for verification of the DD Form 1172–2 and eligibility documentation to the responsible uniformed service for certain categories of dependents, in accordance with § 161.7(e)(1).

(ii) Service-specific requirements and processes are addressed in Air Force Instruction 36–3026, “Identification Cards for Members of the Uniformed Services, Their Eligible Family Members, and Other Eligible Personnel” (available at: [http://static.e-publishing.af.mil/production/1/af\\_a1/publication/afi36-3026v1\\_ip/afi\\_36-3026\\_ip.pdf](http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3026v1_ip/afi_36-3026_ip.pdf)).

(2) *Spouse.* A sponsor's spouse must have eligibility verified by documentation shown in Table 1 to this subpart.

TABLE 1 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A SPOUSE

Status	Eligibility documentation
Spouse .....	Marriage certificate.
Common Law Spouse .....	SJA opinion (Note 1) and Common law marriage certificate (Note 2) or Court order (Note 3).

**Notes:**

1. A written SJA opinion that a common law marriage is recognized in the relevant State or U.S. jurisdiction.
2. A common law marriage certificate certified by the State.

3. An order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) that establishes a common law marriage.

(3) *Child, unmarried, under the age of 21.* A sponsor's dependent child, who is unmarried and under the age of 21, must have eligibility verified as shown in Tables 2 through 7 to this subpart. A

child under the age of 21, who marries and subsequently divorces, may present a divorce decree and have eligibility reinstated, if the other requirements for a dependent child are met.

(i) *Legitimate child.* A sponsor's legitimate child must have eligibility verified by documentation shown in Table 2 to this subpart.

TABLE 2 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A LEGITIMATE CHILD

Status	Eligibility documentation
Legitimate Child .....	Birth certificate (Note 1).
Legitimate Child Conceived Post-humously.	Birth certificate (Note 1) and Director, DoDHRA memorandum (Note 2).

**Notes:**

1. A certificate of live birth or an FS-240, "Consular Report of Birth Abroad," may be used in lieu of a birth certificate.
2. A memorandum signed by the Director, DoDHRA, establishing the eligibility for a child conceived of artificial insemination after the sponsor's death. The deceased sponsor's responsible uniformed service project office must submit all eligibility determination requests to DoDHRA, including documentation that:
  - a. Verifies the sponsor's intent to start a family, usually provided by the lab or clinic that assisted the couple with the in vitro process.
  - b. Provides the date of the sponsor's death.
  - c. Provides the date of birth or expected date of birth of the child.

(ii) *Pre-adoptive or adopted child.* A sponsor's pre-adoptive or adopted child must have eligibility verified by

documentation shown in Table 3 to this subpart.

TABLE 3 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A PRE-ADOPTIVE OR ADOPTED CHILD

Status	Eligibility documentation
Pre-Adoptive Child .....	Birth certificate (Note 1) and Placement agreement (Note 2) or Court order (Note 2) or Document authorized by State or local law (Notes 2, 3).
Adopted Child .....	Birth certificate (Note 1) and Adoption decree (Note 4) or Court order (Note 4).

**Notes:**

1. A certificate of live birth or an FS-240 may be used in lieu of a birth certificate. When a placement agreement or an order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) establishes the child's date of birth, it may also be used in lieu of a birth certificate.
2. The placement agreement, order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession), or other appropriate document from any other source authorized by State or local law to provide adoption placement must include the intent to adopt.
3. An appropriate document from any other source authorized by State or local law with written approval from the responsible uniformed service Judge Advocate General or local SJA.
4. An order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) that establishes legal adoption of the child by the sponsor.

(iii) *Stepchild.* A sponsor's stepchild must have eligibility verified by

documentation shown in Table 4 to this subpart.

TABLE 4 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A STEPCHILD

Status	Eligibility documentation
Stepchild .....	Birth certificate (Note 1) and Sponsor's marriage certificate (Note 2).

**Note:**

1. A certificate of live birth or an FS-240 may be used in lieu of a birth certificate. When a placement agreement or an order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) establishes the child's date of birth, it may also be used in lieu of a birth certificate.
2. A marriage certificate that establishes the relationship between the child's parent and the sponsor.

(iv) *Illegitimate child of record.* A male sponsor's illegitimate child of record must have eligibility verified by

documentation shown in Table 5 to this subpart.

TABLE 5 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A MALE SPONSOR'S ILLEGITIMATE CHILD OF RECORD

Status	Eligibility documentation
Illegitimate child of record whose paternity has been judicially determined.	Birth certificate (Note 1) and Court document (Note 2) or Consent order of paternity (Note 3).
Illegitimate child of record whose paternity has not been judicially determined.	Birth certificate (Note 1) and SJA opinion (Note 4) or Voluntary acknowledgment of paternity (Note 5).

**Notes:**

1. A certificate of live birth or an FS-240 may be used in lieu of a birth certificate. When a placement agreement or an order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) establishes the child's date of birth, it may also be used in lieu of a birth certificate.

2. An order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) that establishes paternity.

3. A consent order of paternity, recognized by a court of competent jurisdiction in the United States (or U.S. territory or possession). An affidavit of paternity, recognized by a court of competent jurisdiction in the United States (or U.S. territory or possession), may be used in lieu of a consent order of paternity.

4. A written SJA opinion, if the member is stationed in a foreign country.

5. A voluntary acknowledgement of paternity signed by both parents and filed with the State.

(v) *Ward*. A sponsor's ward must have eligibility verified by documentation shown in Table 6 to this subpart. The sponsor must certify on the DD Form 1172-2 that the sponsor is providing more than 50 percent of the dependent's support and that the ward resides in the sponsor's household in order to issue an ID card.

TABLE 6 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A WARD

Status	Eligibility documentation
Ward .....	Birth certificate (Note 1) and Financial dependency determination (Note 2) and Placement agreement (Note 3) or Court document (Note 3).

**Notes:**

1. A certificate of live birth or an FS-240 may be used in lieu of a birth certificate. When a placement agreement or an order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) establishes the child's date of birth, it may also be used in lieu of a birth certificate.

2. A financial dependency determination from the responsible service's Defense Finance and Accounting Services (DFAS), or the service equivalent pay office, acknowledging that the sponsor is providing more than 50 percent of the dependent's support, or was at the time of the sponsor's death.

3. A placement agreement or an order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) that establishes legal custody of the child by the sponsor for no less than 12 consecutive months.

(vi) *Foster child*. A sponsor's foster child must have eligibility verified by documentation shown in Table 7 to this subpart.

TABLE 7 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A FOSTER CHILD

Status	Eligibility documentation
Foster Child .....	Birth certificate (Note 1) and Placement agreement (Note 2) or Court document (Note 2).

**Notes:**

1. A certificate of live birth or an FS-240 may be used in lieu of a birth certificate. When a placement agreement or an order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) establishes the child's date of birth, it may also be used in lieu of a birth certificate.

2. A placement agreement or an order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) that establishes the child's relationship to the sponsor.

(4) *Child, unmarried, over the age of 21*. A sponsor's dependent child, who is unmarried and over the age of 21, must have eligibility verified as shown in Tables 8 and 9 to this subpart.

(i) *Full-time student*. A sponsor's child who is between the ages of 21 and 23 and enrolled as a full-time student at an institution of higher learning must have eligibility verified by documentation shown in Table 8 to this subpart.

TABLE 8 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A FULL-TIME STUDENT

Status	Eligibility documentation
Full-Time Student .....	Dependent documentation (Note 1) and Letter from school registrar (Note 2) and Sponsor's certification of 50 percent support (Note 3).

**Notes:**

1. Eligible dependents, as identified in subpart C of this part, must establish their relationship to the sponsor as specified in Tables 2 through 7 in this subpart, if the relationship has not previously been established.
2. A letter from the school registrar that establishes the child as a full-time student.
3. Sponsor's certification on the DD Form 1172-2 that he or she is providing more than 50 percent of the dependent's support.

(ii) *Incapacitated child.* A sponsor must follow the Service-specific process for initial determination of an incapacitated dependent child. The incapacitated dependent child must have eligibility verified by documentation shown in Table 9 to this subpart.

TABLE 9 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR AN INCAPACITATED CHILD

Status	Eligibility documentation
Incapacitated Child .....	Dependent documentation (Note 1) and Medical sufficiency statement (Note 2) and Financial dependency determination (Note 3).

**Notes:**

1. Eligible dependents, as identified in subpart C of this part, must establish their relationship to the sponsor as specified in Tables 2 through 7 of this subpart, if the relationship has not previously been established.
2. A medical sufficiency statement issued by a physician in support of the military treatment facility or authorized TRICARE service provider, stating incapacitation, and dated within 90 days of application, as required by the sponsoring component. If applicable, the physician's statement must reflect that the incapacitation occurred after the 21st birthday but before the 23rd birthday, while the dependent was a full-time student.
3. A financial dependency determination from the responsible Service's DFAS, or the Service equivalent pay office, acknowledging that the sponsor is providing more than 50 percent of the dependent's support, or was at the time of the sponsor's death.

(5) *Parent.* A sponsor's dependent parent, parent-in-law, stepparent, or parent-by-adoption, must have eligibility verified by documentation shown in Table 10 to this subpart.

TABLE 10 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A PARENT

Status	Eligibility documentation
Parent .....	Financial dependency determination (Note 1) and Birth certificate (Notes 2) and Marriage certificate (Note 3) or Adoption decree (Note 4).

**Notes:**

1. A financial dependency determination from the responsible Service's DFAS, or the Service equivalent pay office, acknowledging that the sponsor is providing more than 50 percent of the dependent's support, or was at the time of the sponsor's death.
2. A birth certificate establishing parental relationship to the sponsor, or the sponsor's spouse.
3. A marriage certificate establishing a relationship to the sponsor's parent, or the sponsor's spouse's parent.
4. An adoption decree establishing legal adoption of the sponsor, or the sponsor's spouse, by the parent, or parent-in-law.

(c) *Documentation for surviving dependents.* This paragraph (c) describes eligibility documentation required for surviving dependents of deceased uniformed service members who are eligible for benefits in accordance with subpart C of this part. Surviving dependents must have eligibility verified by documentation shown in Table 11 to this subpart. For ID card issuance, the unremarried widow or widower must certify on the DD Form 1172-2 that the widow or widower has not remarried.

TABLE 11 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A SURVIVING DEPENDENT

Status	Eligibility documentation
Widow or Widower: Unremarried .....	Marriage certificate to sponsor (Note 1) and Death certificate of sponsor.
Unmarried .....	Marriage certificate to sponsor (Note 1) and Death certificate of sponsor and Marriage certificate from subsequent marriage (Note 1) and Divorce decree from subsequent marriage (Note 2) or Death certificate from subsequent marriage.
Dependent .....	Dependent documentation (Note 3).

**Notes:**

1. A common law marriage certificate, a court order, or a written SJA opinion that a common law marriage is recognized by the relevant State or U.S. jurisdiction is also accepted.
2. A dissolution decree or annulment decree is also accepted.
3. Eligible dependents, as identified in subpart C of this part, are required to establish their relationship to the sponsor as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(d) *Documentation for abused dependents—(1) Overview.* This paragraph (d) describes eligibility documentation required for abused dependents of uniformed service members who are eligible for benefits in accordance with subpart C of this part. (i) For the purposes of this paragraph (d), dependent children are limited to the sponsor's legitimate children, adopted children, and stepchildren, in accordance with 10 U.S.C. 1408(h). Their eligibility ends at age 18 unless otherwise eligible as full-time students (aged 18–23) or based on an incapacitation that existed before age 18.

or occurred between the ages of 18 and 23 while a full-time student.

(ii) Abused dependents are required to provide documentation that verifies eligibility as shown in Tables 12 and 13

to this subpart to the responsible uniformed service project office.

(2) *Abused dependent of a retirement-eligible service member.* An abused dependent of a retirement eligible

service member must have eligibility verified by documentation shown in Table 12 to this subpart.

TABLE 12 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR AN ABUSED DEPENDENT OF A RETIREMENT-ELIGIBLE SERVICE MEMBER

Status	Eligibility documentation
Dependent .....	DD Form 2698 “Application for Transitional Compensation” (Note 1) and Letter from DFAS (Note 2) and Dependent documentation (Note 3).

**Notes:**

1. DD Form 2698, approved by the responsible uniformed service.
2. A letter from DFAS, approving request to receive a portion of retired pay, or other approval from the service equivalent pay office.
3. Eligible dependents, as identified in subpart C of this part, are required to establish their relationship to the sponsor as specified in Tables 1 through 4 of this subpart, if the relationship has not previously been established.

(3) *Abused dependent of a non-retirement-eligible service member.* An

abused dependent of a non-retirement-eligible Service member must have

eligibility verified by documentation shown in Table 13 to this subpart.

TABLE 13 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR AN ABUSED DEPENDENT OF A NON-RETIREMENT ELIGIBLE SERVICE MEMBER

Status	Eligibility documentation
Dependent .....	DD Form 2698 (Note 1) and Dependent documentation (Note 2).

**Notes:**

1. DD Form 2698, approved by the responsible uniformed service.
2. Eligible dependents, as identified in subpart C of this part, must establish their relationship to the sponsor as specified in Tables 1 through 4 of this subpart, if the relationship has not previously been established.

(e) *Documentation for former spouses.* This paragraph (e) describes eligibility documentation required for 20/20/20, 20/20/15, and 10/20/10 former spouses of current, former, and retired uniformed service members, who are eligible for benefits in accordance with subpart C of this part. For ID card

issuance, the unremarried former spouse must certify on the DD Form 1172–2 that the former spouse has not remarried. 10/20/10 former spouses, also known as abused former spouses of retirement-eligible Service members who are eligible under 10 U.S.C. 4108(h), should refer to paragraphs

(d)(1) and (2) of this section for more information. Eligible former spouses, as identified in subpart C of this part, must have eligibility verified by documentation shown in Table 14 to this subpart.

TABLE 14 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A FORMER SPOUSE

Status	Eligibility documentation
Former Spouse: Unremarried .....	Marriage certificate to sponsor (Note 1) and Divorce decree from sponsor (Note 2) and Statement of service (Note 3).
Unmarried .....	Marriage certificate to sponsor (Note 1) and Divorce decree from sponsor (Note 2) and Statement of service (Note 3) and Marriage certificate from subsequent marriage (Note 1) and Divorce decree from subsequent marriage (Note 2) or Death certificate from subsequent marriage.

**Notes:**

1. A common law marriage certificate, a court order, or a written SJA opinion that a common law marriage is recognized in the relevant State or U.S. jurisdiction, is also accepted.
2. A dissolution decree or annulment decree is also accepted.
3. Statement of service that establishes the uniformed service member's service. A complete set of DD Form 214, “Certificate of Release or Discharge from Active Duty,” or dates of inclusive service for servicing personnel may be used in lieu of the statement of service.

(f) *Documentation for uniformed service members—(1) Overview.* This paragraph (f) describes eligibility documentation required for current, former, and retired uniformed service members, Medal of Honor (MOH) recipients, 100 percent disabled American veterans (DAVs), and their eligible dependents, in accordance with subpart C of this part.

(i) MOH recipients must have their DEERS records updated manually, as indicated in this paragraph.

(ii) Current, former, and retired members identified in this paragraph (f) should have eligibility updated in DEERS by an authoritative feed; however, under certain circumstances described in paragraphs (f)(2) and (3) of this section, a Service member may have

eligibility verified by documentation shown in Tables 15 through 21 to this subpart.

(iii) All other uniformed service members should have their DEERS records updated by authoritative data feeds.

(2) *Active duty member.* An active duty member should have eligibility updated in DEERS by an authoritative

feed; however, under certain circumstances described in the notes of

the table, an active duty member may have eligibility verified by

documentation shown in Table 15 to this subpart.

**TABLE 15 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR AN ACTIVE DUTY MEMBER AND DEPENDENTS**

Status	Eligibility documentation
Active Duty Member .....	Military orders (Note 1).
Dependent .....	Dependent documentation (Note 2).

**Notes:**

1. Military orders may be used at the service project officer level when DEERS verification is not available.
2. Eligible dependents, as identified in subpart C of this part, must establish their relationship to the sponsor, as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(3) *National Guard and Reserve member.* A National Guard or Reserve member who is activated to active duty should have eligibility updated in

DEERS by an authoritative feed; however, under certain circumstances described in the notes of the table, a National Guard or Reserve member may

have eligibility verified by documentation shown in Table 16 to this subpart.

**TABLE 16 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A NATIONAL GUARD OR RESERVE MEMBER AND DEPENDENTS**

Status	Eligibility documentation
National Guard or Reserve Member	Military orders (Note 1).
Dependent .....	Dependent documentation (Note 2).

**Notes:**

1. Military orders may be used at the service project officer level when DEERS verification is not available.
2. Eligible dependents, as identified in subpart C of this part, must establish their relationship to the sponsor, as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(4) *Retired reserve member.* A retired reserve member should have eligibility updated in DEERS by an authoritative

feed; however, a retired reserve member may also have eligibility verified by

documentation shown in Table 17 to this subpart.

**TABLE 17 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A RETIRED RESERVE MEMBER AND DEPENDENTS**

Status	Eligibility documentation
Retired Reserve Member .....	Notice of eligibility (Note 1) or Retired pay orders (Note 2) or DD Form 214 (Note 3).
Retired Reserve Member ordered to active duty.	DD Form 214 (Note 3) or Military order (Note 4) or Commissioning oath (Note 4) or Enlistment contract (Note 4).
Dependent .....	Dependent documentation (Note 5).

**Notes:**

1. Notice of eligibility from the Service's designated Reserve Personnel Center establishing the uniformed service member's eligibility for retired pay at age 60.
2. Retired pay orders, establishing the uniformed service member's eligibility for retired pay at age 60.
3. A DD Form 214 that establishes the uniformed service member's service can be used when DEERS verification is not available. A statement of service or dates of inclusive service for servicing personnel may be used in lieu of the DD Form 214.
4. Documentation establishing the uniformed service member being ordered to active duty for greater than 30 days.
5. Eligible dependents, as identified in subpart C of this part, must establish their relationship to the sponsor as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(5) *Retired member.* A retired member should have eligibility updated in DEERS by an authoritative feed; however, a retired member may also

have eligibility verified by documentation shown in Table 18 to this subpart. Retired members include voluntary retired members, permanent

disability retired list members, and temporary disability retired list members.

**TABLE 18 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A RETIRED MEMBER AND DEPENDENTS**

Status	Eligibility documentation
Retired Member .....	Retirement orders or Correction of military record (Note 1) or DD Form 214 (Note 2).
Dependent .....	Dependent documentation (Note 3).

**Notes:**

1. A correction of military record can be used at the service project officer level when DEERS verification is not available.

2. A DD Form 214 that establishes the uniformed service member's service can be used when DEERS verification is not available. A statement of service or dates of inclusive service for servicing personnel may be used in lieu of the DD Form 214.

3. Eligible dependents, as identified in subpart C of this part, must establish their relationship to the sponsor, as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(6) *Transitional Health Care (THC) member.* A THC member should have eligibility updated in DEERS by an

authoritative feed; however, a THC member may also have eligibility verified by documentation shown in

Table 19 to this subpart to correct an ineligible condition.

TABLE 19 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A THC MEMBER AND DEPENDENTS

Status	Eligibility documentation
THC Member .....	DD Form 214 (Note 1).
Dependent .....	Dependent documentation (Note 2).

**Notes:**

1. DD Form 214, reflecting the appropriate separation program designator code for Transition Assistance (TA)-180 eligibility. Separation orders, reflecting the appropriate separation program designator code for TA-180 eligibility may be used in lieu of the DD Form 214.

2. Eligible dependents, as identified in subpart C of this part, must establish their relationship to the sponsor, as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(7) *MOH recipient.* A MOH recipient should have eligibility verified by documentation shown in Table 20 to

this subpart. DoDHRA will update all MOH DEERS records.

TABLE 20 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A MOH RECIPIENT AND DEPENDENTS

Status	Eligibility documentation
MOH Recipient .....	Confirmation of MOH status (Note 1).
Dependent .....	Dependent documentation (Note 2).

**Notes:**

1. Confirmation of MOH status by DoDHRA.

2. Eligible dependents, as identified in subpart C of this part, must establish their relationship to the sponsor, as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(8) *100 percent DAV.* An honorably discharged veteran who has been rated as 100 percent disabled or incapable of

pursuing substantially gainful employment by the Department of Veterans Affairs (VA) should have

eligibility verified by documentation shown in Table 21 to this subpart.

TABLE 21 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR A 100 PERCENT DAV AND DEPENDENTS

Status	Eligibility documentation
100 Percent DAV .....	VA rating determination letter (Note 1) and DD Form 214 (Note 2).
Dependent .....	Dependent documentation (Note 3).

**Notes:**

1. VA rating determination letter that establishes eligibility as 100 percent disabled or incapable of pursuing substantially gainful employment.

2. A DD Form 214 that characterizes the uniformed service member's discharge as honorable.

3. Eligible dependents, as identified in subpart C of this part, are required to establish their relationship to the sponsor, as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(g) *Documentation for civilian personnel—(1) Overview.* This paragraph (g) describes eligibility documentation required for civilian personnel, and their dependents, when they are eligible for benefits in accordance with subpart C of this part. Civilian personnel, as the sponsors, and their dependents, qualify for different benefits based on the sponsor's status in

accordance with subpart C of this part. The definition of "civilian personnel" (e.g., civilian employee, DoD contractor, Red Cross employee) is specific to each eligibility set described. Civilian employees include both appropriated fund and nonappropriated fund employees, in accordance with subpart B of this part.

(2) *Civilian personnel—(i) Civilian personnel residing on a military installation in the United States.* Civilian personnel residing on a military installation in the United States, and accompanying dependents, must have eligibility verified by documentation shown in Table 22 to this subpart.



TABLE 22 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR CIVILIAN PERSONNEL RESIDING ON A MILITARY INSTALLATION IN THE UNITED STATES AND ACCOMPANYING DEPENDENTS

Status	Eligibility documentation
Civilian: DoD civilian employee, DoD contractor, Intergovernmental Personnel Act personnel, non-DoD government agency civilian employee under DoD sponsorship.	Travel authorization (Note 1).
Dependent .....	Travel authorization (Note 2) and Dependent documentation (Note 3).

**Notes:**

1. A travel authorization produced by the sponsoring DoD Component authorizing the sponsor to reside on a military installation.
2. A travel authorization produced by the sponsoring DoD Component authorizing eligible dependents to accompany the sponsor.
3. Eligible dependents, as identified in subpart C of this part, are required to establish their relationship to the sponsor, as specified in Tables 1 through 12 of this subpart, if the relationship has not previously been established.

(ii) *Civilian personnel outside the United States.* Civilian personnel stationed outside the United States, and accompanying dependents, must have eligibility verified by documentation shown in Table 23 to this subpart.

TABLE 23 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR CIVILIAN PERSONNEL STATIONED OUTSIDE THE UNITED STATES AND ACCOMPANYING DEPENDENTS

Status	Eligibility documentation
Civilian: DoD civilian employee, DoD contractor, Intergovernmental Personnel Act personnel, non-DoD government agency civilian employee under DoD sponsorship, DoD contractor authorized to accompany the Armed Forces (CAAF).	Travel authorization (Note 1) and SPOT LOA (Note 2, 3).
Dependent .....	Dependent documentation (Note 4) and Travel authorization (Note 5) or SPOT LOA (Note 5).

**Notes:**

1. A travel authorization produced by the sponsoring DoD Component, indicating an assignment outside the United States.
2. A SPOT LOA that designates the contractor as CAAF, if a CAAF in accordance with DoD Instruction 3020.41, "Operational Contract Support (OCS)" (available at: <http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf>).
3. A SPOT LOA, if applicable in accordance with Combatant Command guidance.
4. Eligible dependents, as identified in subpart C of this part, are required to establish their relationship to the sponsor as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.
5. A travel authorization produced by the sponsoring DoD Component or SPOT LOA authorizing eligible dependents to accompany the sponsor.

(3) *Red Cross personnel.* Uniformed and non-uniformed full-time paid personnel of the Red Cross assigned to duty with the uniformed services and either residing on a military installation in the United States, or stationed outside the United States, and accompanying dependents, must have eligibility verified by documentation shown in Table 24 to this subpart.

TABLE 24 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR FULL-TIME PAID PERSONNEL OF THE RED CROSS AND ACCOMPANYING DEPENDENTS

Status	Eligibility documentation
Red Cross Employee .....	Travel authorization (Note 1).
Dependent .....	Travel authorization (Note 2) and Dependent documentation (Note 3).

**Notes:**

1. A travel authorization produced by the sponsoring DoD Component authorizing the sponsor to reside on a military installation in the United States, or indicating an assignment outside the United States.
2. A travel authorization produced by the sponsoring DoD Component authorizing eligible dependents to accompany the sponsor.
3. Eligible dependents, as identified in subpart C of this part, are required to establish their relationship to the sponsor, as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(4) *United Service Organizations (USO) personnel.* USO area executives, center directors, and assistant directors serving outside the United States and outside U.S. territories and possessions and accompanying dependents, must have eligibility verified by documentation shown in Table 25 to this subpart.

TABLE 25 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR USO AREA EXECUTIVES, CENTER DIRECTORS, AND ASSISTANT DIRECTORS AND ACCOMPANYING DEPENDENTS

Status	Eligibility documentation
USO Employee .....	Travel authorization (Note 1).
Dependent .....	Travel authorization (Note 2) and Dependent documentation (Note 3).

**Notes:**

1. A travel authorization produced by the sponsoring DoD Component.

2. A travel authorization produced by the sponsoring DoD Component authorizing eligible dependents to accompany the sponsor.  
 3. Eligible dependents, as identified in subpart C of this part, are required to establish their relationship to the sponsor, as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(5) *United Seaman's Service (USS)* U.S. territories and possessions, and eligibility verified by documentation  
*personnel.* USS personnel serving accompanying dependents, must have shown in Table 26 to this subpart.  
 outside the United States and outside

TABLE 26 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR USS PERSONNEL AND ACCOMPANYING DEPENDENTS

Status	Eligibility documentation
USS Employee (Self) .....	Travel authorization (Note 1).
Dependent .....	Travel authorization (Note 2) and Dependent documentation (Note 3).

**Notes:**

1. A travel authorization produced by the sponsoring DoD Component.  
 2. A travel authorization produced by the sponsoring DoD Component authorizing eligible dependents to accompany the sponsor.  
 3. Eligible dependents, as identified in subpart C of this part, are required to establish their relationship to the sponsor, as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(6) *Military Sealift Command (MSC)* United States and outside U.S. eligibility verified by documentation  
*personnel.* MSC personnel on MSC- territories and possessions, and shown in Table 27 to this subpart.  
 owned and operated vessels outside the accompanying dependents, must have

TABLE 27 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR MSC PERSONNEL DEPLOYED ON MSC-OWNED AND OPERATED VESSELS AND ACCOMPANYING DEPENDENTS

Status	Eligibility documentation
MSC Employee .....	Travel authorization (Note 1).
Dependent .....	Travel authorization (Note 2) and Dependent documentation (Note 3).

**Notes:**

1. A travel authorization produced by the sponsoring DoD Component.  
 2. A travel authorization produced by the sponsoring DoD Component authorizing eligible dependents to accompany the sponsor.  
 3. Eligible dependents, as identified in subpart C of this part, are required to establish their relationship to the sponsor, as specified in Tables 1 through 10 of this subpart, if the relationship has not previously been established.

(h) *Documentation for foreign affiliates.* This paragraph (h) describes eligibility documentation required for foreign affiliates, including foreign national military, civilian, and contractor personnel, and their dependents, when they are eligible for benefits in accordance with subpart C of this part. A foreign affiliate serving in the United States or outside the United States under the sponsorship or invitation of the DoD or a Military Service, and accompanying dependents, must have eligibility verified by documentation shown in Table 28 to this subpart.

TABLE 28 TO SUBPART D OF PART 161—ELIGIBILITY DOCUMENTATION REQUIRED FOR SPONSORED FOREIGN AFFILIATES IN THE UNITED STATES AND ACCOMPANYING DEPENDENTS

Status	Eligibility documentation
Foreign Affiliate .....	ITO (Note 1) or Foreign Visit Request (Note 1).
Dependent .....	ITO (Note 2) or Foreign Visit Request (Note 2).

**Notes:**

1. An ITO, Foreign Visit Request, or other document establishing the foreign affiliate's sponsorship to travel to the United States.  
 2. An ITO, Foreign Visit Request, or letter produced by the sponsoring DoD Component authorizing eligible dependents to accompany the sponsor.

(i) *Documentation required to terminate eligibility in DEERS—(1) Overview.* This paragraph (i) describes documentation required to terminate eligibility in DEERS. When terminating eligibility in DEERS, documentation is required in accordance with Tables 29 through 31 to this subpart.  
 (2) *Spouse.* A sponsor's spouse, former spouse, or surviving widow or widower, who does not qualify as a DoD beneficiary and no longer meets the eligibility requirements identified in subpart C of this part, must have eligibility terminated in DEERS by documentation shown in Table 29 to this subpart.

TABLE 29 TO SUBPART D OF PART 161—DOCUMENTATION REQUIRED TO TERMINATE ELIGIBILITY OF A SPOUSE IN DEERS

Status	Eligibility documentation
Spouse .....	Divorce decree (Note 1) or Death certificate.
Former Spouse .....	Marriage certificate from subsequent marriage (Note 2).
Widow/Widower .....	Marriage certificate from subsequent marriage (Note 2).

**Notes:**

1. A dissolution decree or annulment decree is also accepted.
2. A common law marriage certificate, a court order, or a written SJA opinion that a common law marriage is recognized in the relevant State or U.S. jurisdiction, is also accepted.

(3) *Child.* A sponsor's child, who no longer meets the eligibility requirements identified in subpart C of this part, must have eligibility terminated in DEERS by documentation shown in Table 30 to this subpart.

TABLE 30 TO SUBPART D OF PART 161—DOCUMENTATION REQUIRED TO TERMINATE ELIGIBILITY OF A CHILD IN DEERS

Status	Eligibility documentation
Child, Under Age 21:	
Legitimate, Adopted, Pre-Adoptive, Illegitimate Child.	Marriage certificate (Note 1) or Adoption decree (Note 2) or Court order (Note 3) or Death certificate (Note 4).
Stepchild .....	Marriage certificate (Note 1) or Adoption decree (Note 2) or Court order (Note 3) or Death certificate (Note 4) or Divorce decree (Notes 5, 6).
Ward, Foster Child .....	Marriage certificate (Note 1) or Adoption decree (Note 2) or Court order (Note 3) or Death certificate (Note 4) or Dependency certification (Note 7).
Child, Over Age 21:	
Full-Time Student .....	Marriage certificate (Note 1) or Death certificate (Note 4) or Change in financial status (Note 7) or Letter from school registrar (Note 8).
Temporary or Permanent Incapacitated Child.	Marriage certificate (Note 1) or Death certificate (Note 4) or Change in financial status (Note 7) or Medical sufficiency statement (Note 9).

**Notes:**

1. A marriage certificate, if the child marries.
2. An adoption decree, if the child is adopted and the relationship to the sponsor is severed. This does not apply to surviving children adopted by a non-military member after the death of the sponsor in accordance with 32 CFR 199.3(f)(3).
3. An order or appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession), affirming either the voluntary relinquishment or involuntary termination of parental rights and placing the child into custody of another guardian, or emancipating the child. In cases of involuntary termination, the Service project office should consult with the local SJA and confirm that the sponsor was properly notified of the involuntary termination proceedings and was given the opportunity to defend the sponsor's rights.
4. A death certificate, if the child dies.
5. A final divorce decree, if the sponsor and the child's parent divorce in accordance with 32 CFR 199.3(f)(3).
6. A dissolution decree or annulment decree is also accepted.
7. Sponsor certification on the DD Form 1172-2 that the sponsor is not providing more than 50 percent or that the child does not reside in the household.
8. A letter from the school registrar that establishes the child is no longer a full-time student.
9. A medical sufficiency statement issued by a physician in support of the military treatment facility or authorized TRICARE service provider, establishing the end of an incapacitation.

(4) *Parent.* A sponsor's parent, including a parent-in-law, stepparent, or parent-by-adoption, who no longer meets the eligibility requirements, as identified in subpart C of this part, must have eligibility terminated in DEERS by documentation shown in Table 31 to this subpart.

TABLE 31 TO SUBPART D OF PART 161—DOCUMENTATION REQUIRED TO TERMINATE ELIGIBILITY OF A PARENT IN DEERS

Status	Eligibility documentation
Parent .....	Change in financial status (Note 1) or Divorce decree (Note 2) or Marriage certificate (Note 3) or Death certificate (Note 4) or.

**Notes:**

1. The sponsor, or the dependent parent, verifies that the sponsor is not providing more than 50 percent financial support for the parent.
2. The relationship between the sponsor and the parent-in-law is terminated as a result of a divorce. A dissolution decree or annulment decree is also accepted.
3. The parent marries.
4. The parent dies.

(j) *Documentation required to set data display restrictions in DEERS.* This paragraph (j) describes documentation required to request data display restrictions in DEERS. In certain circumstances, data display restrictions may be applied in DEERS to mask data elements from being viewed by affiliated family members by documentation shown in Table 32 to this subpart. Reasons and circumstances for restricting data may include, but are

not limited to, personal preference and information such as an address, phone cases of abuse. Restricted data may number, or email address. include, but is not limited to, contact

TABLE 32 TO SUBPART D OF PART 161—DOCUMENTATION REQUIRED TO SET DATA DISPLAY RESTRICTIONS

Status	Documentation
Sponsor or Dependent .....	DEERS Support Office request (Note 1) or Project Office request (Note 2) or Protective order (Note 3) or Health Insurance Portability and Accountability Act request (Note 4).

**Notes:**

1. A request to the DEERS Support Office asking for contact information to be restricted.
2. A request to the Service DEERS/RAPIDS Project Office asking for the contact information to be restricted.
3. An order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) that establishes a protective order.
4. A request to restrict health information.

(k) *Documentation required to change a gender marker in DEERS.* This paragraph (k) describes documentation required to request a change to a retiree's, a dependent's, or a contractor's gender marker in DEERS. Requests to change a gender marker require submission of documentation listed in Table 33 to this subpart that reflects the applicant's gender identity. All requests by retirees, dependents, and contractors to change gender markers must be submitted by the sponsor's responsible uniformed service project office or sponsoring agency to DoDHRA.

(1) For changes to a retiree's gender marker, after DoDHRA confirms the

change in DEERS, the uniformed service project office must follow existing Service procedures to send an update to DFAS, or the Service equivalent pay office, to allow DFAS, or the Service equivalent pay office, to update its system with the retiree's gender identity.

(2) A military Service member should refer to DoD Instruction 1300.28, "In-Service Transition For Transgender Service Members" (available at: <http://www.dtic.mil/whs/directives/corres/pdf/130028p.pdf>) and the Secretary of Defense Memorandum of June 30, 2016, Directive Type Memorandum (DTM) 16-005, "Military Service of

Transgender Service Members" (available at: <http://www.dtic.mil/whs/directives/corres/pdf/DTM-16-005.pdf>) for DoD policy concerning changing their gender in DEERS.

(3) Government civilian employees should consult their servicing human resources or civilian personnel office for guidance concerning changing their gender markers in DEERS.

(4) If a name change is required in conjunction with a change of gender marker, see paragraph (m) of this section.

(5) To change a gender marker in DEERS to correct an administrative error, see paragraph (n) of this section.

TABLE 33 TO SUBPART D OF PART 161—DOCUMENTATION REQUIRED TO CHANGE A GENDER MARKER IN DEERS

Status	Documentation
Retiree, Dependent, or Contractor (Note 4).	Re-issued or amended birth certificate (Note 1) or U.S. Passport (Note 1) or Court order (Note 2) or Doctor's letter with justification (Note 3).

**Notes:**

1. Document must reflect the individual's gender identity.
2. An order or other appropriate document from a court of competent jurisdiction in the United States (or U.S. territory or possession) reflecting the individual's gender identity.
3. If unable to submit a re-issued or an amended birth certificate reflecting the individual's gender identity, a U.S. passport reflecting the individual's gender identity, or a certified true copy of a court order reflecting the individual's gender identity, a retiree, dependent or contractor may submit a letter from a doctor certifying that the sponsor or dependent has had the appropriate clinical treatment for gender transition. If a doctor's letter is being submitted in lieu of the other official documents identified in this table, the individual submitting the request shall attach to the doctor's letter a written statement that the other official documents cannot be submitted. Information that must be included in the doctor's letter follows:
  - a. Physician's full name.
  - b. Physician's medical license or certificate number.
  - c. Issuing state or other jurisdiction of medical license/certificate.
  - d. Physician's office address and telephone number.
  - e. Language stating that the physician is the sponsor's or dependent's attending physician and that the physician has a doctor/patient relationship with the sponsor or dependent.
  - f. Language stating the sponsor or dependent has had the appropriate clinical treatment for gender transition to the individual's gender identity. Specific treatment information is not required.
  - g. Language stating "I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct."
4. Includes other ID card eligible populations managed by the Trusted Associate Sponsorship System for which DEERS is the authoritative source.

(l) *Documentation required to change a Social Security Number (SSN) in DEERS.* This paragraph (l) describes documentation required to change an SSN in DEERS. An individual's SSN should be changed in DEERS with

documentation shown in Table 34 to this subpart.

(1) To change an SSN in a DEERS record that was established by an authoritative feed (e.g., uniformed service member records, DoD civilian personnel records), the sponsor will

need to consult the personnel office that established the authoritative feed.

(2) To change an SSN in a DEERS record that was manually established (e.g., dependent records), the sponsor will need to go to a RAPIDS site for assistance.

TABLE 34 TO SUBPART D OF PART 161—DOCUMENTATION REQUIRED TO CHANGE AN SSN IN DEERS

Status	Documentation
Sponsor .....	Social security cards (Note 1) and Social Security Administration letter (Note 2).
Dependent .....	Social security cards (Note 1) and Social Security Administration letter (Note 2).

**Notes:**

1. Social security cards issued by the Social Security Administration, establishing the old and new SSNs.
2. A letter from the Social Security Administration, explaining that a new SSN has been issued and stating that the individual will no longer use the old SSN.

(m) *Documentation required to change a name in DEERS.* This paragraph (m) describes documentation required to change a name in DEERS. Name changes based on a marriage, divorce, or death, are made at the time of enrollment or ID card issuance. An individual's name should be changed in

DEERS with documentation shown in Table 35 to this subpart.

(1) To change a name in a DEERS record that was established by an authoritative feed (e.g., uniformed service member records, DoD civilian personnel records), the sponsor will need to first consult the personnel office that established the authoritative feed. If an immediate change is required, the

sponsor may visit a RAPIDS site with the applicable documentation identified in Table 35 to this subpart.

(2) To change a name in a DEERS record that was manually established (e.g., dependent records), the sponsor will need to visit a RAPIDS site with the applicable documentation identified in Table 35 to this subpart.

TABLE 35 TO SUBPART D OF PART 161—DOCUMENTATION REQUIRED TO CHANGE A NAME IN DEERS

Status	Documentation
Sponsor .....	Court order or Marriage certificate (Note 1) or Divorce decree (Note 2) or Death decree (Note 3) or Social security cards (Note 4).
Spouse .....	Court order or Marriage certificate (Note 1) or Divorce decree (Note 2) or Death certificate (Note 3) or Social security cards (Note 4).
Child .....	Court order or Social security cards (Note 4).

**Notes:**

1. A marriage certificate to change an individual's last name to match the spouse's last name or to hyphenate the last name.
2. A divorce decree to establish the individual's last name as the individual's last name before being married. A dissolution decree or annulment decree is also accepted. Additional documentation confirming name before being married may be required.
3. A death certificate to establish the individual's last name as the individual's last name before being married. Additional documentation confirming name before being married may be required.
4. Social security cards issued by the Social Security Administration, establishing the individual's old full name and new full name.

(n) *Documentation required to correct an administrative error in DEERS—(1) Overview.* This paragraph (n) describes documentation required to correct administrative errors in DEERS.

(i) To correct an administrative error in a DEERS record that was established and updated by authoritative feed, the

sponsor should consult the personnel office that owns the authoritative feed.

(ii) To correct an administrative error in a DEERS record that was established and updated manually, the sponsor, on behalf of a dependent, should seek the support of the uniformed service's DEERS Support Office Field Support

personnel with documentation shown in Tables 36 through 38 of this subpart.

(2) *Name or date of birth.* An individual's name or date of birth, when incorrectly entered in DEERS, should be corrected with the documentation shown in Table 36 to this subpart.

TABLE 36 TO SUBPART D OF PART 161—DOCUMENTATION REQUIRED TO MODIFY A NAME OR DATE OF BIRTH IN DEERS TO CORRECT AN ADMINISTRATIVE ERROR

Status	Documentation
Sponsor or Dependent .....	U.S. Citizenship and Immigration Services Form I-9, "Instructions for Employment Eligibility Verification," Documentation (Note).

**Note:** Documentation from the U.S. Citizenship and Immigration Services Form I-9, Lists of Acceptable Documents), that establishes name or date of birth.

(3) *Gender.* An individual's gender marker, when incorrectly entered in DEERS, should be corrected with the

documentation shown in Table 37 to this subpart.

TABLE 37 TO SUBPART D OF PART 161—DOCUMENTATION REQUIRED TO MODIFY A GENDER MARKER IN DEERS TO CORRECT AN ADMINISTRATIVE ERROR

Status	Documentation
Sponsor or Dependent .....	Birth certificate and Form I–9 Documentation (Note).

**Note:** Documentation from the U.S. Citizenship and Immigration Services Form I–9 (Lists of Acceptable Documents) that establishes gender.

(4) *SSN.* An individual’s SSN, when corrected with the documentation incorrectly entered in DEERS, should be shown in Table 38 to this subpart.

TABLE 38 TO SUBPART D OF PART 161—DOCUMENTATION REQUIRED TO MODIFY AN SSN IN DEERS TO CORRECT AN ADMINISTRATIVE ERROR

Status	Documentation
Sponsor or Dependent .....	Documentation establishing SSN (Note).

**Note:** Government-issued documentation establishing SSN, including but not limited to, social security card, Department of the Treasury Internal Revenue Service Form W–2, “Wage and Tax Statement,” and Form SSA–1099, “Social Security Benefit Statement.”

Dated: October 11, 2016.  
**Aaron Siegel,**  
*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*  
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